



## **PRESS INFORMATION**

### **JFS Loses in Supreme Court by 5-4 Margin**

The eagerly-awaited decision of the nine Supreme Court judges, who heard the JFS case in October, has proved to be unsuccessful for JFS. The judgement concluded by the narrowest of margins that the test applied by the Chief Rabbi in determining whether or not a person was halachically Jewish inevitably involved the ethnicity of the person under consideration and brought the test within the ambit of direct racial discrimination. In consequence, it was not lawful for the school to use that test in determining to whom priority should be given in offering places at the school and the school could only lawfully apply a test related to religious practice if it wished to give priority to Jewish students.

Commenting on the decision, chairman of governors Russell Kett said, “The governors and the school are naturally disappointed at the Supreme Court’s decision and we must now set about establishing a more workable solution for a Jewish practice test to be used for admissions in 2011.”

“Of those who ruled against the school, Lord Philips, President of the Supreme Court, suggested that there may be a defect in the law by not allowing the school to give admission priority, when oversubscribed, to those who are Jewish in orthodox law, and all stressed that neither the school nor the Chief Rabbi had acted in any morally wrong way or in any racist way in the commonly held sense. The unlawful discrimination relates to ethnicity and not race as such”. Lady Hale and Lord Kerr made similar points.

“JFS School felt it had no alternative than to continue to press for its test of ‘Jewishness’ to be based solely on orthodox Jewish religious law, rather than on a series of factors which themselves have no relevance under Jewish law but which seem to support the notion of a test of Jewish practice required by English legal system,” he added.

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He pointed out that all the Justices were at pains to say that there was no moral criticism of the school or of the Chief Rabbi. They all went out of their way to make it clear that JFS's admissions policy was not 'racist' and took great care to make it clear that the governors of JFS acted with great sincerity, Lord Kerr describing the school's motives as 'unimpeachable'.

He also commented on the quality of the legal team which had represented JFS in the Supreme Court.

"Led by the irrepressible Lord Pannick QC and supported by specialist education barrister, Peter Oldham and discrimination expert Professor Christopher McCrudden, along with our solicitors, Richard Gold and Michael Brotherton of Stone King Sewell, I do not consider there to have been a finer team of lawyers who could have represented the school in the Supreme Court," he said.

"One satisfactory aspect of the outcome of this case is that governors of the school can now focus our time and energies on ensuring JFS continues to perform as an Outstanding School, as judged in the past few months by OFSTED, without diverting time and resources to dealing with this case. I can assure the entire JFS family – parents, students, and staff, both present and prospective – that none of the school's educational provision has been, nor will be, adversely affected by the outcome of this case," he concluded.

**ENDS**

**Notes to Editors:**

1. This case involved an appeal by the father of a child (M) who was refused admission to JFS because he did not satisfy the school's admission criteria. The criteria provided that in the case of oversubscription the school could give preference to those who were confirmed by the Office of the Chief Rabbi (OCR) as Jewish. Under Jewish religious law a child is Jewish if his mother is Jewish, by descent or conversion. M's mother converted to Judaism under the auspices of a reform synagogue and her conversion was not therefore recognised by the OCR. Accordingly M was not recognised by the OCR as Jewish
2. M's father appealed to the Schools Adjudicator on the grounds that the admission criteria were either directly or indirectly discriminatory. The case was appealed through the High Court and the Court of Appeal to the UK Supreme Court (the court which has replaced the Judicial Committee of the House of Lords).

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3. The Race Relations Act 1976 prohibits discrimination on the grounds of colour, race, nationality or ethnic or national origins. Direct discrimination means treating someone less favourably on such grounds and is prohibited (subject only to certain specific exemptions). Direct discrimination cannot be justified. Indirect discrimination means applying a criterion which is applied equally to everyone but which puts persons of a certain colour, race etc. at a particular disadvantage. It is prohibited unless it can be justified, i.e. it can be shown to be a proportionate means of achieving a legitimate aim.
4. Discrimination on grounds of religion or belief is prohibited by Part II of the Equality Act 2006, which contains an exemption for faith schools. JFS is designated a 'Jewish' school and its admission criteria therefore fall within the scope of the relevant exemption. However this does not preclude the criteria from also being considered under the Race Relations Act 1976.
5. The UK Supreme Court heard the case on 27-29 October 2009.
6. JFS was supported in its appeal by interventions from the United Synagogue, the Board of Deputies of British Jews and the Secretary of State for Children, Schools and Families.
7. M's father sought to uphold the Court of Appeal's decision in his favour and was supported in his case by interventions from the Equality and Human Rights Commission and the British Humanist Association.
8. The UK Supreme Court's judgment was handed down this morning at 9.45 and can be found at <http://www.supremecourt.gov.uk/news/judgments.html> .
9. The majority (Lord Phillips, Lady Hale, Lord Mance, Lord Kerr and Lord Clarke) held that the JFS admission criteria were directly discriminatory on the grounds of race (ethnic origins).
10. Eight Justices expressed an opinion on indirect discrimination. All eight concluded that the admission criteria could have been justified because the school clearly had a legitimate aim. Two of the Justices were of the view that the admissions criteria were also a proportionate means of achieving that aim. The remaining six did not consider that JFS had demonstrated that it had acted proportionately (but did not say that this was not possible).
11. A clear majority of the Justices who found against JFS indicated that the law on direct discrimination may be wrong, given the extraordinary result of the case.
12. Following the Court of Appeal's judgment in July 2009, all Jewish faith schools have been prohibited from applying admissions criteria based on the religious test of who is a Jew and instead have had to apply a religious practice test (based in part on synagogue attendance). A test based on religious practice will have to continue for the foreseeable future but will now have to be justified as it is possible that it would also be considered to be indirectly discriminatory.

**For further information, please contact:**

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