



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA2779

**Objector:** The Fair Admissions Campaign

**Admission Authority:** The Academy Trust for King David High School, Manchester

**Date of decision:** 15 December 2014

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for King David High School, Manchester, for admissions in September 2015.**

**I have also considered the arrangements for admissions in September 2014 and September 2015 in accordance with section 88I(5). I determine that the arrangements for both years do not conform with the requirements relating to admission arrangements.**

**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 as quickly as possible.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the Fair Admissions Campaign, (the objector), about the admission arrangements (the arrangements) for September 2015 for King David High School, (the school). The school is an academy school for pupils aged 11 -18 in Manchester with a Jewish religious character. The objection concerned whether the arrangements had been determined and published as required and whether a number of aspects of the school's faith-based oversubscription criteria and its supplementary information form (SIF) complied with the requirements relating to admissions.

### **Jurisdiction**

2. 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 by the academy trust, which is the admission authority for the school, on that basis on 19 December 2013. The objector submitted the objection to these determined arrangements on 30 June 2014. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.
3. Alongside the objection, the objector referred several aspects of the 2014 arrangements to me in accordance with the provisions of section 88I of the Act. I have used my power under section 88I of the Act to consider both the referral and the 2014 and 2015 arrangements as a whole.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation, the School Admissions Code (the Code) and the School Admissions Appeals Code (the Appeals Code).
5. The documents I have considered in reaching my decision include:
  - a. the objector's email of objection dated 30 June 2014 and subsequent correspondence;
  - b. the school's response to the objection and subsequent correspondence;
  - c. information provided by Manchester City Council which is the local authority (LA) for the area;
  - d. the response of the Office of the Chief Rabbi (OCR) which is the religious authority for the school to the objection and the guidance issued by the OCR to its schools;
  - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
  - f. copies of the minutes of the meeting at which the academy trust determined the arrangements; and
  - g. a copy of the determined arrangements.
6. I have also taken account of information received during a meeting I convened on 17 September 2014 at the school which was attended by representatives of the school, the LA and the objector. The religious authority was also invited to attend but chose not to be represented.

### **The Objection**

7. The objection read as follows:

*“either 1.46 (admissions policy for 2015 not decided yet) or 1.47 (admissions policy for 2015 not published yet). The rest of the complaint is therefore about the 2014 policy*

*1.47/2.14 (2014 admissions policy not on website)*

*1.9e) (criteria a/b/c/d – synagogues require individuals to make financial contributions for membership. Typically this can be waived but only for those on low incomes, so those not on low incomes are required to make a financial contribution)*

*We question criteria a/b break 1.8’s requirement that ‘Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular... racial group’/constitute indirect racial discrimination under the Equality Act 2010. Orthodox Jewish synagogues typically (if not always?) refuse membership to individuals on the basis of whether or not an individual’s mother is Jewish. Given this, we question whether giving preference to children who have a parent who is a member of an Orthodox Jewish synagogue makes it much harder for children whose mother is not ethnically Jewish to gain admittance, and therefore is discrimination of the sort disallowed as a result of the JFS case*

*1.9b) (criteria 3 takes into account unnamed feeder schools)*

*1.8/1/37/14 (the criteria are unclear in saying ‘In the event of a tie-break situation, preference will be given to applicants who show a demonstrably greater commitment to the faith, eg regular attendance at Synagogue, Shabbat and Kashrut observance etc.’ but not precisely defining what this means)*

*1.8 (there is no effective tie-breaker for the situation where two people are assessed to have demonstrated as great a commitment)*

*2.4 (all applicants are required to complete the supplementary application form even if not applying for a religious place)*

*2.4 (the SIF collects unneeded information such as child’s gender, details of both parents/guardians, whether the child resides with their natural parents, whether parents/guardians reside at the same address)*

*1.9a)/1.6/1.36/2.8 (the statements in the SIF, ‘It is my wish that my child should take full advantage of the facilities for Religious and Hebrew Education.’ and ‘I agree to abide by the school rules.’)”*

## **Other Matters**

8. When I reviewed the arrangements for 2014 and 2015 (which were the same with the exception of a reduction in the published admission number (PAN)), I considered that there might be other matters which did not comply with the requirements relating to admissions. These were:
  - a. the SIF asked for the mother’s maiden name and paragraph 2.4a states that SIFs must not ask for maiden names;
  - b. the SIF asked if either parent lives at a different address from the child for details to be given and this could breach the prohibition of in paragraph 1.9f of the Code on giving priority on the basis of marital status and the prohibition in 2.4a on asking about marital status on a SIF;
  - c. the arrangements gave different degrees of priority depending on

whether the family are members of an Orthodox or a non-Orthodox synagogue. As no definitions are included the arrangements might breach paragraphs 1.4 and 1.8 and 1.37 of the Code by lacking clarity and as parents would not be able to tell if their own synagogue was considered to be Orthodox or non-Orthodox.

