



Office of  
the Schools  
Adjudicator

## DETERMINATION

**Case reference:** ADA2796

**Objector:** The Fair Admissions Campaign

**Admission Authority:** The academy trust for Nishkam High School, Birmingham

**Date of decision:** 11 February 2015

### **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 Nishkam High School in Birmingham.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible and no later than 15 April.**

### **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 Nishkam High School, (the school), for September 2015. The school is an academy free school in Birmingham with a Sikh religious character for pupils aged 11 – 18. The objection is to whether the arrangements for admissions in 2015 have been determined or published and to a number of aspects of the school's faith-based oversubscription criteria, to some elements of its use of a supplementary information form (SIF) and to a failure to describe the process it uses for random allocation.

### **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 on 19 March 2014 by 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 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. When I looked at the arrangements I considered that they might also not conform with the requirements relating to admissions in ways other than those set out in the objection. I have accordingly used my power under section 88I of the Act to consider the arrangements as a whole for admission to Year 7 (Y7) and Year 12 (Y12) for 2015.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
  - a. the objector's email of objection dated 30 June 2014;
  - b. the school's response to the objection dated 8 September 2014 and supporting documents and subsequent correspondence;
  - c. annex 1 to the Supplemental Agreement to the funding agreement between the academy trust and the Secretary of State;
  - d. the comments of Birmingham City Council which is the local authority (LA) for the area in response to the objection dated 15 August 2014 and subsequent correspondence;
  - e. the comments of the Guru Nanak Nishkam Sewak Jatha (GNNSJ) which is the school's faith body to the objection dated 11 December 2014;
  - f. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
  - g. confirmation of when consultation on the arrangements last took place;
  - h. copies of the minutes of the meeting on 19 March 2014 at which the academy trust determined the arrangements, and
  - i. a copy of the determined arrangements.

### **The Objection**

6. 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) being broken. The rest of the complaint is therefore about the 2014 policy*  
*2.4 (all applicants required to complete the SIF even if not applying for a faith-based place)*  
*1.8/14 (in the first bullet point, presumably it should say ‘up to 50% of places’ will be offered under the faith-based criteria, and that the ‘remaining places’ will be offered under the open criteria. Ditto in the Open Places section)*  
*1.9b) (criteria B of both faith-based/open places – mentions ‘named feeder school’s [sic] but doesn’t actually name them)*  
*1.37 (the faith-based criteria imply that looked after children are assessed against the religious practice criterion. But all children of the faith must be admitted as first priority, not just those that meet the highest criteria)*  
*1.8/14 (both parents required to be religiously practising and guardians not mentioned. Unfair on those children with guardians or just one parent)*  
*1.9i) (‘My child is nurtured in the faith through home or Gurdwara education’)*  
*1.35 (independence and process of random selection not specified)*  
*2.4 (SIF asks about child’s gender)”.*

**Other Matters**

7. When I reviewed the arrangements for 2015, I considered that there were other ways in which they might not conform with the requirements relating to admissions. In relation to Y7 and Y12, these were:
- a. the faith-based oversubscription criteria appeared to be unclear and not objective and thus did not conform with paragraphs 14 and 1.8 of the Code. In addition, it appeared that it would not be possible for parents always to tell from the arrangements whether their own religious practice was likely to meet the school’s requirements to gain priority for a place on the basis of faith and this meant that the arrangements also failed to conform with paragraph 1.37 of the Code;
  - b. for places allocated on the basis of faith and for priority open places, there appeared to be no tie-breaker to separate two applicants who qualified equally for the final available place as required by paragraph 1.8 of the Code;
  - c. the arrangements might not give the required priority to looked after and previously looked after children of a faith other than the Sikh faith contrary to paragraph 1.37 of the Code;
  - d. the definition of looked after and previously looked after children appeared not to be accurate which meant that there was a risk that such children might not all receive the priority they are

entitled to under the Code;

- e. the SIF requested information not necessary to apply the oversubscription criteria. It thus appeared to breach paragraph 2.4 of the Code and because it suggested that matters not in the oversubscription criteria might be taken into account in allocating places, it also breached paragraph 1.9a of the Code.
8. In addition, the arrangements for admission to Y12 did not provide for young people to apply for places themselves in contravention of paragraph 2.6 of the Code. There also appeared to be a requirement for young people to attend an interview as part of the admission process in contravention of paragraph 2.6 of the Code.

