

# **‘An Unholy Mess: how virtually all religiously selective state schools in England are breaking the law’**

## **Press briefing**

### **Overview**

In 2014 the British Humanist Association (BHA) and Fair Admissions Campaign (FAC) became the first national organisations to submit a large number of objections to the Schools Adjudicator. This arose from concern about widespread non-compliance with the School Admissions Code by religiously selective state schools – which they are statutorily obliged to comply with. FAC decided to investigate the admissions policies of a sample of religiously selective secondary schools, namely, those in the 19 local authorities where the local authority’s name starts with the letter ‘B’. This covered 70 schools, out of 535 across England (or just over one eighth), and produced a decent mix of urban, suburban, and rural schools, as well as a range of religious denominations and types of school.

The Campaign concluded that 69 of them broke the Admissions Code, and so decided to submit objections to the most problematic 43 about their arrangements (along with those of five other schools). (The Campaign did not object to 26 schools’ arrangements where it considered that the issues were relatively minor or identical to other cases.)

The OSA proceeded to find widespread non-compliance with the Code, supporting FAC’s findings. Some 1,385 Code breaches have been identified amongst these schools, suggesting that there might be as many as 12,000 breaches across all religiously selective state secondary schools.

### **Context: the legal framework**

Every state-funded school in England must comply with the [School Admissions Code](#), along with the [School Admission Appeals Code](#) and the statutory legislation that underpins the Code, namely the [School Standards and Framework Act 1998](#) and its accompanying [regulations](#). Schools must also follow the [Equality Act 2010](#) and [Human Rights Act 1998](#), relevant sections of which are quoted by the Code. And they are under a duty to promote community cohesion.

Admission authorities for schools<sup>1</sup> must annually determine admission arrangements that clearly set out the process by which children will be admitted to the school, both within and outside of the normal admission round. The arrangements must specify how many pupils the school will admit to each year group, and in what order pupils will be admitted when the school is oversubscribed (i.e. when there are more applicants than places). Admission authorities must consult on their arrangements at least every seven years, or when changes are proposed to be made to them.<sup>2</sup>

The Equality Act 2010 precludes discrimination on the basis of religion or belief, including by schools in their admission arrangements. However there is an exception written into the Act permitting schools designated as having a religious character, more commonly known as ‘faith schools’, to religiously select their pupils when oversubscribed. The Admissions Code similarly permits religiously

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<sup>1</sup> Be this the school, as is the case with voluntary aided, foundation, academy and free schools, or the local authority, as is the case with community and voluntary controlled schools.

<sup>2</sup> Except where proposing to increase the published admission number or where such changes are necessary to comply with the School Admissions Code.

designated schools to religiously select pupils. But it sets out a number of limits to this permission, as well as wider rules that apply to all state schools (whether religiously designated or not).

The Code and statute also provide a mechanism by which individuals can object if they believe that a school has not complied with the Admissions Code. Such objections can be lodged to the [Office of the Schools Adjudicator](#) (OSA), a specialist tribunal with statutory powers to order schools to amend their arrangements if it believes schools are non-compliant with the Code.

## **Context: religious selection**

This report and our objections to the OSA focused only on secondary schools. There are 658 religiously selective state secondary schools in England and Wales, which is 19% of all mainstream state secondary schools. 339 are Roman Catholic, 209 are Church of England (CofE) or Church in Wales, 60 are 'generically' Christian, 11 are Jewish, and 9 are Muslim.

Not all of these schools select all of their pupils by faith, and there is a large variation in the degree of religious selection at secondary level. 99.8% of places at Roman Catholic schools are subject to religious selection, as were over 90% of places at both Jewish and Muslim schools. On the other hand just 10.9% of generically Christian and 49.7% of CofE places were religiously selected.

Overall, we estimate that 13% of **all** mainstream state secondary school places are subject to religious selection. Once primary schools are also included, that figure rises to 16% of all mainstream state school places, or 1.2 million in total – more than the number of places at private, single-sex, and grammar schools combined.

