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Andrew Dismore MP
House of Commons
London
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5th August 2007

Dear Andrew

Thank you for your letter of 26 July, which raised a number of questions in relation to Equality Act guidance to schools and faith school admissions. I will respond to each of your questions in turn.

Equality Act Guidance to Schools

We carefully considered the guidance made available to schools on the Equality Act Part 2 and consulted with a variety of stakeholders prior to publication to ensure that it struck the right balance. As you pointed out in your letter, we have made reference to not over-riding the rights of non-discrimination under the Human Rights Act in respect of school transport since this was an area of particular concern throughout the passage of the Bill, and we also covered school duties under the Human Rights Act with regard to school uniform issues. We did not give a blanket assurance with regard to all of the exceptions, as was suggested in the letter from Harriet Harman in January 2006. However, we are currently in the process of reconsidering guidance for schools in respect of equality legislation and will use this as an opportunity to make any necessary changes.

Faith Schools which do not give priority for admission to children of their own faith.

While the Department does not routinely collect data on the type of oversubscription criteria adopted by schools, we do know that not all schools with a religious character give priority in admissions to children of their faith. Others reserve a proportion of places for children of other faiths or no faith.

A number of faith schools, particularly voluntary controlled faith schools, adopt criteria that give no priority based on faith. For example, Hertfordshire voluntary controlled primary schools adopt the same admission criteria as the county's community schools. A number of voluntary aided schools, where the governing body is admissions authority, such as Christ Church CE VA Primary School in North Somerset, also adopt criteria which have no

reference at all to faith.

Other faith schools include criteria which ensure that children of other faiths or no faiths obtain places in the school. Most of North Somerset's VA Church of England primary schools, for example, give priority to local children above faith applicants.

Whether the plurality of provision in the maintained sector would be undermined if faith schools were not permitted to give priority to faith applicants.

As you know, Article 2 of the First Protocol to the Human Rights Act protects parents' rights to access 'education and teaching in conformity with their own religious and philosophical convictions'.

The government is of the view that the duality of provision within the maintained sector – faith and non-faith – in this country supports the Article 2 rights of all parents, whether they have a faith or not. Allowing faith schools to give priority to children of their faith over others further underpins the Article 2 right. Unless faith schools are allowed to prioritise applicants based on their faith, parents with religious convictions will find they are increasingly unable to access faith schools as places will, instead, be taken up by children who are not of that faith group.

However, that is not to say that we do not welcome the moves of both the Catholic and Anglican Churches to open up more places in new faith schools to non-faith applicants, as this can help the broader community to access a wider choice of good quality schools. Rather, we accept that a balance needs to be struck which allows both the wider community to access the full range of quality school places in their area and protects the rights of parents to access schools where the ethos conforms with their own religious and philosophical beliefs.

How often is the statutory power to direct used by local authorities?

We do not collect data on how often local authorities use their powers of direction to admit pupils under sections 96 and 97 of the School Standards and Framework Act 1998. However, we are aware that they do frequently use these powers as, prior to the enactment of the Education and Inspections Act 2006, admission authorities could appeal against such directions to the Secretary of State. The Education and Inspections Act now requires the Schools Adjudicator to consider such appeals. The Act also gives local authorities new, fast track powers, to direct foundation and voluntary aided schools to admit looked after children. We have anecdotal evidence of local authorities' use of these powers through local authority officials contacting my own officials to discuss them.

What measures do we take to ensure that faith based criteria do not discriminate directly or indirectly on racial grounds?

The School Admissions Code makes clear "the Race Relations Act 1976 makes it unlawful for admission authorities to discriminate against applicants on the basis of race, colour, nationality or national or ethnic origin. That Act, as amended by the Race Relations (Amendment) Act 2000, imposes on public bodies, including local authorities and schools, a duty to promote racial equality".

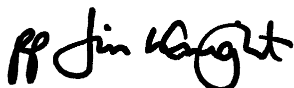
The Code also requires faith schools to have regard to the advice of their faith organisations in setting admission arrangements and this is an important regulating process that will help ensure that schools do not adopt unfair or unlawful practices.

Any admissions arrangements, faith or otherwise, which do unlawfully discriminate are subject to the remedies available under the Race Relations Act 1976 (RRA). For example, on a formal complaint, the Commission for Racial Equality (CRE) could take enforcement action if it found there to be race discrimination and once the CRE is wound up in September the Commission for Equality and Human Rights (CEHR) will assume this responsibility.

However, there are other safeguards built into the system. Admission authorities are also required, by law, to consult locally on their admission arrangements on an annual basis. Once arrangements have been finalised (or 'determined') the local authority, admissions forum, other schools and parents have a statutory right of objection. Any of these could lodge objections arguing that arrangements were racially discriminatory. If the Adjudicator were to find this to be the case, he would amend the arrangements to remove the discriminatory provisions and his decision would be binding. Of course, any of these consultees could also complain directly to the CEHR which could take compliance action.

Finally, I could also exercise powers of intervention under provision in sections 496 and 497 of the Education Act 1996 if, following a complaint, I was to find that an admission authority had acted either unreasonably or unlawfully.

Yours sincerely



ED BALLS MP