## **Background**

9. Nishkam High School is an academy free school which opened in September 2012 with pupils in Y7 and Y12. The school is designated by the Secretary of State as a school with a Sikh religious character. Annex 1 to the school's supplemental funding agreement specifies that the school's faith body is GNNSJ.
10. The school has a published admission number (PAN) of 100 for each of Y7 and Y12. When I first reviewed the school's website in August 2014, I found a tab headed "Admissions" on its homepage. This led to a document headed "Guidance notes – Admissions Process" which included oversubscription criteria and a link to the school's SIF. The guidance notes were undated but referred to "*admission numbers for 2014*" and the SIF was headed "Application for Admission in September 2014". The arrangements for 2015 (including both the oversubscription criteria set out in a document headed "School Admission Criteria" and the SIF for 2015) were placed on the school's website on 5 September 2014.
11. Admission arrangements for Year 7: The admission arrangements make clear that if fewer than 100 applications are received all will be admitted. They also state that a child with a statement of special educational needs (SEN) that names a particular school must be admitted to that school. The oversubscription criteria for 2015 are as follows:

### ***"Category 1 – Faith-based places***

*50% of remaining places [after the admission of those with a statement of SEN naming the school] will be offered to children of families practising Sikh Dharam (faith or religion) or whose parents can show a commitment to any other faith or involvement in religious activity (see definition at the end).*

### ***Priority Faith-based places***

*A Looked After Children of Sikh Dharam faith or religion. Children who are in the care or who were previously in care of a Local Authority as*

*per section 22 of the Children Act 1989.*

*B Siblings – of Sikh Dharam faith or religion. Children with a sibling on the roll at the time of proposed admission.*

*C Children in Nishkam Primary School – of Sikh Dharam faith or religion. Children currently attending the Nishkam Primary School.*

*Remaining Faith-based places will be allocated using the definitions at the end.*

### **Category 2 – Open places**

*50% of places will be offered to children who apply for non-faith or open places.*

#### *Priority Open places*

*A Looked After Children [the same definition as above is used]*

*B. Siblings – non-faith. Children with a sibling on the roll at the time of the proposed admission.*

*C. Children in Nishkam Primary School – non-faith. Children currently attending the Nishkam Primary School.”*

12. The arrangements then continue in a separate section which relates to both faith-based and open places:

*“After the allocation of category 2 places, any remaining places will be allocated on the basis of random allocation....*

*Having allocated places in priority order as above, if in the lowest category where places have been allocated there remains oversubscription, all applications in that category will be subject to proximity; children who live nearest to the school when measured in a straight line from the front door of the home to the School’s front door.*

#### *Definitions*

*We have established a definition of families practicing Sikh Dharam (faith or religion) which gives priority to applicants as follows (in order of priority). All Applications will be assessed and places offered against the highest available criteria before moving to the next.*

- 1. Child and/or parents/guardian is a practising, initiated Sikh (Amritdhari) – Declaration on letter headed stationery from a Sikh Gurdwara.*
- 2. Kesadhari child (uncut hair) with intent to become practising initiated Sikh (Amritdhari). Written statement that a child has uncut hair and that the following practices are followed by the family:*

- *My child is nurtured in the faith through home or Gurdwara education.*
  - *Regular attendance at Gurdwara*
3. *Child of any other faith whose parents can demonstrate a strong commitment to their faith and involvement in religious activities. Written statement by parents that their children practices [sic] their faith and are involved in religious activities of their respective religion.”*
13. Admission arrangements for Y12: From September 2014, the school has pupils in Y7, Y8 and Y9. This means that no pupils will progress from Y11 to Y12 until 2017. In the meantime, the school admits some young people directly into Y12. The arrangements state:
- “Admission into Year 12 will be based on academic attainment and suitability of the courses to meet individual student needs. Applicants will need to complete an application form and attend an information, advice and guidance meeting.”*
14. This is followed by a short section on academic entry requirements and a statement that if Y12 is oversubscribed, the oversubscription criteria for Y7 will be applied.
15. The school was inspected by Ofsted from 30 April – 1 May 2014 when it had pupils in Y7 and Y8 and in the sixth form and found to be outstanding. The school was oversubscribed for Y7 in 2013 and 2014 and thus had to apply its oversubscription criteria. The school was not, however, oversubscribed at Y12 in either year.
16. In making the objection, the objector explained that the Fair Admissions Campaign was not interested in being involved in the process of considering the objection. In line with Office of the Schools Adjudicator (OSA) practice and procedures, all correspondence has been copied to the objector, but the objector has not chosen to make any further comments.