- d. the arrangements did not provide any means to distinguish between children in some of the categories used in the oversubscription criteria and hence breach paragraph 1.7 of the Code and are not clear as required by paragraphs 1.4 and 1.8 of the Code;
- e. the arrangements stated that a waiting list would be maintained for two weeks after the closing date for acceptances of offers whereas paragraph 2.14 of the Code requires a waiting list to be maintained for at least the first term of the academic year of admission;
- f. the arrangements stated that parents who wished to exercise their right to appeal if their child had not been offered a place had to do so within 14 days. Paragraph 2.1 of the Appeals Code states that at least 20 days must be allowed;
- g. the arrangements could suggest that admission to the school depended on academic performance and standards of personal conduct. This could breach paragraphs 1.4, 1.8, 1.9a, 1.18 and 1.21 of the Code;
- h. the school used three different SIFs for Y7 which could make the arrangements unclear in breach of paragraphs 1.4 and 1.8 of the Code and also meant that the school collected information unnecessary to apply the oversubscription criteria and hence in breach of paragraph 2.4 of the code;
- i. the definition of looked after and previously looked after children was not accurate which meant there was a risk some of these children might not receive the priority they are entitled to under paragraph 1.7 of the Code;
- j. the arrangements lacked a clear statement that children with statements of special educational needs (SEN) which named the school would be admitted as required by paragraphs 1.6 and 1.8 of the Code, and
- k. the arrangements for admission to Y12 lacked a clear PAN as required by paragraph 1.2 of the Code and did not conform in a number of ways to the requirements relating to admissions, including those relating specifically to admissions to sixth forms set out in paragraph 2.6 of the Code.

## **Background**

- 9. The school became an Academy in 2011, converting from voluntary aided (VA status). Annex B to the school's funding agreement with the Secretary of State confirms that it is an Orthodox Jewish Academy and its

religious authority is the OCR. The school has informed me that it last consulted on its admission arrangements when it was in the process of becoming an academy and it plans to consult again before determining its arrangements for 2016.

10. When I reviewed the school's website in July 2014, I found a section entitled "Applications" which said: *"To apply for a place at King David High Schools please complete the appropriate document below."* This was followed by three links, headed respectively: *"main school application"*, *"Yavneh Boys Application"* and *"Yavneh Girls Application"*. Each of these documents is a SIF which means that the school has three SIFs for Y7. There was also a link to a PDF document headed *"Admissions Policy 2014/15"*. In July 2014, however, this link led to the admission arrangements for 2015.
11. The admission arrangements for Y7 state that the PAN for 2015 is 90. The oversubscription criteria set out in the school's admission arrangements for 2015 for Y7 when I first saw them were as follows:

*"Parents are reminded that it is not necessary to meet all, or indeed, any of the criteria below for their child to be offered a place at the school. However, in the event of the school being oversubscribed, the Governors will apply the following criteria in order of priority:-*

- a) looked after children (within the meaning of section 22 of the Children Act 1989) being children in the care of the local authority or previously looked after children whose family are members of an Orthodox synagogue;*
- b) children whose parent/parents or guardian/guardians are members of an Orthodox synagogue;*
- c) Looked after children (within the meaning of section 22 of the Children Act 1989) being children in the care of the local authority or previously looked after children whose family are members of a Non-Orthodox Synagogue;*
- d) Children whose parent/parents or guardian/guardians are members of a Non-Orthodox synagogue;*
- e) Any other looked after children or previously looked after children and*
- f) All other applicants.*

*In the event of oversubscription within categories b) and d) above places will be offered in accordance with the following criteria:*

- (i) siblings (here meaning the Jewish brother or sister where they share the same mother or father and this includes step-siblings and Jewish adopted siblings) of children attending the school at the date of admission*

- (ii) *children attending King David Junior School*
- (iii) *children from other Jewish primary schools*

*A waiting list will be kept open until two weeks after the closing date for acceptance of offers, for applicants who have not been offered a place in the first round.*

*In the event of a tie-situation, preference will be given to applicants who show a demonstrably greater commitment to the faith, eg regular attendance at Synagogue, Shabbat and Kashrut observance etc.”*

12. The arrangements go on to explain that “*assessment examinations are held to assess the suitability of applicants to the various classes and streams within the school*”. The arrangements also state that application forms are available from the school office and must be sent back to the school office.
13. The school has since the meeting sent me a set of possible new admission arrangements for Y7. These have not been published on the school’s website. Given that the closing date for applications for 2015 has now passed, these possible arrangements could be used only for late applications and a waiting list for 2015 admissions or, following the proper determination process, for 2016. I have referred below to these where appropriate to do so.
14. Information about admission into the school’s the sixth form at Year 12 (Y12) was provided on a page on the website headed Sixth Form. This says:

*“We welcome applications to Sixth Form from students from other schools... Further information is available from the school office but the process includes*

- *One or more interviews,*
- *Good predicted GCSE*
- *Good reference from previous school”*

15. The admissions criteria set out for the sixth form include a PAN of 90. The arrangements include the following:

*“The admissions procedure for the Sixth form shall be the same as those listed for admissions into Year 7, except that priority will be given to pupils who are currently at the school and that the “interview process” will be used far more extensively.*

*Standards of conduct: Sixth form students are expected to play a leading role in the whole school. They are expected to set the religious and moral tone and to lead by example. To be admitted (and to remain on the course), students must demonstrate a high standard of commitment to the practice of and beliefs in, Judaism, a high standard of discipline and personal conduct, and a strong work ethic, as demanded by the faith. Any serious disciplinary issues*

(eg exclusions) in the lower school will be grounds for non-admission into the Sixth Form.”

16. This is followed by a section on academic requirements, which includes a statement that “*these requirements may be varied from time to time, depending on the circumstance of individual students*”.

### Consideration of Factors and Other Matters

17. I begin by noting that with the exception of the PAN the arrangements for 2014 and 2015 are the same. The arrangements had been properly determined when the objection was made. I am therefore treating the objection as being to the 2015 arrangements.