Worryingly, a clear correlation has been found between the degree of religious selection employed by schools and how socio-economically exclusive they are. Comprehensive schools with no religious character or selection typically admit 5% more pupils eligible for free school meals than would be expected given their areas. Similarly, religious comprehensives that do not select by religion typically admit 1% fewer. However, schools whose admissions criteria allow religious selection for all places typically admit 30% fewer pupils eligible for free school meals than would be representative of their area. Focusing on Church of England schools alone, those that don't select on faith admit 1% fewer than would be expected, while those that fully select admit 35% fewer.

There is also evidence concerning the relationship between religious selection and ethnic segregation. Whilst this is more complicated as a result of being tied up to a greater extent in religio-ethnic demographics and parental choice, there is strong evidence to suggest that minority faith schools are the most racially-segregated state schools.

Additionally, surveys suggest that religious selection is hugely unpopular with the public. For instance, [a November 2012 poll](#) conducted by ComRes found that 73% of British adults think that 'state funded schools should not be allowed to select or discriminate against prospective pupils on religious grounds in their admissions policy'.

## **Summary of findings**

As the report highlights, many of the breaches we identified were common to the admissions arrangements of a large number of schools. The following is a list of the more serious examples of those common breaches, including details of how many of the schools were found to be guilty of them:

- **Widespread issues with clarity, fairness, and objectivity.** Almost all schools were found to have problems here, and almost 60% of these issues had to do with religious selection. This included lack of clarity as to the required frequency and duration of religious worship required, schools requiring both parents to attend worship, or asking a religious leader to sign a form confirming that the parent and/or child was religiously observant, but not specifying what is required to be so construed.
- Almost 90% of schools were found to be **asking for information from parents that they did not need.** This included the gender of the child (usually innocuous but in two cases leading to direct discrimination on the basis of gender under the Equality Act 2010), asking for details of both parents (and sometimes assuming they were of opposite genders – leading to further Equality Act problems), asking for details of religious observance in a different or more detailed way than was required for the oversubscription criteria, asking parents to declare their support for the ethos of the school, or asking both parents to sign a form or sometimes asking for the child to sign (bizarrely some schools asked for three parent signatures – it is not clear why). Some schools asked for parents' birth certificates, for applicants' countries of origin, whether they were UK nationals, whether they spoke English as an additional language, and if they had any medical issues.<sup>3</sup> For sixth forms, there were questions about why children wanted to apply to the school, for a personal statement, predicted grades, and chosen subjects. One school was found to be directly discriminating on the basis of race in asking for a religious marriage certificate, which is more easily available to those who are deemed to be halachically Jewish, something that is easier for those who are also ethnically Jewish (hence giving rise to racial discrimination). Finally, many schools required all applicants to complete supplementary forms regardless of whether any of the information was needed for those applying under the lowest admissions criterion, when such forms can only be compulsory when asking for information that is needed.
- About 85% of schools were found **not to have properly published their admission arrangements** at the time of objection. Many schools were publishing their 2015 arrangements some months after they were legally required to do so, and in a quarter of cases schools were found **not to have determined their admission arrangements** in the first place. Other schools were taking down their 2014 arrangements upon putting up their 2015 arrangements (when they should have left both up until the end of 2014). And others still were not publishing any supplementary information forms parents might be required to complete. One school had an admissions policy on its website that was at least six years out of date.
- A majority of schools were found not to be dealing properly with **looked-after and previously looked-after children** (LAC and PLAC) – in some cases as a result of not defining what these terms mean in an inclusive way, in most cases not properly giving priority to LAC and PLAC who were not of the faith of the school, and in a few rare cases not prioritising LAC and PLAC at all.
- Over a third of schools were found to be **placing conditions on the consideration of applications other than those in the oversubscription criteria** – either by asking for information that was not later considered, or by asking parents and children to support the ethos of the school.
- Over half of schools were found **not to have an effective tie-breaker** to separate two otherwise identical applicants, while a few did have random allocation but failed to deal with it properly.

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<sup>3</sup> Some of these being things schools would need to know about pupils who attend the school, but not things the schools concerned needed to know in order to administer their admissions process. The information concerned should not be asked for until after places have been allocated. In the meantime it could lead to discrimination.