### **Consideration of Factors and other Matters**

17. Determination and publication of arrangements: I will address first the concern in the objection that the arrangements for 2015 might not have determined by 15 April 2014 as required by regulation 17 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) and paragraph 1.46 of the Code. The school has provided evidence in the form of the minutes of the relevant meeting of the academy trust that the arrangements were determined on 19 March 2014. This means that the arrangements were determined and this was done in line with the timetable set out in the Code. I do not uphold the aspect of the objection relating to determination of the arrangements.
18. While the arrangements had been determined as required, they were

not then published on the school's website. Because of the school's failure to publish the arrangements for 2015 as required, the objector saw only the arrangements for 2014 when making the objection. The arrangements for Y7 for 2014 were similar to those for 2015 with the exception of a reduction in the number of feeder primary schools and some small changes to the wording of the faith-based oversubscription criteria. The SIFs for both years were similar with changes reflecting the changes to the oversubscription criteria. As the arrangements for Y12 for both years reflected the arrangements for the corresponding Y7, they too changed in the same way. Because the arrangements for 2015 had been determined when the objection was made and the objection was made by the specified deadline, there is a valid objection to the 2015 arrangements.

19. Paragraph 1.47 of Code is clear that once arrangements have been determined, admission authorities "**must publish a copy of the determined arrangements on their website**". The school did not publish its arrangements until September 2015 which was over five months after determination and well after the deadline for objections to be made to the arrangements. The school in its response to the objection made the point that it had sent the determined arrangements to the LA and that the LA had published the arrangements on its website. The school also said copies were given out at open days and were available from the school office.
20. It is a requirement of paragraph 1.47 of the Code that admission authorities **must** send a copy of the determined arrangements to the LA and faith body by no later than 1 May each year. The requirement on the LA is then to include the arrangements in the composite prospectus which it **must** publish by 12 September each year. The fact that the school met the requirement to send the arrangements to the LA and that it also gave out copies is no justification for failing to meet the requirement to publish the arrangements on its own website. Parents and others who wish to see the arrangements and who may wish to object to these arrangements are entitled to expect to find them on the school's website. I uphold the aspect of the objection relating to publication of the arrangements.
21. Matters relating to the school's Supplementary Information Form (SIF). The objector stated that the arrangements required all applicants to complete the SIF and that the SIF asked for the child's gender which was unnecessary and that both of these provisions were contrary to paragraph 2.4 of the Code.
22. The admissions page on the school's website says "*You will also be required to complete an additional supplementary information form for Nishkam High School, this form can be completed online by clicking **here** or, alternatively by downloading the form below. Both forms must be completed for a place*". The admissions criteria document says "*You will also be required to complete an additional form for the school*". The SIF itself states that it must be completed.

23. Paragraph 2.4 of the Code explains that admission authorities are allowed to use SIFs only where they need additional information which they would not otherwise have in order to process applications. The school – as with all publicly funded schools – will have the information about applicants which is provided on common application forms (CAFs). This will give all the information the school needs in order to consider applicants applying under category 2 – open places. The school cannot accordingly ask such applicants to complete a SIF. For those applying under category 1 – faith-based places, the school will need some information which is not included on the CAF and it is allowed to use a SIF for this purpose.
24. In its response to the objection, the school said that the SIF was written for it by a project management company appointed by the Department for Education (DfE) and that no objection was raised to it. The school also said that it considered that the use of the SIF was *“a useful way of ensuring that each category of applicants (Faith or Open) has the same access to the following Priority Admission Places: “Looked After”, “Feeder School” and “Siblings””*. As noted above, Nishkam is a relatively new school, established as part of the free schools initiative. It is permitted by virtue of footnote 48 to paragraph 2.20 of the Code for all applications for academy free schools in their first year of operation to be made direct to the school using a school application form and not via applicants’ LAs as part of co-ordinated admissions. Annex 1 to the school’s supplemental funding agreement and the response to the objection from the LA confirm that in its first year of opening (that is the academic year beginning in September 2012) applications for admission were made direct to the school. However, Annex 1 also states that in subsequent years the school will participate in the LA’s co-ordinated admission arrangements and will accordingly have access to all relevant information from the CAF of each applicant.
25. There is no valid reason for the school to use a SIF to consider any application other than for a child seeking priority against a faith-based oversubscription criterion. In relation to the gender of children applying for a faith-based place, this information will be available on the CAF and cannot therefore be included on the SIF. I uphold these aspects of the objection.
26. The SIF also includes a box which is headed “Section D – other supporting information”. The box contains the words: *“This will only be considered where relevant to the over-subscription approach referred to above”*. There is no guidance as to what should be put in this box. Paragraph 1.7 of the Code explains that all schools must have oversubscription criteria and that these must be applied to all applicants. Paragraph 1.9a of the Code further provides that admission authorities must not place any condition on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements. The inclusion of a box on the SIF inviting parents to provide information further information suggests that account may be taken of matters which are not included in the oversubscription criteria. I determine that the use of the box does not



