



DETERMINATION

Case reference: ADA2990

Objector: The Fair Admissions Campaign

Admission Authority: The Academy Trust for Hasmonean High School

Date of decision: 7 October 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body for Hasmonean High School, Barnet.

I have also considered the arrangements in accordance with section 88I(5). I determine that the definition of previously looked after children does 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 by 28 February 2016.

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 2016 for Hasmonean High School (the school), an academy school for children aged 11 to 18. The objection is about how the school determines whether an applicant is an Orthodox Jew.

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 governors' admissions committee on behalf of the academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 30 June 2015.

3. The school was subject to adjudication on its 2015 arrangements in December 2014. Regulation 22 of the School Admissions (admission Arrangements and Co-ordination of Admission arrangements) (England) 2012

says “where the adjudicator has determined an objection to the admission arrangements of a school or Academy, no objection may be referred to the adjudicator raising the same or substantially the same issues in relation to those admission arrangements within 2 years of the decision by the adjudicator.” Following the adjudication in 2014 the school made significant changes to its admission arrangements. This objection is to aspects of the Rabbi Reference Form (RRF) and the Supplementary Information Form (SIF) introduced for 2016. These forms are not the same as those used for 2015 and the issues raised by the objector, with one exception, are not, and could not be, the same or substantially the same as those considered in the 2014 determination.

4. 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. I have also used my power under section 88I(5) of the Act to consider the arrangements as a whole.

Procedure

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

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

- a. the objector’s email dated 30 June 2015;
- b. the school’s response to the objection and supporting documents;
- c. the London Borough of Barnet, the local authority (the LA) composite prospectus for parents seeking admission to schools in the area in September 2016;
- d. confirmation of when consultation on the arrangements last took place;
- e. copies of the minutes of the meeting at which the arrangements were determined; and
- f. a copy of the determined arrangements.

The Objection

7. There are five parts to the objection.

- a. The RRF allows both parents to provide their name when only one is needed and this may not comply with paragraph 2.4 of the Code.
- b. The RRF asks “*Does your family observe the laws of family purity?*” Such laws relate to the sexual aspects of marriage and the objector questions whether asking this is reasonable, procedurally fair or objective. The objector suggests that this may not comply with paragraphs 1.8, 14 and 1.37 of the Code.
- c. The RRF includes questions on areas of law which do not form part of the oversubscription criteria and this may not comply with paragraphs 1.8, 14 and 1.37 of the Code.
- d. The SIF asks questions about seeking priority for admission on

the grounds that the child attends an Orthodox Jewish primary school. As attending an Orthodox Jewish primary school is not part of the arrangements this may not comply with paragraphs 1.8, 14, 1.9a and 1.9b of the Code.

- e. A family may meet the faith practice requirement but the Rabbi completing the RRF may be unaware that they do and could not therefore complete the RRF accurately which would be unfair and not comply with paragraphs 14 and 1.8 of the Code.

Other Matters

8. The definition of previously looked after children in the arrangements was not as required by paragraph 1.7 of the Code and its footnotes.

Background

9. The school became an academy in 2011; it has a published admission number (PAN) of 150 and is usually oversubscribed. Boys and girls are taught on two different sites which are just over one mile apart. The oversubscription criteria for 2016 can be summarised as:

1. Orthodox Jewish children who are looked after or were previously looked after.
2. Orthodox Jewish children with medical or social grounds for admission to the school.
3. Orthodox Jewish children with siblings at the school.
4. Orthodox Jewish children who are only or the eldest children.
5. Orthodox Jewish children whose siblings are former pupils.
6. Other Orthodox Jewish children.
7. Other looked after and previously looked after children.
8. Other children.

10. Orthodox Jewish children are defined in the following way:

“A A child must observe and practise Orthodox Jewish traditions and practices as set out in B hereunder. In the event of any dispute as to whether a child meets these criteria, the authority of the Rabbis of the Jewish Secondary Schools Movement is final.

B A child must also have a parent or parents who:

- 1. Have a genuine desire for Orthodox Jewish schooling and*
- 2. Observe the Sabbath and Holy Days, adhere to the Dietary Laws and maintain active participation in an Orthodox synagogue, such synagogue to be one recognised as such by the Rabbis of the Jewish Secondary Schools Movement.”*

Consideration of Factors

Signature of both parents

11. The requirement for both parents to sign the RRF was addressed in the determination made by the Schools Adjudicator in December 2014. It is not therefore within my jurisdiction, however I note that subsequent to this objection the school has amended the RRF to make it clear that only one parent is required to sign that form.

Laws of family purity

12. The RRF says that to meet the faith practice requirement a family must meet three out of five requirements listed below during the previous year.