### Year 7

18. Published Admission Number: Before I consider the objection and the other matters, I wish to address the question of the school’s PAN. As noted above, the PAN for Y7 for 2015 is 90. The LA and school have confirmed that this represents a reduction in PAN which had been 115 for each of the years beginning 2011, 2012, 2013 and 2014. The school has explained that it reduced the PAN in response to a decline in the numbers of pupils seeking and accepting places at the school in recent years as demonstrated in the table below:

Year	PAN	Number joining Y7
2011	115	115
2012	115	108
2013	115	125 (had been 105 at beginning of September but then received a large unexpected extra number)
2014	115	93

19. The school has also said “*the PAN is not normally related to Admission policies*” and is “*a matter of internal school organisation.*” The school is simply wrong in these assertions; the PAN is part of the admission arrangements by virtue of section 88D of the Act and paragraph 1.2 of the Code. Moreover, while it is the case that consultation is not required before a PAN is to be increased or if it is to stay the same, consultation is required where an admission authority proposes to reduce its PAN. Paragraph 1.3 of the Code emphasises that admission authorities **must** consult in the way set out in paragraph 1.42 of the Code where they propose to reduce the PAN. At the meeting, the school commented that no child had been disadvantaged by the change of PAN as it had accepted every child who had wanted a place. The LA representative confirmed this. Nonetheless, the school has not complied with the requirements relating to admissions so far as the determination of a reduced PAN is concerned.

20. Determination and publication of the arrangements: In the initial objection,

the objector said in relation to the 2015 arrangements “*either 1.46 (admissions policy for 2015 not decided yet) or 1.47 (admissions policy for 2015 not published yet)*”. As noted above, this objection was submitted on 30 June 2014. I first reviewed the school’s website in July 2014 at which time the admissions policy for 2015 was published on the website. The school has also provided confirmation and evidence that the arrangements were determined on 19 December 2013. The objector then said in response to the school’s comments on the objection when the school said that it had determined and published its arrangements: “*We have to confess to be having some trouble recalling what the precise situation was in this area at the time of our objection*” and goes on to suggest that the 2015 arrangements may have been published after the objection was made but before I reviewed the website. The objector then makes the point that the arrangements for 2014 at that point no longer appeared on the website. The arrangements had been determined in accordance with the statutory timetable so I do not uphold that aspect of the objection. As to publication, the arrangements had been published when I reviewed the website so I do not uphold that aspect of the objection.

21. So far as the arrangements for 2014 are concerned, paragraph 1.47 of the Code requires that these are published for the whole of the offer year. Paragraph 2.14 requires that all admission authorities **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission which has to be in line with its published admission arrangements. Taken together, these two paragraphs combined mean that the arrangements for 2014 needed to be on the school’s website until the end of the term which began in September 2014. I uphold this part of the objection. The school’s arrangements did not conform with this requirement. The school has now re-published the arrangements for 2014.

#### The school’s faith based oversubscription criteria

22. The school is designated as having a religious character and is accordingly entitled by virtue of paragraph 1.36 of the Code to use faith-based oversubscription criteria. In doing so, it must by virtue of paragraph 1.38 of the Code have regard to any advice published by its religious authority and by virtue of paragraph 1.9i may take account in its oversubscription criteria of religious activities which have been laid out by its religious authority. The school’s religious authority is, as noted above, the OCR and I have been provided with a copy of the guidance it has issued to its schools. The guidance is only one page in length. It makes clear that following a ruling of the Supreme Court in 2009, Jewish Schools cannot base their oversubscription criteria on whether a child is halakhically Jewish (by which the OCR means born of a Jewish mother or converted to Judaism in a manner recognised by the Chief Rabbi). The guidance goes on to say that:

*“..consistent with the ethos of each school, any religious criteria should be designed to be as inclusive as possible. They should reflect the rabbinic principle that the world stands on three things: Torah (Jewish study and knowledge), Avodah (the life of religious observance and prayer) and Gemillut*

*Chassidim (acts of kindness and social responsibility). Evidence of practice should normally be considered as positive evidence of religious commitment.”*

23. I consider first the question of whether giving priority on the basis of membership of a synagogue breaches paragraph 1.9e of the Code which states that priority must not be given on the basis of practical or financial support to the school or an associated organisation. The school’s arrangements give priority to those whose parents or guardians are members of synagogues with different degrees of priority according to whether the synagogue is an Orthodox synagogue or non-Orthodox synagogue. The objector stated that synagogues require individuals to make financial contributions for membership, with this requirement typically being waived only for those on low incomes. The objector argued that where priority is given on the basis of synagogue membership this creates an association between the school and the synagogue. This in turn would mean that the arrangements would breach paragraph 1.9e of the Code which prohibits giving priority on the basis of financial or practical support to the school or an associated organisation.
24. In correspondence subsequent to the meeting, the objector and the school have exchanged, via the Office of the Schools Adjudicator (OSA), information about membership requirements and fees for various synagogues in the area. This has shown that there is – as might be expected – a range of practice and tradition in the different synagogues. However, it is clear to me that a number of the synagogues do charge fees. These fees may be waived for those of limited means. However, that is not relevant to the test set by the Code which is whether there is an association between the synagogues and the school and that where there is such an association, priority **must not** be given on the basis of practical or financial support to the associated organisation.
25. Membership of a synagogue is the only way specified in the arrangements for gaining priority under the faith-based oversubscription criteria. I therefore consider that there is an association between the school and the synagogues. I consider that the arrangements breach paragraph 1.9e of the Code and I uphold this part of the objection.
26. I turn now to the question raised in the objection of whether the arrangements breach paragraph 1.8 of the Code and whether they constitute racial discrimination under the Equality Act. The objector argues also that *“Orthodox Jewish synagogues typically (if not always?) refuse membership to individuals on the basis of whether or not an individual’s mother is Jewish. Given this, we question whether giving preference to children who have a parent who is a member of an Orthodox Jewish synagogue makes it harder for children whose mother is not ethnically Jewish to gain admittance and therefore is [unlawful] discrimination”*. The objector refers to a ruling of the Supreme Court in relation to another school with a Jewish religious character in 2009. The objector argues that the school’s arrangements breach the provision in paragraph 1.8 of the Code that arrangements are not to *“disadvantage unfairly, either directly or*