conform with the requirements relating to admissions.

27. Clarity of the references to the proportions of places to be offered on the basis of faith and without reference to faith. Footnote 30 to paragraph 1.36 of the Code says that the funding agreement for an academy free school with a religious character will provide that where the school is oversubscribed at least 50% of places are to be allocated without reference to faith. The school's arrangements refer to 50% places being "faith-based places" and 50% places being "open places" which are to be "*offered to children who apply for non-faith or open places*". The objector argued that the arrangements should instead refer to "up to 50% places" in each case and that because they did not they breached paragraphs 14 and 1.8 of the Code.
28. The school's supplemental funding agreement reflects the wording in the Code by stating that the school will "*adopt admission criteria that provide that, if oversubscribed, at least 50% of its places available each year will be allocated without reference to any faith-based admission criteria*". I do not consider that the arrangements should refer to "up to 50%" and I do not uphold this aspect of the objection. In the case of places for which priority may be given on the basis of faith, "up to 50%" may suggest that the no more than 49% places can be given priority on this basis, which is not true as the limit is 50%. In the case of places for which priority is not to be given on the basis of faith, "up to 50%" would not reflect the provision in the school's funding agreement. I do, however, consider that the arrangements as drafted are not clear and thus breach paragraphs 14 and 1.8 of the Code. This is because they do not take account of the fact that the school may not be able to offer precisely 50% places to Sikh children and precisely 50% not on the basis of faith. Such a situation could arise if the school were undersubscribed, in which case all would need to be offered places regardless of the breakdown of those applying for a place on the basis of faith or for an open place or if relatively few children Sikh children applied but more children who were not Sikhs did so. Even if the school has 120 applicants all of whom were Sikh, the school would need to allocate at least half of its places on the basis of its open place criteria rather than its faith-based criteria. The school must revise its arrangements as quickly as possible.
29. The clarity of the oversubscription criteria and the priority given to looked after and previously looked after children: I turn now to the question of the overall clarity of the aspects of the arrangements setting out the different degrees of priority afforded to different groups of children. As part of this I consider whether the arrangements give the required degrees of priority to looked after and previously looked after children. The objection stated that "*the faith-based criteria imply that looked after children are assessed against the religious practice criterion. But all children of the faith must be admitted as first priority, not just those that meet the highest criteria*". In addition, I was concerned when I considered the arrangements that they might not give the required priority to some other looked after and previously looked after children.