1. eat away from home only in establishments certified as kosher by a recognised kashrut authority;
2. observe the laws of family purity;
3. commit time to Torah study as required by Jewish law;
4. commit time to communal prayer where possible and/or individual prayer in accordance with Jewish Law; and
5. look for Rabbinic guidance with regards to Halachic queries.

13. The objector has said with respect to the second of these that “*Such laws relate to the sexual aspects of marriage - we question whether it is reasonable, procedurally fair or objective to ask for or seek to verify this information.*” The objector suggests that this may not comply with paragraphs 1.8, 14 and 1.37 of the Code.

14. The school has said “*this test of religious practice is an established and appropriate test of religious observance which would be entirely clear to an observant Jew and is in no way embarrassing or intrusive.*” I have found the laws of family purity, which are based on verses in the Book of Leviticus, clearly explained and discussed on websites aimed at practising Jews and non-Jews. The laws relate to sexual and other interactions between husbands and wives and include the requirement for a woman to immerse herself in a mikveh, a ritual bath, while reciting a blessing on a specified day each month.

15. 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 reference to the laws of family purity does not appear in the oversubscription criterion themselves, so I do not consider that this paragraph is applicable to this part of the objection.

16. Paragraph 1.37 of the Code says “*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*” Having looked at various references to the laws of family purity, I am convinced that a practising orthodox Jew would understand what is required to observe them.

17. I have also considered paragraph 1.38 of the Code “*Admission authorities for schools designated as having a religious character **must** have*

*regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated.”* I have been provided with a copy of a letter from a Rabbi on behalf of the JSSM which confirms that the relevant faith body was consulted on this matter.

18. Paragraph 14 of the Code 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.*” It is necessary for me to consider if it is fair for this question to be asked and whether the answer can be clear and objectively assessed.

19. While the school and its religious authority may think that to be asked such a question would not embarrass an observant orthodox Jew, there remains the possibility that some parents applying for places at the school may find it embarrassing or intrusive. To meet the faith practice requirement the family must say it observes three out of five areas of law, it is not therefore necessary for a family to declare observance of this law in order to demonstrate the practice of their faith. I consider this fair to anyone who may not wish to divulge such details of their private life.

20. For those applicants for whom the question is not intrusive, the problem is how the Rabbi would know that the laws were observed. The RRF says “*the family must have demonstrated ... evidence that it meets three out of the five requirements.*” While the Rabbi may be aware that a woman is using the mikvah regularly I do not see how they can be certain that the more intimate requirements of the laws are being observed other than by trusting the word of the applicant.

21. I have concluded that it would not be possible to objectively assess whether or not a family observes the laws of family purity. Paragraph 14 of the Code requires the practices used to allocate places are objective, so I uphold this part of the objection.

The Rabbi Reference Form and oversubscription criteria

22. The objector said that the areas of law numbered 2 to 5 on the RRF “*do not form part of the oversubscription criteria (in paragraphs A and B), only appearing on the RRF.*” and suggested this may not comply with paragraphs 1.8, 14 and 1.37 of the Code.

23. In response the school said “*It is clear in the Admission Policy that any applicant seeking to be considered under the religious oversubscription criteria will need to complete the RRF. There is no need to repeat the practice tests in the RRF in the Admission Policy.*”

24. In the arrangements it says “*we prioritise children of the Orthodox Jewish Faith, as defined in paragraphs A&B*”. Paragraph’s A and B quoted above make no mention of family purity, the study of the Torah, prayer or Rabbinic guidance with regard to Halachic queries. A parent considering applying for a place at the school for their child may, on reading the policy document, think they meet the faith requirement as they observe the Sabbath and holy days, adhere to dietary laws and are active in an Orthodox synagogue. They then however discover there is another set of requirements on the RRF. Having two different tests of being an Orthodox Jew does not make it easy to understand how the faith-based criteria will be satisfied as required by paragraph 1.37 or help with the overall clarity of the arrangements as required by paragraph 14. I uphold this part of the objection.

25. Subsequent to the receipt of the objection the school has revised the definition of the Orthodox Jewish Faith in its policy by replacing paragraph B with “*A child must also have a parent or guardian who observes Orthodox Jewish traditions and practices according to the criteria set out in Parts 1 and 2 of our Rabbi Reference Form.*” This means there is now only one test of faith practice set out in in the arrangements.

The supplementary information form

26. The objector noted that the SIF asks questions about seeking priority for admission on the grounds that the child attends an Orthodox Jewish primary school. Attending an Orthodox Jewish primary school is not one of the oversubscription criteria and there is no list of “*specified*” schools as stated on the SIF. The objector said this may not comply with paragraphs 1.8, 14, 1.9a and 1.9b of the Code.

