

Outcome of Consultation and Trust response

Introduction

A public consultation relating to the future of Hasmonean High School was undertaken which focussed on the following changes to take effect from 1 September 2018:

1) the single academy trust (“SAT”), which operates the existing co-educational academy known as Hasmonean High School, to become a multi-academy trust (“MAT”) known as “Hasmonean Multi-Academy Trust”; and

2) the existing co-educational academy to de-merge to form two separate single sex academies to be known as - “Hasmonean High School for Boys” and “Hasmonean High School for Girls”;

together referred to as “the Proposal”.

The Proposal was made to place the academy on a more secure legal footing and ensure compliance with Equalities legislation following advice from the Department for Education (‘DfE’) in the light of a court ruling regarding the operation of co-educational schools.

Having two separate single sex academies would also mean that the MAT would need to have a separate admissions policy and process for the separate boys’ and girls’ schools

Process

The consultation took place from 25th January 2018 until 30th March 2018.

The following consultees were emailed about the Proposal:

- Parents
- Trustees of the Academy Trust
- Trustees of the JSSM
- Hasmonean Staff
- Barnet Local Authority
- Neighbouring local authorities
- Local primary schools

The consultation documents were also published on the school’s website.

Plans to de-amalgamate have been reported on by the press e.g.

<https://www.thejc.com/education/education-news/hasmonean-high-school-launches-consultation-over-splitting-boys-and-girls-1.457510?highlight=hasmonean>

Outcome

There were 6 responses to the consultation, all by email. A full set of the responses can be found in the Appendix to this document. Not all the responses were easy to categorise as to whether they were for or against the Proposal, but in summary the responses could be broadly categorised as follows:

Those in favour:	3
Those against:	0
Mixed responses:	3

Summary of Consultee Responses

None of the responses to the consultation opposed the Proposal and one half of the responses were in favour of the Proposal.

The responses which are described as 'mixed' focussed on issues which could be described as separate (but related) to the de-amalgamation and the forming of a MAT, i.e. the Proposal. For example, there was a particular focus on the curriculum that will be offered to the two separate schools, and whether any lessons will be mixed. These responses broadly related to issues of how the separate schools would be operated, rather than to the principle of whether the schools should be separate.

Trustee Response to Consultation

In the view of Trustees, the consultation responses have not identified any good reasons to not proceed with the Proposal. In particular, there were no reasons put forward to challenge the DfE view that having separate schools will put the school on a more legally robust footing. Trustees are minded to proceed with the Proposal to ensure the regulatory compliance advised by the DfE.

If the Proposal is accepted by the DfE, the MAT will have a revised governance structure. The local governing body that is appointed for each school will then (subject to the terms of the scheme of delegation to be adopted) be responsible for making decisions affecting the curriculum and educational provision at their respective schools, with the trust board of the MAT overseeing regulatory compliance with regard to the Equality duty and the breadth and balance of the curriculum at each school.

If the Proposal is approved by DfE, then at the appropriate time each local governing body can seek views on the particular important school policies to be adopted. The issues raised by consultees on how the schools should operate, and in particular the curriculum content can be considered by the local governing bodies taking into account the views of a range of stakeholders once the de-amalgamation has taken place.

In making the decision to proceed with the Proposal, Trustees are mindful of the equality issues and have considered the impact of the Proposal with regard to the Public Sector Equality Duty. Trustees have taken on board the views of consultees on any relevant issues relating to the possible impact of the Proposal on those persons with protected characteristics under the legislation. Trustees have also had due regard to the need to advance equality of opportunity and foster good relations between persons who share a “relevant protected characteristic” and persons who do not, and in this regard all the views expressed from consultees on this issue have been considered. Trustees will continue to ensure that both boys and girls will be provided with the highest standard of education and the opportunities to flourish.

Once the Trust has been notified of DfE approval and there is a planned date for implementation, then parents and stakeholders will be notified. There will also be more detailed discussions with staff and representatives prior to the implementation.

Appendix: Responses to Consultation

1. Parent of the School (1), 20.03.2018

Consultation on Proposed Split of Hasmonean from a SAT to a MAT
Parent at Hasmonean High School
20th March 2018

Summary

The proposed split of Hasmonean High School into Hasmonean Boys School and Hasmonean Girls School into two schools within one multi academy trust is likely to enable ongoing gender discrimination in respect of the content of the Jewish education curriculum.

As part of the conversion to the MAT, I'd like reassurance from Ofsted and the DFE that two secondary schools within the same MAT, one for boys and one for girls, are obligated to teach the same Jewish studies curriculum, and that this requirement for equal Jewish education is made explicit as one of the conditions for the split.