30. When I first read the arrangements I was not at all clear how they would operate in practice. In particular, it was not apparent how the “priority applicants” provision for category 1 faith-based places (which encompasses looked after and previously looked after Sikh children, Sikh siblings and Sikh children at Nishkam Primary School) worked alongside the definitions of practising Sikhs and practising members of other faiths set out in the arrangements. In correspondence, the school has explained that all: *“all priority applicants [for a faith-based place] are admitted without being considered against the criteria”*. The school also said that the definitions of practising Sikh, those intending to become a practising Sikh and practising children of other faiths are only used if there are remaining faith-based places to be allocated once all priority applicants have been admitted. Thus, applicants for a faith-based place who did not fall within the “priority applicants” definition were grouped according to the definitions set out in the arrangements. These applicants would be considered for any remaining places after priority applicants with the highest priority given to practising Sikhs, then those with an intention to become Sikh and then practising members of other faiths.
31. Paragraph 1.37 of the Code provides that *“Admission authorities for faith schools may give priority to all looked after children and previously looked after children, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith.”* Following the school’s explanation, I am confident that they do not apply the practice test when considering applications from looked after and previously looked after Sikh children. I do not accordingly uphold the aspect of the objection that only those looked after and previously looked after Sikh children who met the school’s practice test were given the highest priority. So far as looked after and previously looked after children who were of a faith other than the Sikh faith are concerned, I was not clear how they would be treated under the arrangements. The arrangements provide that looked after and previously looked after children who were “non-faith” had the highest priority in the open places category. The arrangements thus failed to ensure the right level of priority for looked after and previously looked after children who were of a faith other than the Sikh faith and who might apply for a faith-based or open place. In correspondence the school said *“In practice all “looked after or previously looked after children” (irrespective of faith) are categorised as priority applicants. Priority applicants are dealt with and given equal priority ahead of applicants being ranked using the determined admissions criteria. The School will review the way this is stated and ensure the statement is clearer by amending the admissions criteria”*. The school must amend its arrangements in order to conform with the Code.
32. I have already noted that I did not find the explanation in the arrangements of how the oversubscription criteria work clear. In particular, so far as those applying for a place on the basis of faith are concerned, the arrangements fail to make clear that only those who do not fall within the scope of the “priority faith-based places” but are

applying for a faith-based place are considered against the definitions of religious commitment and involvement. The school said in its email of 1 October 2014 that it would review the wording of the arrangements and make them clearer. In relation to both those places for which priority is given on the basis of faith and other places, the arrangements are also made unclear by the way particular terms are used in different documents. The admissions criteria document refers to “Category 1 – Faith-based places” and “Category 2 – Open places”. However, the SIF takes a different approach and refers to “Category 1: Priority Faith Applicants”; “Category 2: All Faith Applicants”; “Category 1: Priority Open Place Applicants” and “Category 2 All other Open Place Applicants. As they stand, the arrangements are not clear as required by paragraphs 14 and 1.8 of the Code.

33. I have considered whether the definitions of involvement in both the Sikh and other faiths used in the arrangements conform with the requirements relating to admissions. First, in relation to the Sikh faith, the arrangements require a written statement that the family attends the Gurdwara and participates in Sewa on a regular basis. As “regular” is not defined, the arrangements are not clear as required by paragraphs 14 and 1.8 of the Code and do not conform with the requirement in paragraph 1.37 of the Code that admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.
34. The objector argued that the statement “*that the child is nurtured in the faith through home or Gurdwara education*” breached paragraph 1.9i of the Code. This paragraph of the Code states that “*admission authorities **must not** prioritise children on the basis of their own or their parents’ past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)*”. I asked the GNNSJ in a letter of 14 August 2014 and an email of 10 November 2014 for copies of any guidance given to the school in relation to admissions. The GNNSJ responded on 11 December 2014 stating that it had advised the academy trust for the school of the importance of ensuring that the admission arrangements conformed with the Code. In its response of 8 September 2014 the school said: “*This criterion had the potential of being ambiguous and has been removed from the 2015 admissions process*”. However, when I checked the 2015 arrangements, the statement was still there. I raised this with the school and the school then said in its email of 5 December 2014 that the reference to removing the provision from the 2015 arrangements was a typing error and that the “*the school had meant to say that this statement will be removed at the earliest opportunity which will be in the 2016 arrangements*”. The arrangements for 2015 thus included priority on the basis of activities which had not been laid out as religious activities by the school’s faith body. I accordingly uphold this aspect of the objection. In addition, I determine that the statement “*the child is nurtured in the faith through home or Gurdwara education*” is not clear.

The school itself has said that it recognises that the statement has the potential to be ambiguous and I consider that it is unclear as it is capable of a very large number of different interpretations. Hence it also breaches paragraphs 14 and 1.8 of the Code.