*indirectly, a child from a particular ... racial group*" and the provisions of the Equality Act 2010 in relation to racial discrimination.

27. The OCR guidance does not address the question of who can be a member of a synagogue which is under the auspices of the Chief Rabbi. The objector has also drawn my attention since the meeting to provisions on the websites of a number of the Orthodox synagogues in Manchester which make clear that they will admit to membership only those who are halakhically Jewish. Parental membership of these synagogues would, of course, qualify a child for priority for admission under the school's faith-based criteria.
28. Against this background, I consider that the school's arrangements by giving priority on the basis of membership of Orthodox synagogues breach paragraph 1.8 of the Code and they breach the Equality Act by amounting to discrimination on the basis of race following the ruling of the Supreme Court in 2009. In its letter of 30 July 2014 and at the meeting, the school said it would be happy to amend its criteria so that it is based on attendance at rather than membership of a synagogue. While all cases are considered on their merits, attendance at a place of worship is a frequently used criterion and – provided the attendance requirement is reasonable, clear and fair – usually considered to be in conformity with Code. I uphold this aspect of the objection.
29. Feeder schools: The arrangements when I first saw them gave priority to children who had attended one named feeder school – King David Junior School – and a lesser degree of priority to children who had attended "*other Jewish primary schools*". Paragraph 1.9b of the Code states that account cannot be taken of any previous school attended unless it is a named feeder school; paragraph 1.9l prohibits the naming of fee-paying independent schools as feeder schools and 1.15 provides that admission authorities may name a school as a feeder school and that the selection of feeder school **must** be transparent and made on reasonable grounds.
30. In fact the King David Junior School no longer exists – as it and the linked former infant school have now become an all through primary school. King David Primary School is also a Jewish academy school. It has a PAN of 60 and shares the same campus as the King David High School. I consider that naming King David Primary School conforms with paragraph 1.15 of the Code. However, the fact that the name in the admission arrangements is not accurate makes the arrangements not as clear as they should be.
31. I now turn to the lesser degree of priority given to children from "*other Jewish primary schools*". This provision breaches Paragraph 1.9b of the Code as these schools are not named. The wording "*Jewish primary schools*" could include fee-paying independent schools which would also be a breach of paragraph 1.9l of the Code. I uphold this aspect of the objection. At the meeting, I asked the school to provide me with the names of the schools it wished to include as feeder primary schools and it has done so in the possible new arrangements. There are three schools (in addition to the King David Primary School). They are all publicly funded

schools. I have no jurisdiction over possible arrangements but I comment as follows on the information provided by the school. The PANs of the three schools sum to 135 which when added to the PAN of King David Primary is a total of 195. This is more than double the PAN of the school. This would mean that if the school were oversubscribed, a child who had not attended one of the feeders would be unlikely to be able to secure a place at the school. This situation has been exacerbated by the school's decision to reduce its PAN from 115 to 90.

32. Ordering of the oversubscription criteria: as explained above, the arrangements provide that where the PAN is reached and exceeded among those whose parents are members of an Orthodox or non-Orthodox synagogue, priority will be given first to those who have siblings at the school and then to those who attend the King David Junior School and then to those who attend other Jewish primary schools. The arrangements go on to say "*In the event of a tie-break situation, preference will be given to applicants who show a demonstrably greater commitment to the faith, eg regular attendance at Synagogue, Shabbat and Kashrut observance etc.*"
33. The objector argued that by not precisely defining what is meant by "*demonstrably greater commitment*", the arrangements breached paragraphs 14, 1.8 and 1.37 of the Code. Paragraphs 14 and 1.8 require arrangements to be clear, fair and objective and paragraph 1.37 requires that admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied. The school's arrangements offer no indication of what will be taken into account in determining demonstrably greater commitment and I consider that they are thus not clear and are potentially also subjective and unfair as it is possible that a subjective and/or unfair way of assessing commitment could be used. I consider also that paragraph 1.37 is breached as there is no indication given of the levels of commitment that have generally been required to gain a place at the school and I am of the view that a parent would find it hard to assess the chance of his or her child gaining a place. I uphold this aspect of the objection.
34. The school was quick to say at the meeting that it would make this aspect of the arrangements clearer. The possible new arrangements say that "*in the event of a tie-break situation, preference will be given to applicants who attend synagogue more regularly and if that remains a tie-break, then those living closest, geographically, to the school will be given priority*". Whilst these possible arrangements are not within my jurisdiction, I note that "*more regularly*" has not been defined and, as the objector observed in correspondence it is not clear how a more frequent attendance over a relatively short period of time would be compared with less frequent attendance over a longer period. There is no explanation of how distance would be measured as required by paragraph 1.13 of the Code.
35. Distinguishing between applicants in some categories: When I reviewed the section of the arrangements setting out the oversubscription criteria, I was also concerned about further possible breaches of the Code. The