Jewish Education

At present the curriculum for Jewish education for girls at Hasmonean High School is substantially different to that of the boys. Whilst there have been great advances over the past few years in respect of the quality and delivery of the girl's Jewish education resulting in girls are engaging with more Jewish texts, there remains the fundamental issue that Jewish education at the girls school is not taken as seriously (less time) as at the boys school and moreover only boys are being taught the Oral Law (Mishna and Gemara (also known as Talmud)) systematically and in any depth.

Although I've been told that the girls can engage in the Oral Law, it seems that this engagement is very limited to when an Oral Law sources are used in (say) a lesson on Jewish law in the Girls school, it will be excerpts of text used. This is because the girls do not have the opportunity nor the skills to study from the "Seforim" (Jewish books) that the boys use on a daily basis. By contrast the boys have several lessons a week solely focused on Gemara study and this is undertaken directly from the original texts.

It's disappointing that over 40 years after Rav Soloveitchik introduced Gemara study for girls at Stern College¹ that Hasmonean High School alongside several coed UK primary schools are still denying girls the chance to study Oral Law, despite boys being able to study these texts both in school and as part of after school clubs. Orthodox High schools across America, Canada, Australia and Israel are teaching girls Gemara on similar terms to boys, and a new generation of Orthodox Jewish girls is being brought up with an equal Jewish education.

"Not only is the teaching of Torah she-be-al peh to girls permissible but it is nowadays an absolute imperative. This policy of discrimination between the sexes as to subject matter and

¹ <https://www.thelehrhaus.com/commentary/forty-years-later-the-rav%E2%80%99s-opening-shiur-at-the-stern-college-for-women-beit-midrash/>

method of instruction which is still advocated by certain groups within our Orthodox community has contributed greatly to the deterioration and downfall of tradition Judaism.”²

Raising Awareness of My Concern

I brought up this matter at a recent Hasmonean parent forum with Mr McClusky (Executive Headteacher) and Marc Meyer (chair of governors) (appendix 2) and its disappointing that there are no plans either as part of this proposed reorganisation or otherwise to address the fundamental gender balance in the Jewish education at Hasmonean High School. Even if the view is taken that not all parents would want their daughters to study Gemara / Talmud an initial possibility would be to implement an element of optionality into the girl’s curriculum to give the same opportunities as the boys to those who want to engage.

UK Equality Law

UK Equality law is clear that girls and boys in a school should be given equal opportunities and education with the only carve out being specifically for sports³. Recent case law including both the 2009 JFS case⁴ on school admissions as well as the 2017 cases of *Al Hijrah*⁵ and *In the Matter of M Children*⁶ has established that religious beliefs even if deeply held do not exempt a school from its obligations under the Equality Act. See appendix 1.

Other Matters

Hasmonean High School was looking, until the planning permission was turned down, to co-locate the girls’ and boys’ schools into one segregated building. Should the schools end up in the same building at some future point the matter of minority GCSE subjects should be considered. My daughter could not study GCSE Business studies as there wasn’t demand in the girls’ school. However, this subject went ahead in the boys’ school as enough boys wanted to study for it. This could also apply for textiles, computing etc. I’d ask the DFE to clarify that in the event of the two schools being co-located in one building in the future that this situation could not reoccur, e.g. the girl would be able to take the GCSE by attending lessons with the boys, or a boy would be able to take the GCSE in the girls’ school.

Conclusion

My concern is that by giving permission for the school to split into two separate entities, the discrimination of girls in the religious studies curriculum will be perpetuated indefinitely and hence I’d urge the school to re-evaluate the Jewish studies curriculum and the DFE to defer the split until the matter of unequal Jewish education is fully resolved.

By email

Appendix 1

M Children Case Para 95:

² From Rav Soloveitchik “Community, Covenant and Commitment: Select Letters and Communications <https://www.amazon.co.uk/Community-Covenant-Commitment-Selected-Communications/dp/0881258725>

³ <https://www.thelehrhaus.com/commentary/forty-years-later-the-rav%E2%80%99s-opening-shiur-at-the-stern-college-for-women-beit-midrash/>

⁴ https://www.supremecourt.uk/decided-cases/docs/UKSC_2009_0136_Judgment.pdf

⁵ <https://www.judiciary.gov.uk/judgments/hm-chief-inspector-of-education-childrens-services-and-skills-v-the-interim-executive-board-of-al-hijrah-school/>

⁶ <https://www.judiciary.gov.uk/judgments/in-the-matter-of-m-children/>

It is well-established on authority that discrimination which is motivated by a religious belief (however sincerely held and even if the discrimination is mandated by that religious belief) does not make discrimination under the Equality Act lawful: see Regina (E) v Governing Body of JFS and another (United Synagogue and others intervening) [2009] UKSC 15, [2010] 2 AC 728, para 35 (Lord Phillips of Worth Matravers PSC) and para 65 (Lady Hale JSC). See also Regina (Williamson and Others) v Secretary of State for Education and Employment [2005] UKHL 15, [2005] 2 AC 246, para 58, where Lord Walker of Gestingthorpe cited with approval what had been said by Mason ACJ and Brennan J in the High Court of Australia in Church of the New Faith v Commissioner of Pay-Roll Tax (Victoria) (1983) 154 CLR 120, at 136: "Religious conviction is not a solvent of legal obligation."