27. Paragraphs 1.9a and 1.9b say admission authorities **must** not place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements or take into account any previous schools attended, unless it is a named feeder school.

28. I have also taken into account paragraph 2.4 the Code which says “*In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They must not ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9*”.

29. The school said that “*This is a superfluous reference to the use of primary criteria in earlier versions of admission arrangements for the School and has now been removed from the SIF.*”

30. While the question about attendance at an Orthodox Jewish primary school may be superfluous and a vestige from previous admission arrangements, parents may not know that and could think account was taken of their child’s primary school in allocating places. If the school did so it would

be in breach of paragraphs 1.9a and 1.9b of the Code. It is not necessary to know if the child attended an Orthodox Jewish primary school to make decisions about the oversubscription criteria so the SIF does not comply with paragraph 2.4 of the Code and I uphold this part of the objection.

31. The school has already removed this question from the SIF and has published a new version on its website.

The Rabbi's knowledge of the family

32. The objector saw a potential unfairness that it thought would not comply with paragraph 1.8 or 14 of the Code. This was in situations where the family met the faith practice requirements, but the Rabbi did not know that they did and so would not be able to sign the RRF.

33. I have set out above the five areas of law of which parents are asked to declare their own observance. In addition the rabbi is asked to comment on the following three questions stating either yes, no or unsure.

1. Does the family observe the laws of Shabbat observance?
2. Does the family observe the laws of Yom Tov observance?
3. Does the family observe separation of meat and milk products and utensils in the kitchen at home?

34. I accept that an Orthodox Jewish family should conduct its life according to these eight areas of law. However, the question for me is whether these matters can be objectively assessed for the purposes of school admissions.

35. The RRF includes the wording "*a family must have demonstrated to you that it meets the three requirements below and also evidence that it meets three out of the five requirements on page 1.*" This puts the onus on the parents to demonstrate their practice to the Rabbi. It also means that an 'unsure' response from the Rabbi to any of the second set of questions is equivalent to a 'no' and would mean the family was not regarded as meeting the faith practice criteria.

36. In its response to the objection the school, having consulted the JSSM, proposed that the form is amended to request that the Rabbi meets the family if they are unsure about the family's level of observance.

37. This suggestion could be seen as introducing an interview into the admissions process which is prohibited by paragraph 1.9m of the Code. It does not address the question of the objectivity of the faith practice test; paragraph 14 of the Code requires arrangements to be objective.

38. While a family could demonstrate to the rabbi that they commit time to study the Torah, to prayer and that they look to him for guidance, I do not see how they could demonstrate that they only eat in kosher establishments when away from home. I have discussed observance of the laws of family purity above. Observing Shabbat and Yom Tov involves domestic activities which

the Rabbi may have to take on trust as they would the organisation of the family kitchen.

39. To be regarded as an orthodox Jew the family must answer yes to three out of the first five questions and the Rabbi must answer yes to all three of the second set. The Rabbi signs the form to say they have “*no reason to doubt that the above information is correct*”. This implies that the Rabbi cannot be certain the information is correct and therefore the test of religious practice cannot be objective as required by the Code.

40. Having considered the above factors I have concluded that this could lead to families who do not meet the religious practice requirement being declared to do so as well as to those who do meet the requirement not being recognised as doing so. The test is not objective and I uphold this part of the objection.

Other Matters

41. The definition of previously looked after children in the arrangements does not reflect that found in paragraph 1.7 of the Code and in its footnotes. Child arrangements orders now replace residence orders following the Children and Families Act 2014.

Conclusion

42. For the reasons set out above I uphold those parts of the objection that are within my jurisdiction.

43. Paragraph 3.1 says “*The admission authority must, where necessary, revise their admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.*” I have considered by when it would be appropriate for the school to comply with my decision.

44. I have taken into account that this objection was not made by a member of the community which the school aims to serve and that this determination will be published very shortly before applications for school places in 2016 have to be submitted. The school has already made some changes to the RRF and SIF to address aspects of this determination, the more fundamental question of how the admission authority determines whether an applicant is an Orthodox Jew in an objective way will require consultation with its religious advisers, parents and others as required by paragraph 1.44 of the Code. I do not think that it would be possible to resolve this question in two months. Nor do I think it would be fair to parents who have already made applications to the school for the basis of their adherence to the faith to be altered at this stage in the process, or that it would be practicable to do so. I will therefore be requiring the arrangements to be changed by 28 February 2016.

Determination

45. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body for Hasmorean High School, Barnet.

46. I have also considered the arrangements in accordance with section 88I(5). I determine that the definition of previously looked after children does not conform with the requirements relating to admission arrangements.

47. 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 by 28 February 2016.

Dated: 7 October 2015

Signed:

Schools Adjudicator: Mr Phil Whiffing