provision relating to siblings and those attending Jewish Primary schools is not applied to applicants under a number of categories; namely, looked after and previously looked after children of the faith, other looked after and previously looked after children and all other applicants. As the tie-breaker – and notwithstanding that it in any case breaches a number of provisions of the Code as I have already determined – is based on religious practice it would not be capable of distinguishing between applicants in the categories of looked after and previously looked after children not of the faith. It would only be able to distinguish between children applying under the “*all other applicants*” category where their parents were practising Jews whose parents did not belong to a synagogue. Thus it would not be capable of distinguishing between applicants who were not Jewish or were non-practising Jews.

36. Paragraph 7 of the Code says that: “*Oversubscription criteria must then be applied to all other applicants [by which is meant all other than looked after and previously looked after children] in the order set out in the arrangements*”. The school’s arrangements do not allow all applicants to be ranked in accordance with oversubscription criteria and I accordingly determine that they do not conform with paragraph 1.7 of the Code.
37. What is described in the arrangements as a tie-breaker is not in fact capable of being used in this way as it is not capable of distinguishing between two candidates who qualify equally for the final available place. If, say, the school reached and exceeded PAN among children who attended a Jewish primary school, and then applied the test of “*commitment*” it would not be able to distinguish between children with the same level of commitment. The school has said that it considers that it would be unlikely for this situation to occur. It may be unlikely but the purpose of the final tie-breaker is to deal with such eventualities notwithstanding that they may occur rarely. In the case of children who are not Jewish, the arrangements lack any means of distinguishing between them, so it is completely unclear what would happen if the school reached and exceeded PAN among these children. I determine that the school’s arrangements do not conform with the requirement to have a final tie breaker set out in paragraph 1.8 and I uphold this aspect of the objection.
38. Clarity of the faith based criteria: I have dealt above with the ordering of the faith-based criteria. I was also concerned that the arrangements do not - when discussing commitment to the faith and its expression through synagogue attendance and observance of the Sabbath and dietary laws - make clear whether it is the behaviour of the parent or the child or both that counts. The SIF refers to “*you*” which I consider means the parent rather than the child (as the parent makes the application) but this is nowhere made clear. The arrangements are not clear and hence do not conform with paragraphs 14 and 1.8 of the Code.
39. The arrangements, as noted above, explain that if necessary to distinguish between applicants whose parent is a member of a synagogue, preference will be given to those “*who show a demonstrably greater commitment to the faith*” and give the examples of regular attendance at Synagogue,

observance of the Sabbath and keeping the dietary laws. While the SIF does ask how often the parent attends synagogue, it does not ask whether this is on the Sabbath or about any other aspects of Sabbath observance and it does not ask about keeping the dietary laws. The school explained that it made enquiries of Rabbis. However, there is no reference form for this purpose provided as part of the arrangements. This makes the arrangements unclear and possibly unfair and subjective as there is a risk that different rabbis will apply different standards in responding to enquiries if these are not presented in a standard format. Because the arrangements do not set out clearly what is meant by “*demonstrably greater commitment to the faith*”, I consider that the arrangements do not meet the requirement of paragraph 1.37 of the Code that admission authorities “*must ensure that parents can easily understand how any faith-based criteria will reasonably be satisfied*”. I uphold this aspect of the objection.

40. The arrangements give a higher degree of priority to those with parents who are members Orthodox synagogues than to those whose parents are members of non-Orthodox synagogues. No definition of Orthodox synagogue is given in the arrangements. I am conscious that as the school’s religious authority is the OCR, it would be possible to infer that an Orthodox synagogue is one which is under the religious authority of the OCR. The OCR does not have jurisdiction over the Liberal, Reform or Masorti Jewish communities and it is likely that adherents of these strands of Judaism would not consider their synagogues to be Orthodox synagogues. It is less clear what would happen in the case of what might be described as more strictly Orthodox Jewish communities which would also not be under the jurisdiction of the OCR. As the arrangements do not make clear what is required for a synagogue to be considered Orthodox, I consider that they are not clear as required by paragraphs 14 and 1.8 of the Code and do not meet the requirement in paragraph 1.37 that admission authorities **must** ensure that parents can easily understand how faith-based criteria will be satisfied.
41. Matters relating to the SIF: I have noted above that the school has three SIFs (main school, Yavneh Boys and Yavneh Girls). I deal below with the specific issue of whether it is permitted to have three SIFs in this way. I deal here with the contents of the SIF which are common to all three and for ease of reference I refer simply to the SIF. The objector stated that the arrangements require all applicants to complete the SIF even if not seeking a place on the grounds of faith. The arrangements when I first reviewed them said “*To apply for a place at King David High Schools [sic] please complete the appropriate document below and send it to the school office ..*” Paragraph 2.4 of the Code allows for the use of SIFs to collect information not provided on the CAF which is required to apply the school’s oversubscription criteria. This school needs some additional information to apply its faith-based criteria and is entitled to use a SIF for this purpose. However, there would be no need for anyone applying to the school under the categories of looked after and previously looked after children not of the faith or other children where they were not Jewish to complete a SIF. The Code makes very clear in paragraphs 15d, 1.6 and

1.36 that where a school has places available it must offer these to everyone who has applied without the use of oversubscription criteria or condition. The school's arrangements by suggesting that all applicants – and not just those applying under the faith-based categories – need to complete a SIF do not in this regard conform to these provisions of the Code or to paragraph 2.4 of the Code and I uphold this aspect of the objection.