35. As noted above, the school's arrangements include an element of priority – within the proportion for which priority is given on the basis of faith – for children whose parents are members of faiths other than Sikhism. The oversubscription criteria document says: *“Child of any other faith whose parents can demonstrate a strong commitment to their faith and involvement in religious activities. Written statement by parents that their children practices [sic] their faith and are involved in religious activities of their respective religion”*. The SIF states that a *“letter from a relevant faith organisation will be required, with supporting statements of initiation and/or demonstrating commitment to faith and any other additional/relevant evidence”*. It is not easy to discern from these inconsistent statements quite what is required of parents. This means that the arrangements are unclear and hence do not conform with paragraphs 14 or 1.8 of the Code. In addition, the SIF asks the following questions:

- “1. Name and address of regular place of worship*
- 2. How often does your child pray at your place of worship?*
- 3. Has your child undergone faith initiation/baptism?*
- 4. How regularly do [sic] participate in community/faith service?*
- 5. Do you accept that “all faiths should be respected”?*
- 6 Does your child or you [sic] participate in any “multi-faith” activities?”*

36. There is no indication on the SIF or elsewhere as to how answers to the questions will be assessed or how the answers will be taken into account in determining who is to be offered a place. Question 5 is not capable of yielding an answer which can be objectively assessed as it is asking for the parent's opinion. Questions 4 and 6 ask about participation in faith and community service and activities. No definition or information about acceptable activities or service is given here. It would not be possible for a parent looking at the arrangements to know whether their particular practice would satisfy the school's requirements and the arrangements do not accordingly conform with paragraph 1.37 of the Code which states that *“Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied”*. The school has said that no applications for a place on the basis of practising a faith other than Sikhism have yet been made and this means that the school has not yet had to apply this aspect of its oversubscription criteria. However, that is no justification for failing to have arrangements which comply with the requirements set out in the Code.

37. Inclusion of a tie-breaker for some groups of applicants: For applicants who apply for an open place and who do not fall within one of the open place priority groups, the school uses random allocation to determine who should be given a place. For all other applicants (that is all those applying for a place on the basis of faith and those falling within the open place priority groups) the school uses distance to rank applicants within each group. However, the arrangements do not include any provision to cater for a situation in which two applicants within the same group qualified equally for the final available place because they live the same distance from the school. Paragraph 1.8 of the Code provides that arrangements “*must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated*”. The arrangements do not provide this for these groups of applicants and so do not conform with the Code.
38. The use of random allocation: The school uses random allocation to distinguish between applicants for open places who do not qualify for consideration under one of its categories of “priority open places.” objector stated that the “*independence and process of random selection [was] not specified*” and that the arrangements thus breached paragraph 1.35 of the Code which states that “*Admission authorities that decide to use random allocation ... must set out clearly how this will operate*”. The school said that it was “*committed to following the procedure given in the Admissions Code and a description of the actual process is only omitted to keep the SIF as brief as possible.*” The 2014 SIF said “*After that allocation of places under the above categories [the priority open place categories] any remaining applications will be allocated on the basis of random selection using the procedure given in the National Admissions Code*”. The 2015 SIF is silent on the question of how applicants for open places who are not priority applicants will be ranked although the admissions criteria document says that random allocation should be used, but does not say how this will operate.
39. While I accept the school’s wish to keep its documentation succinct, this is absolutely no reason not to conform with a clearly stated requirement of the Code. Because the arrangements do not set out how random allocation will operate for a potentially significant number of places they do not conform with the Code. So far as the reference to the SIF is concerned, and notwithstanding that the 2015 SIF does not cover this, parents should not have to read the Code to understand how a particular school’s arrangements will operate. Furthermore, I have already determined that the school cannot use a SIF for those who applying for open places. I uphold this aspect of the objection.
40. The references to parents rather than parent in the arrangements and the lack of references to guardians or guardian and the references to two parents/guardian on the SIF: The objector argued that the arrangements breached paragraphs 14 and 1.8 because by requiring both parents to be religiously practising and not mentioning guardians the arrangements were unfair to children with only one parent or with a guardian or guardians. The admission criteria document and the SIF

refer in different places to “parents”, “parents/guardian” and “parent or guardian”. In the key definition of who is to be regarded as a Sikh, the arrangements refer to “Child and/or parents/guardian”. The school has said that no child has been discriminated against and that that “*all possible descriptions of family were only left out to keep the SIF simple*”. I do not consider that the arrangements require both parents to be religiously practising and there are references to guardians. I do not uphold this aspect of the objection. However, I do find that the use of different and inconsistent terminology makes the arrangements unclear and thus in breach of paragraphs 14 and 1.8 of the Code for that reason. Linked to this, the school’s SIF includes a box which provide for the names of “Parent/Guardian 1” and “Parent/Guardian 2”. While it is also the case that the SIF only requires and only provides for one parent or carer to sign the SIF, I consider that some parents or carers may feel that their application will be treated more or less favourably depending on whether they can provide one or two names. There is no need for the name of more than one parent to be included on the SIF. The arrangements accordingly breach paragraph 2.4 of the Code which provides that a SIF can only seek additional information necessary to apply the oversubscription criteria.