- Almost 40% of schools were found **not to have published their admission numbers**, as schools are required to do for each age group at which pupils can enter a school during a normal admission round. This was particularly an issue with sixth-forms.
- About 40% of schools were found to have **unnamed feeder schools**, and in most cases it was further found that if all the schools concerned had been named then this would have been viewed as 'unreasonable' in the eyes of the Code. This typically meant taking pupils from 'all Catholic schools' or 'all CofE schools'. Some schools were found to be prioritising pupils attending private fee-paying schools.
- A quarter of schools were found **not to allow all applicants to be admitted even when undersubscribed**. In some cases this reflected there being no sixth form admission arrangements at all.
- Over a quarter of schools were found to be **religiously selecting in ways not allowed in guidance from their religious authorities**. In three cases this was due to lack of any guidance at all, including in the case of one Church of England diocese (suggesting all 66 schools in that diocese were breaking this part of the Code), while in another case the school argued that the guidance had been passed down as an oral tradition.
- Over a quarter of schools were found to be **interviewing, all with respect to sixth forms**, in spite of the ban on interviews having a high profile when it was introduced.
- A quarter of schools were found **not to make clear how children with statements of special educational needs were admitted**.
- A quarter of schools were found in breach of the Code because they **took account of past behaviour, attendance, attitude, or achievement**, again all with respect to sixth forms.
- Almost a fifth of schools were found to be **requiring practical or financial support to associated organisations** – through voluntary activities such as flower arranging in churches or, in the case of two Jewish schools, in requiring membership of synagogues (which costs money).
- 15% of schools were found to be **considering parents' occupational or marital status**, with occupational issues focussing on giving priority to those who were teachers in ways not permitted by the Code.
- Almost 20% of schools were **not allowing children to apply for the sixth form without parental involvement**. Others were found not to have **consistent entry requirements**, or the same requirements for internal and external applicants.
- A number of schools were found not to have properly followed the **general admissions process**.
- Almost 15% of schools were found, with respect to their sixth forms, to have **introduced new selection by academic ability**, which is unlawful.
- A number of schools were found **not to have well-ordered oversubscription criteria**.
- A number were found to **measure distance in an unclear way, or have unclear catchment areas**.
- Over a fifth were found **not to have consulted properly on their admission arrangements**.
- A number of schools were found to have **broken the Equality Act 2010 in directly discriminating on the basis of race or gender**. Two schools were found to discriminate on the basis of race in prioritising those who are considered by modern Orthodox Jewish authorities to be 'halachically Jewish' – something that it is much more easy to be for those who are ethnically, as well as religiously, Jewish. Arguably three were found to be discriminating on the basis of gender (although this was not explicitly stated in every case). This reflected the fact that two of them directly discriminate on the basis of gender in their internal organisation, which raises wider issues. One was also found to be **indirectly discriminating on the basis of social background**, as its religious oversubscription criteria required eleven years of religious practice and this was considered to be overly burdensome for more deprived families. And while this was not explored in the OSA cases, in our view

four schools also might have been **directly discriminating on the basis of sexual orientation**, in assuming on forms that parents were of opposite genders.

## **Some notable cases**

### **King David High School, Manchester**

King David High School in Manchester was found to have broken the Admissions Code 69 times in total, the second highest of all the schools we objected to. The school was giving priority to applicants who were members of synagogues, which typically come with a requirement to pay a membership fee, and therefore were found to be requiring financial support for an associated organisation to the school. This was also found to represent direct discrimination on the basis of race as only Orthodox synagogues were considered and membership of such synagogues requires being an Orthodox Jew – a status that is difficult to acquire for those who are not ethnically Jewish.

King David High School is a mixed school, and while located on one site, has two single-sex classes within each year group, each offering a different curriculum. Whilst this (potentially unlawful) fact is outside of the OSA's remit, the school had separate admissions procedures for those deciding to apply to these classes, which was found to break the Equality Act as it took into account pupils' gender.

Lastly, the school was found to have been reducing its PAN to reflect a shrinking local Jewish population without consulting on doing so. This meant that the school was continuously oversubscribed (allowing them to admit only Jewish applicants), even though it had physical capacity available. On top of this, the school then also admitted every Jewish applicant that applied even if this meant admitting well above its PAN.

### **St Mary Redcliffe and Temple School, Bristol**

St Mary Redcliffe and Temple School (SMRT) in Bristol selects 200 of its 216 places on the basis of church attendance – leaving a small number available to local residents. In order to meet the most stringent religious criterion, parents and children are required to attend worship three times a month for three years. In recent years the school has been sufficiently oversubscribed and so all pupils gaining entry have met this criterion.