Equality Act 2010 Schedule 11⁷

s868. This paragraph allows schools which have a religious character or ethos (often referred to as faith schools) to discriminate because of religion or belief in relation to admissions and in access to any benefit, facility or service. It means that faith schools may have admissions criteria which give preference to members of their own religion and it allows them to conduct themselves in a way which is compatible with their religious character or ethos. It does not allow faith schools to discriminate because of any other of the protected characteristics, such as sex, race or sexual orientation. Nor does it allow them to discriminate because of religion in other respects, such as by excluding a pupil or subjecting him to any other detriment.

Appendix

2

Subject: Parent Focus Meeting - Update

Sent on behalf of Mr McClusky

Excerpt from Meeting Notes

Inspirational Kodesh

It was felt that the teaching of some Jewish Studies lessons at the girls' school needs to be more rigorous and systematic, particularly but not only in the Sixth Form. While the teaching of Jewish Studies at the girls' school has dramatically improved in recent years, and was much praised by Pikuach during its last inspection, there is without question a need to ensure that it is consistently excellent across all sets in all year groups. The need to raise standards at both schools has been recognised by the JS Leadership Team: we must ensure that the lessons inspire, that the lessons are carefully planned and skills and knowledge are rigorously and professionally taught; this is being directly addressed in the post-Pikuach Jewish Studies Development Plan. A Sixth Form review of all subjects has just taken place and learning walks are taking place with greater frequency this year, allowing both governors and senior leaders to have a closer view of what is happening on the ground. Some parents questioned whether we have the correct balance between Kodesh and Chol, particularly for Year 11 boys next year as the GCSE specifications have become more challenging. It was also felt by some that there was a lack of time to prepare for examination due to the breadth of the Jewish Studies curriculum at the boys' school. This is an issue

⁷ <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/28>

which I will raise with both senior leaders and with governors. I will report back on it in due course.

The question was raised as to whether girls' should be given the option of studying the same religious texts as boys. Before governors implement the proposals from Hasmonean to de-merge to form two separate single sex academies, they need to take into consideration the impact of the proposals with regard to the Public Sector Equality Duty before an application for the de-amalgamation is made to the DfE. This includes giving due regard to the provision for boys and girls to ensure that they are given equal opportunity to thrive.

Extract from email from Equality and Human Rights Commission

(The full email can be supplied on request, it covered many questions, some of which are not applicable or relevant to Hasmonean)

Different Jewish education depending on gender

You have advised that some Jewish schools provide different Jewish education for girls and boys. Under the education provisions of the Act it is unlawful for a school to discriminate against a pupil in (amongst other things) the way that it provides education for the pupil, by not providing education for the pupil and by subjecting the pupil to any other detriment.

Assuming that the different Jewish education is provided via single-sex classes, the Department for Education's non-statutory advice on The Equality Act 2010 for schools and local authorities advises that it is not necessarily unlawful to have some single-sex classes in a mixed school, provided that this does not give children in such classes an unfair advantage or disadvantage when compared to children of the other sex in other classes. For example, it would be lawful to teach sex education to single-sex classes, as long as the classes were provided to both boys and girls.

In the recent judgement in *Chief Inspector of Education, Children's Services and Skills v Interim Executive Board of Al-Hijrah School* (13 October 2017), the Court of Appeal held that the segregation of male and female pupils at a faith school constituted direct discrimination contrary to section 13 of the Act against both male and female pupils. It held that female pupils were treated less favourably than male pupils, as female pupils lost the opportunity to socialise, interact and learn with, or from, male pupils. Likewise, male pupils were treated less favourably than female pupils, as male pupils lost the opportunity to socialise, interact and learn with, or from, female pupils. However, whilst the segregation policy was unlawful, the majority of judges stated that such segregation did not impose a greater detriment on female pupils than male pupils, as all of the children were taught the same subjects to the same standards. Further, that there was no evidence that segregation would reinforce in the minds of pupils the notion that females were inferior to males in both a social and employment context.