42. The SIF asks about membership of Synagogue, how often families attend and how long they have been members. As noted above, the arrangements take account of regularity of synagogue attendance. However, there is no reference in the oversubscription criteria to the period of time for which attendance has been sustained. This question is therefore not needed in order to apply the current oversubscription criteria and consequently cannot be included on the SIF.
43. The objector also argued that the SIF requested other information which was not necessary to apply the oversubscription criteria. This included the child's gender, details of both parents/guardians, whether the child resides with their natural parents and whether parents/guardians reside at the same address and the mother's maiden name. Paragraph 2.4 of the Code makes clear that a SIF can request only that additional information which has a direct bearing about oversubscription criteria. It also states that the SIF **must not** ask for "*any personal details about parents and families, such as maiden names ... marital status...*" The school's SIF clearly breaches these requirements, directly in the case of the question about the mother's maiden name and indirectly in relation to marital status by asking "*if either parent/guardian lives at an address different from the pupil's please give details*". In response, the school said that this information was "*not part of the entrance criteria but just for practical information regarding contact details.*" The school also offered to amend the SIF. By asking for information which is not needed in order to apply the oversubscription criteria and, in respect of some of the questions, for information which the Code specifically says must not be asked for, the school's arrangements do not conform with the Code. The proposed new SIF does not include a number of provisions which breached the Code. However, it continues to ask for the full names of both parents, including in circumstances where the application is being made by a guardian rather than by one of the child's parents. It therefore asks for information which is not necessary to apply the admission arrangements and which cannot therefore be sought and by asking for the full names of both parents possibly also breaches paragraph 2.4a as the full names of both parents could provide information about marital status.
44. The objector noted that the SIF requires applicants to sign statements which say: "*It is my wish that my child should take full advantage of the facilities for Religious and Hebrew Education*" and "*I agree to abide by the school rules*". The objector considers these provisions breach a number of the Code's provisions, namely: paragraphs 1.9a, 1.6, 1.36 and 2.8 of the Code. Separately, when I reviewed the arrangements, I noted that they

stated that: “... to be admitted, parents must commit that they will support the religious ethos of the school”.

45. It is a requirement of the Code that where a school, including a school with a religious character, has places available it must admit all who would like one without use of oversubscription criteria or conditions. This is covered in paragraphs 15d, 1.6, 1.36 and 2.8 of the Code. Paragraph 1.9a provides that admission authorities must not place any conditions on the consideration of any application other than those in the oversubscription criteria. In correspondence the school said all it was seeking to do through the statement in its SIF was ensure that prospective pupils wished to take advantage of its facilities relating to religious and Hebrew education and that it did not ask anyone to confirm that they would abide by the religion or support the school in a practical way. So far as the reference to the school rules was concerned, the school thought that this was in the interests of the good order of the school. I take account of the school's points. However, the arrangements are in direct opposition to requirements of the Code which are actually repeated in several places in the Code. I uphold this aspect of the objection. I note in this context that the revised arrangements continue to state that to be admitted parents must commit that they will support the religious ethos of the school and abide by the school rules.
46. Priority given to looked after and previously looked after children: the school's arrangements define looked after children as “children in the care of the local authority”. In fact, as footnote 17 to the Code makes clear looked after children includes those provided with accommodation by a local authority as well as those in the care of a local authority. In addition, the school's arrangements refer to “the local authority”. A reader of the arrangements might reasonably infer that “the local authority” refers to Manchester as this is the LA area in which the school is located. As footnote 17 again makes clear a looked after or previously looked after child could be in the care of or provided with accommodation by any local authority; the requirement to give priority to these children is not limited to those living in the LA area of the school concerned. The arrangements do not conform with the Code and the school is required to revise its arrangements as quickly as possible.
47. As a school with a religious character, King David High School must give the highest priority to looked after and previously looked after children of its faith. It meets this requirement by giving highest priority to looked after and previously looked after Orthodox Jewish children before giving the next highest priority to Orthodox Jewish children who are not looked after or previously looked after. However, the school does not meet the requirement in paragraph 1.37 of the Code that: “*Where any element of priority is given in relation to children not of the faith they [the school in this case] must give priority to looked after and previously looked after children not of the faith above other children not of the faith.*” This is because it fails to give the highest priority after Orthodox Jewish children who are not looked after or previously looked after to all other looked after and previously looked children. Instead, it gives priority in order to non-

Orthodox Jewish children who are looked after or previously looked after, then to other non-Orthodox Jewish children and then to other looked after and previously looked after children. In order to meet the requirements relating to admissions, the school must either give the highest priority to all looked after and previously looked after children and then distinguish between other children or it can give the highest priority to Orthodox Jewish looked after and previously looked after children, next highest priority to other Orthodox Jewish children and the next highest priority to all other looked after and previously looked after children.