6.1% of pupils at the school are eligible for free school meals, compared to 51.4% in its immediate vicinity, 32.8% in its local area, 25.4% amongst children in all state Bristol secondary schools, and 15.5% including neighbouring local authorities (from which the school draws a few pupils).

In other words, this school is socio-economically much wealthier than all local comparators. In fact it is one of the most socio-economically selective schools in the country. Paragraph 1.8 of the School Admissions Code says that 'Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social... group'. We argued that this school, in religiously selecting, was breaking this paragraph of the Code – supporting this with a range of evidence from the academic literature showing how religious selection has been shown to cause socio-economic selection.

However, whilst the Adjudicator concluded that the school's admissions arrangements were socio-economically selective, he deemed that because the level of attendance required was not unusually high, the social group in question were not '*unfairly*' disadvantaged. We believe that this applies the

wrong test of fairness. The fact that a practice is widespread does not mean it is fair. Indeed, it is far more likely to mean that the unfairness identified is widespread.

### **Hasmonean High School, Barnet**

Hasmonean High School in Brent asked for gender, parents' marriage certificates, observance of dietary laws, and for the Rabbi, 'How long have you known this family?' and 'In what capacity do you know this family?', as well as whether the Rabbi 'feels the family have a genuine desire for Orthodox schooling' and 'feels that this family will be suitable for Hasmonian and will support the ethos of the school'. It also asked for both parents to sign the form, none of which was required for application.

The school was also found to be directly discriminating on the basis of race under the Equality Act 2010, as it was the *ketubah* (religious marriage certificate) that was asked for and only those who are *halachically* (i.e. ethnically) Jewish are able to obtain a *ketubah* without first having to go through the burdensome process of converting to Orthodox Judaism.

We also believe that the implication of the OSA's decision is that it was also directly discriminating on the basis of gender as the information on gender was used in order to measure distance from the school differently for boys and girls (due to the school having two single-sex sites – something that might in itself break the Equality Act).

### **Bishop Justus CofE School, Bromley**

Bishop Justus CofE School in Bromley, along with a fifth of the other schools, invited applicants or religious leaders to provide evidence of practical support offered to associated/religious organisations. Bishop Justus was notable in that it specifically laid out individual activities in support of churches, such as flower-arranging and cleaning – a practice that is disappearing rapidly from schools following a string of high profile OSA cases. The Adjudicator, upholding our objection, stated that these activities represented practical support, were unreasonable and were not permitted by the diocesan guidance.

### **Yesodey Hatorah Senior Girls' School, Hackney**

Yesodey Hatorah Senior Girls' School in Stamford Hill requires the parents of prospective pupils to ensure that children would not have access to internet, TV, or any other 'inappropriate media', as well as enforcing a dress code on parents. This was permitted by the OSA as it was determined (correctly in our view) that there is nothing in the Code that forbids this.

### **Trinity Church School; St James' Catholic High School, St Columba's Catholic Boys' School; Cardinal Newman Catholic School; Cardinal Vaughan Memorial School; and Khalsa Secondary Academy**

The above schools were all asking for the details of both parents in their SIFs and were using gender-specific pronouns while doing so (i.e. assuming the parents were for opposite genders). We believe this constitutes indirect discrimination on the basis of sexual orientation under the Equality Act 2010, but this was not an issue explored by the OSA in these terms in its determinations.

## **Key recommendations**

It is clear now that amongst religiously selective secondary schools there are widespread issues of non-compliance with the School Admissions Code, sometimes intentional, other times inadvertent. In light of these findings, the report makes five principal recommendations:

### **1. An end to religious selection by state schools**

First and foremost, we think that religious selection amongst state-funded schools should be phased out. The most obvious and straightforward step that can be taken towards ending complexity in admissions, ending socio-economic and ethno-religious discrimination and making the system as fair and straightforward as possible for parents and children is to open up all state schools to all young people, without regard to their or their parent's religious or non-religious views. There is a range of other reasons why we think this is desirable, all of which are set out on the Fair Admissions Campaign's website.