Applying the above judgement to the example you have outlined, there may be an argument that in receiving different Jewish education via single-sex classes, boys and girls may each be suffering less favourable treatment to each other i.e. girls are denied the opportunity, which the boys have, of receiving particular elements of Jewish education, and

the boys are denied the opportunity, which the girls have, of receiving other elements of Jewish education.

However, it is important to bear in mind that the judgement in the Al-Hijrah School case involved a different set of facts; the School operated a policy of complete segregation of female and male pupil's over a certain age for all lessons, breaks, school trips and clubs. Whilst it may nevertheless be possible to argue its relevance to the issue of different Jewish education depending on gender, this would ultimately fall to the courts to determine.

2. Former Teacher at the School and Informal Jewish Educator, 26.03.2018

Subject: Re: The proposed split of Hasmonean into two separate schools.

I write as an Orthodox woman who is passionate about about Torah study and Jewish observance.

As a former Jewish Studies teacher at Hasmonean High School (Girls), and an informal Jewish educator with particular focus on young women I encounter women of all ages, who are more knowledgeable in what we call 'secular' subjects than in Jewish sacred text and religious subjects. They are smart, talented women who, enabled by their education, go on to pursue careers and become accomplished professionals. The education gap between the genders in secular education has largely been closed but now is the time to ensure that the education gap is closed for religious education as well.

There's a yawning gap between the challenges and achievement their secular education offers, and the limited opportunities in Jewish subjects. While this may be true for some of the boys, the fact remains that entire core Jewish texts, subjects and associated skill sets (Mishnah, Talmud and the ability to study Oral Law) are not offered to girls or taught in a sustained way.

While Hasmonean Boys' Jewish Studies curriculum is highly regarded in the community, the Girls' Jewish Studies curriculum does not draw any esteem. While it has recently been expanded, much of it is still offered in 'informal' setting, reinforcing the message that it is something optional, light and not to be taken too seriously.

The implicit message to girls is that they should aim high in their professional aspiration. They can be anything they dream of - apart from excelling in Torah (Jewish studies).

At the opening of Maayanot High School for girls in Teaneck, (New Jersey) in November 1996, Rabbi Aharon Lichtenstein spoke of the importance of teaching Talmud to girls. He noted that there was both greater need and greater opportunity to give young women access to core Jewish texts that were once the preserve of boys and men: *'Respect for their abilities, their commitment, for their potential which is inherent within them and if you want to mobilize this force for themselves and for the good of the community. What that means, of course, is maintaining standards that are demanding and challenging. In practice, of course, it means not simply teaching digests of digests, but a confrontation, at a basic level, with primary texts'*.

(November 1996, transcript published in [Lehrhaus](#) October 2017)

When the texts most central to a deep and sophisticated understanding of the development of Jewish law, tradition and values, are taught to boys but not to girls, the message the school imparts, to students of both genders, is that women have less ability in this subject. Mishnah and Talmud in particular are considered challenging text and by omitting them from girl's curriculum the school is displaying what has been called 'the soft bigotry of low expectations'. This is a bias towards girls and leads them to see Talmud and Mishnah as 'male' subjects and not identify themselves with advanced religious study.

I believe Hasmonean High School can play a critical role in closing the gap between what young women are achieving in their secular education and professional lives on one hand, and the limited access and skills in Jewish education. I would like to see the school display integrity and fealty to core Jewish values and invest in nurturing girls' talents in rigorous study of Mishnah and Talmud. It needs to address this important issue of gender equality in Jewish education rather than circumvent it by creating two separate schools.

Greater participation from women has the potential of enriching Jewish communal life and society at large.

3. Parent of the School (2), 26.01.2018

Subject: hasmonean new status

good morning

re the new boys/girls arrangement at hasmonean –what does this mean for the plans to merge to one site? Are they now off the table?

Thanks

4. Headteacher of a Local Jewish Primary School, 25.01.2018

Subject: Consultation re SAT to MAT conversion

As Headteacher of one of the long-established feeder schools for boys to Hasmonean High School, I am writing to express my full and unqualified support for the Proposal to de-merge the Academy and form a MAT.

Yours sincerely

5. Parent of the School (3) 25.01.2018

Subject: consultation response

The demerger seems a sensible response to the recent case which affected another school.

It is good to see that having a sibling on the other site will remain an admissions priority.

We would want every effort to be made to ensure equality of educational opportunity in the two schools e.g. the same courses to be offered on both sites.

As things proceed, we would also be interested to know whether the staff structures at SLT/ other levels within the school will change.

Thank you,

6. Parent of the School (4), 30.01.2018

Subject: RE: From Hasnonean - Message from Mr McClusky

I fully support the proposal, and thank you to everyone who has spent their time on this to make it so straightforward.

It is just unfortunate that it is necessary to do this and waste everyone's time.

Thanks