48. Waiting list and appeals: the arrangements when I first saw them said that the school's waiting list would be kept open for two weeks after closing date for acceptance of others. Paragraph 2.14 of the Code deals with waiting lists and provides that a waiting list **must** be kept for at least first term of the academic year of admission. The arrangements do not conform with the Code. The arrangements when I first saw then stated that notice of appeals had to be sent to the Chair of the Governing Body within 14 days of receiving the result of an application. Paragraph 2.1 of the Appeals Code requires that at least 20 be allowed for this purpose. The arrangements do not conform with the Appeals Code. I note that the possible new arrangements have given 20 days for appeals.
49. Matters relating to the school's internal management: When I first reviewed the arrangements, I noted some unusual features. These included the fact that the arrangements referred to the King David Schools (when it is one school); the fact there were three forms for application to Y7 which were for the main school, for Yavneh Boys and Yavneh Girls. I also noted that that the website referred to admission to three classes, namely Solomon, Saul and David. The pages on the web site for these classes included references to being for academic highflyers (Solomon) and to admission by entrance examinations and to requirements for high standards of personal conduct (Saul and David). In addition, the arrangements themselves had a section headed "Assessment Examination" which read: *"These are held to assess the suitability of applicants to the various classes and streams within the School"*.
50. At the meeting, I asked the school for its comments. So far as the different forms were concerned, the school explained that it was organised so as to allow for children to be educated in co-educational groups (the main school) or in single sex groups (Yavneh boys and Yavneh girls). The school explained that for some more strictly Orthodox parts of the Jewish community, single sex education was important and the school's approach allowed it to meet the wishes of a wider section of the Jewish community than if the school was organised only as a co-educational school. The school was adamant that the gender of a pupil or which form was completed had no effect on decisions about admission. It said that for some parts of its parent body, being able to complete a form that made clear that they were seeking to have their child educated only with boys or girls as the case might be was important. The school believed that without the assurance the different forms gave such parents would not apply for places at the school. The LA made clear at the meeting that it agreed with

the school's analysis of the local community and it had no concern about the school's approach in the light of its circumstances.

51. The internal organisation of the school is not in any way a matter for the adjudicator. The only question for me is whether the arrangements conform with the requirements relating to admissions. The Code allows for the use of supplementary forms and does not say that only one form can be used. I have considered the school's arrangements against the requirements that arrangements must be fair, clear and objective. I consider that they are in this regard objective. I now turn to clarity and fairness. The questions asked on all three forms are exactly the same. The only differences lie in the headings. The heading for Yavneh boys includes details of the rabbis associated with the school and a name of the deputy head (which is not the same as the deputy head of the school which is also given on the form). For Yavneh girls, the form states the name of the "*head of Yavneh Girls*" which is not the name of the headteacher of the school. Both forms do give details of the head and deputy head of the whole school (as does the main school form) and both forms state that the school is "*administered by the King David High School*". The declaration at the bottom of all forms refers to admission to the King David High School.
52. I have already determined that by asking for gender in its SIF, the school is in breach of paragraph 2.4 of the Code as gender is not necessary to apply the oversubscription criteria. As the school is a mixed school, it must by virtue of paragraph 1.7 of the Code, have oversubscription criteria which are capable of being applied to all applicants in the order set out in the arrangements. The Equality Act also means that no school which is not a single sex school can have regard to the gender of applicants when applying its oversubscription criteria. By having SIFs which are gender specific the school is by definition seeking information about the gender of some applicants. The fact that the school is seeking only to respond to the wishes of parts of its faith community does not allow it to have arrangements which do not conform with the Code. It is open to the school to organise its pupils into mixed and single sex groups and it can make clear on its website that it does so. So far as the admission arrangements are concerned, these do not conform with the requirements of the Code .
53. I turn now to the different academic streams (which are referred to as classes on the website) within the school. When I reviewed the school's website, it was not at all clear to me whether the pages which set out requirements for "*admission to*" the different classes were or were not part of the admission arrangements. The school has explained that they are not and relate only to internal school organisation. The school explained that many in the community it serves have high ambitions for their children and want to be confident that children will receive an education which is academically rigorous and in which high standards of personal conduct are promoted.
54. However, I do not consider that to be the end of the matter. The arrangements say that assessment examinations "*are held to assess the suitability of applicants to the various classes and streams within the*

*school.*” The website has details of Saul, David and Solomon classes. As noted above, Saul and David classes have explicit entry requirements which are a combination of academic and personal conduct requirements. Solomon class says it is for academic high flyers. There are no details of any other classes for which there are no academic entry standards and the school did not at the meeting suggest that other classes existed (other than the single sex groups of Yavneh boys and girls). All this means that a parent studying the website could reasonable conclude that their child had to be an academic highflyer or meet a set of entry requirements encompassing academic thresholds and personal conduct standards to gain admission to the school. I consider that these sections of the website therefore suggest that there are academic and personal conduct requirements for entry to the school. This is not the case and, indeed, it would be unlawful for the school – which is not a selective or partially selective school - to introduce such requirements. The material on the website is accordingly potentially misleading and could mean that parents will be put off apply for a place at the school.