If the Government is not willing to take steps to phase out religious selection, or even if it is willing, we have also made a number of other recommendations that we hope can help improve things in other ways. These follow.

### **2. Guidance for schools on complying with the Code**

Many of the areas of noncompliance identified in the report are common, and it would therefore be useful if the DfE were to issue schools with guidance. The only previous guidance issued is only directed at Free Schools and does not cover many of the issues identified in the report.

### **3. Revision of the Code to clarify areas of confusion**

In addition to recommending areas in which guidance would be helpful, there are a number of areas where the Code would clearly benefit from revision, including around when admission arrangements must be published; frequency and duration of religious worship; only taking into account one and not two parents/carers; excessive information on supplementary information forms; priority for looked after and previously looked after children; the use of the terms 'expect' and 'ask'; final tie-breakers invariably meaning random allocation or taking above the published admission number (PAN); how PANs work with respect to sixth forms; taking into account previous education received; that the lowest oversubscription criterion must be a 'catch-all' that allows for the admittance of all applicants; stating how pupils with statements of special educational needs are prioritised; schools not being able to take into account children giving financial or practical support to it or an associated organisation (as is already the case with parents); and the need to publish catchment areas on a map.

### **4. Establishment of an independent monitoring body to enforce compliance with the Code**

As it stands, it is largely incumbent on members of the public to point out possible breaches in schools' admission arrangements. The findings in the report make clear that this system is not fit for purpose. A pro-active and independent monitoring service is required to ensure compliance with the Code and alert schools to potential areas of non-compliance. Where a matter cannot be resolved informally, cases can be referred to the OSA.

Similarly, no one is ensuring that religious authorities are publishing guidance – as they must if local schools are to be permitted to religiously select. In four cases, including one Church of England

Diocese, it was found that no written guidance for schools had been provided. In several other cases, especially amongst Jewish schools, the guidance goes beyond what the Code allows. It would be a simple exercise to request to see the guidance of all religious authorities, ensure that it exists and ensure that it does not permit admission arrangements that breach the Code.

#### **5. A standard template for admissions policies**

Admissions policies are becoming less uniform over time. In 2000 just 30% of all secondary schools were their own admission authority, with the remaining 70% accounted for by the local authority. Now over 80% of secondary schools are their own admission authority. The divergence this creates not only means that breaches or abuses of the Code are harder to monitor, but it also produces an incredibly complex system for parents to negotiate.

Requiring schools to follow a standard template which allows for a variety of Code-permitted criteria would eradicate many of the less 'malicious' Code breaches, make the more malicious ones easier to identify and creating a system easier for parents to understand.

#### **6. Admissions policies of all schools to be set by an external body**

Beyond the creation of a standard template, it does not make sense for schools to be their own admission authorities. As this report demonstrates, many schools lack sufficient understanding of the Code and schools also have perverse incentives to manipulate their intakes, thereby improving their performance when compared to other local schools. Making some other local body responsible for this, which is free from such incentives, seems obvious.

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The British Humanist Association is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. It promotes a secular state and equal treatment in law and policy of everyone, regardless of religion or belief.

The Fair Admissions Campaign wants all state-funded schools in England and Wales to be open equally to all children, without regard to religion or belief. The Campaign is supported by a wide coalition of individuals and national and local organisations. We hold diverse views on whether or not the state should fund faith schools. But we all believe that faith-based discrimination in access to schools that are funded by the taxpayer is wrong in principle and a cause of religious, ethnic, and socio-economic segregation, all of which are harmful to community cohesion. It is time it stopped.

[Supporters of the campaign](#) include the [Accord Coalition](#), the [British Humanist Association](#), Professor [Ted Cantle](#) and the [iCoCo Foundation](#), the [Association of Teachers and Lecturers](#), [British Muslims for Secular Democracy](#), the [Campaign for State Education](#), the [Centre for Studies on Inclusive Education](#), the Christian think tank [Ekklesia](#), the [Hindu Academy](#), the [Green Party](#), the [Liberal Democrat Education Association](#), [Liberal Youth](#), the [Local Schools Network](#), [Richmond Inclusive Schools Campaign](#), the [Runnymede Trust](#), the [Socialist Educational Association](#), and the [General Assembly of Unitarian and Free Christian Churches](#).