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For immediate release

## **Narrowest of margins defeats JFS in the UK Supreme Court**

London, 16<sup>th</sup> December 2009

The UK Supreme Court today, by the narrowest of margins, held that the admissions criteria of JFS, which gave preference in the event of oversubscription to children who are Jewish according to Orthodox Jewish law (either by descent or conversion), were in the definition of the 1976 Race Relations Act, directly racially discriminatory.

JFS lost the case by the narrowest of margins – with five Justices upholding the Court of Appeal's earlier ruling and four dissenting. However, all of the Justices went out of their way to make it clear that JFS's admission policy was not 'racist' and took great care to make it clear that the Chief Rabbi, the United Synagogue and the governors of JFS acted with great sincerity and are entirely free from moral blame, Lord Kerr describing their motives as 'unimpeachable'.

The closeness of the Court's decision underlines the inherent difficulty in applying the complex modern law of discrimination to an ancient religion, particularly where the UK law of direct discrimination does not allow any breach to be justified, however legitimate the motive.

A majority of the Justices expressed the view that the law may be wrong and Lady Hale signalled that an amendment to the Equality Bill should be investigated

Nevertheless, notwithstanding the sympathy of the Court, the finding that applying the test of Jewish status is directly discriminatory will have a significant and profound effect on Jewish schools and the whole of the Jewish community, including the Masorti, Reform and Liberal movements. This is why the United Synagogue has supported the School's case.

Lord Rodger in his dissenting judgment said, **"The decision of the majority means that there can in future be no Jewish faith schools which give preference to children because they are Jewish according to Jewish religious law and belief..... Instead, Jewish schools will be forced to apply a concocted test for deciding who is to be admitted. That test might appeal to this secular court but it has no basis whatsoever in 3,500 years of Jewish law and teaching."** He continued **"The majority's decision leads to such extraordinary results, and produces such manifest discrimination against Jewish schools in comparison with other faith schools, that one can't help feeling that something has gone wrong."**

Commenting on the decision, United Synagogue President Dr. Simon Hochhauser said, **“The United Synagogue is extremely disappointed with the Supreme Court ruling which interferes with the Torah-based imperative on us to educate Jewish children, regardless of their background. Practice tests are anathema to the United Synagogue, which for centuries has opened its institutions to all Jews, observant or not. These practice tests have no relevance under Jewish law and serve only to support the notion of a test of religion in the eyes of the English legal system. As Lord Brown noted, essentially we must now apply a “Non-Jewish definition of who is Jewish.”**”

**-Ends-**

**EDITORS' NOTES: -**

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).
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.