41. Priority given to children who have attended feeder schools. The objector complained that the school’s arrangements gave priority to children who had attended certain primary schools but that these schools were not named and the arrangements therefore breached paragraph 1.9b of the Code which prohibits taking account of any previous school attended unless it is a named feeder school. This was on the basis of the 2014 arrangements which referred to “*those primary schools within a 3 mile radius deemed a “feeder school”*”. The 2015 arrangements which are the subject of the determination had been changed in this respect and as noted above the only feeder school is Nishkam Primary School. I do not uphold this aspect of the objection as the arrangements for 2015 do not give priority on the basis of attending a previous school which is not a named feeder school.
  
42. The definition of looked after and previously looked after children in the arrangements: The arrangements refer to children “*who are in the care or were previously in the care of a Local Authority as per section 22 of the Children Act*”. As paragraph 1.7 of the Code makes clear, a looked after child includes not only a child in the care of a local authority but also a child who is provided with accommodation by a local authority in pursuit of its social services functions which is different. Similarly, a previously looked after child includes a child who has been provided with accommodation by a local authority. I am sure that the school intends – as it has said - to give the highest priority to all those entitled to it, but the use of inaccurate and narrower wording means that some parents or guardians may look at the arrangements and not appreciate the entitlement of the children they are responsible for. The current wording used by the school means that the arrangements do not conform with the Code.

43. Matters relating to admission to the sixth form: Currently, all the pupils in the school's sixth form have joined it in Y12, although this will probably change from September 2017 as those who joined the school in Y7 in its first year of operation will reach Y12. The school has set a PAN of 100 for its Y12 and uses the same oversubscription criteria and SIF as for Y7. To date the school has not been oversubscribed for Y12. When I reviewed the arrangements for Y12, I was concerned that in a number of respects – in addition to those set out above in relation to Y7 and Y12 – they failed to conform with the requirements relating to admissions.
44. Because there is no separate application form for Y12, there is no provision for pupils (rather than parents) to apply for a place as required by paragraph 2.6 of the Code and the arrangements accordingly fail to conform with the Code. The arrangements state that *“applicants will need to ...attend an information, advice and guidance meeting.”* This form of wording strongly suggests that attending the meeting is a condition for gaining admission and that it forms part of the admissions process. Paragraph 1.9m of the Code and the Act specifically prohibit the use of interviews as part of the process of admissions to schools (with the sole exception of boarding schools). Paragraph 2.6 of Code also states that *“any meetings [relating to joining a sixth form] held to discuss options and course must not form part of the decision process on whether to offer a place”*. In response, the school said *“such meetings do not form part of the selection process, the offer of a place is based solely on academic achievements. The meetings are a means for providing information about courses and options available at the school, and if necessary to discuss career options and ensure the applicants receive any guidance which may be required. The school would be happy to remove or amend the statement, if required, at earliest opportunity to amend the admission criteria.”* The arrangements do not conform with paragraph 2.6 of the Code and must be amended.
45. As the school uses the same oversubscription criteria for Y7 as for Y12, it gives an element of priority to those who have attended Nishkam Primary School. I am concerned only with the arrangements for admission to the school in 2015. Given that Nishkam Primary School opened only in 2011 it is simply not possible that any candidates for Y12 in 2015 could have attended Nishkam Primary School. This makes the priority pointless.

## **Conclusion**

46. I have partially upheld the objection and I have determined that in a number of other respects the arrangements failed to conform with the requirements relating to admissions. In the course of reviewing the arrangements and writing this determination, I have been struck by the lack of clarity in the arrangements – both in terms of the way they are described and inherently. The requirement for clarity is one of the overarching principles of the Code; as paragraph 14 has it: *“Parents should be able to look at a set of arrangements and understand easily*

*how places for that school will be allocated.*” The school has already accepted the need to make some changes to its arrangements to improve their clarity. The school must revise its arrangements in order to remedy the breaches of the Code identified in this determination. It must do so as quickly as possible and by no later than 15 April 2015.

## **Determination**

47. 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 Nishkam High School in Birmingham.
48. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
49. 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 and no later than 15 April.

Dated: 11 February 2015

Signed:

Schools Adjudicator: Shan Scott