55. I have considered whether these sections of the website are within my jurisdiction or, in other words, whether they are part of the admission arrangements of the school. As noted above, the admission arrangements actually refer to the assessment examinations. Footnote 4 to the Code defines admission arrangements as *“the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered”*. I consider that the material on the school’s website about the assessment examinations could reasonably be considered to form part of the admission arrangements. It therefore makes the arrangements as a whole unclear and possibly misleading. Because the school’s website suggests that there might be selection on the basis of academic performance and conduct for admission to the school, the arrangements are not clear as required by paragraph 14. The arrangements also breach paragraph 1.18 of the Code which provides that only designated Grammar schools are permitted to select their whole intake on the basis of academic ability or paragraph 1.21 which allows partially selective schools only to select a proportion of their intake by ability. By stating that a high standard of personal conduct is required, the arrangements breach paragraph 1.9a which prohibits the setting of conditions or the taking into account of any factor than those in the oversubscription criteria when decisions are taken about who is to be admitted to a school. The arrangements do not conform with the Code. The possible new arrangements do state that the assessment examinations are not related to admissions criteria. However, this does not address the issue of the misleading information on the website pages headed Solomon, Saul and David. It is, of course, open to the school to make clear how on its website how children are allocated to different classes once they have been offered places at the school.

56. Admission of children with statements of SEN. The arrangements when I reviewed them did not refer to the admission of children with statements of SEN. Paragraph 1.6 of the Code says that all children whose statement of

SEN names the school must be admitted. Because the school's arrangements did not mention the admission of these children, there is a concern that parents of such a child might not feel that they could ask for the school to be named in their child's statements. Moreover, other parents might not realise that such children must be admitted if the school is named on the statement with the result that the number of places available for other children might be reduced. This makes the arrangements unclear. I determine that school's arrangements do not conform to the requirements of the Code with respect to the admission of children with statements of SEN. The possible new arrangements do mention children with statements of SEN. However, they state that such children will be given the highest priority in the event of oversubscription "*provided the school can reasonably cope with their needs.*" The admission to school of children with statements of SEN is not dealt under oversubscription criteria but through a separate statutory process. In addition, schools cannot place conditions on the admission of such pupils in the way the possible new arrangements suggest. Annex C to the school's funding agreement sets out in detail the processes which are to be followed when an LA proposes to name the school in a child's statement, including where the school wishes to make representations about this.

## YEAR 12

57. The requirements relating to admissions apply to Y12 just as much as they do to Y7. The school's Y12 arrangements state that the school will admit "*each September up to 90*". In fact this is the capacity of each year group in the sixth form and will thus include students who transfer each year from Y11. The school is required to set a PAN which must relate to those to be admitted to the school in Y12 which does not include those transferring from Y11. The PAN must be clear and stating that it will be "up to" a particular number is not clear as required by paragraph 14 of the Code as it suggests that the school may opt to admit fewer which it cannot do if enough applicants who meet the entry criteria seek places.
58. The Y12 arrangements refer to one or more interviews. The Act prohibits the use of interviews as part of the admission process for any point of entry to any school with the sole exception of boarding schools – which is not relevant in this case. The Code makes clear at 1.9m and 2.8 that any meeting held to discuss options and courses for places in the sixth form must not form part of the decision making process on whether to offer a place. The school's arrangements do not conform with the Code.
59. The arrangements state that to be admitted students must demonstrate a high standard of commitment to Judaism, a high standard of discipline and personal conduct and a strong work ethic. Another part of the Y12 arrangements also refers to reports from previous schools, including that a good reference or report will be required from the previous school. These provisions taken together breach a number of provisions of the Code. First, as noted above in relation to Y7, while the school can give priority to children on the basis of faith, it cannot make practice of the faith a condition of entry. Paragraphs 15d, 1.6, 1.36 and 2.8 provide that if the

school has place available in a normal year of entry, it must admit all who apply without the use of any conditions or oversubscription criteria (with the exception for Y12 of academic requirements). Paragraph 1.9 g of the Code states that schools cannot take account of reports that previous schools about past attendance, attitude or achievement. The arrangements do not conform with the Code.

60. Paragraph 2.6 of the Code provides that schools can set academic criteria for the sixth form. These can be different for different subjects but must be the same for internal and external candidates. The school's arrangements set out the required academic standards. They then go on to state that these "requirements may be varied from time to time, depending on the circumstance of individual students". If requirements are varied in this way then this means that they may well end up being different for some external candidates compared to internal candidates in contravention of the paragraph 2.6 of the Code.
61. Paragraph 2.6 of the Code states that children or their parents on their behalf can apply for sixth form places. The school's application form for Year 12 provides only for a parental signature. Thus the form – and hence the arrangements – do not meet the requirements of paragraph 2.6 and the school must revise the arrangements as quickly as possible. The possible new arrangements include changes to the form so that it is capable of being completed by a young person or a parent. However, the proposed form provides only for the young person to sign it rather than for the young person or the parent.

## **Conclusion**

62. I have determined that in significant ways the admission arrangements for King David High School do not comply with the requirements relating to admissions. The faith-based oversubscription criteria cannot be based as now on membership of a synagogue and the oversubscription criteria as whole lack the required clarity and objectivity. The SIF asks for information which is not necessary to apply the oversubscription criteria and which cannot therefore be lawfully sought. The school has expressed willingness to amend its arrangements and is required by the Code to do by 15 April 2015 at the latest.

## **Determination**

63. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the academy trust for King David High School, Manchester, for admissions in September 2015.
64. I have also considered the arrangements for admissions in September 2014 and September 2015 in accordance with section 88I(5). I determine that the arrangements for both years do not conform with the requirements relating to admission arrangements.
65. 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 as quickly as possible.

Dated: 15 December 2014

Signed:

Schools Adjudicator: Shan Scott