

Court of Appeal Judgment in Re. E v JFS and others

A1 What is the case about?

The case concerned a judicial review brought by E of the lawfulness of the JFS Admissions policy on the basis that the criteria are racially discriminatory.

A2 What are the facts of this case?

E is Jewish by birth and his former wife is Jewish by conversion (under the auspices of an independent Progressive synagogue). E applied for their son, M, to be admitted to JFS.

The JFS admissions policy is when over-subscribed to give preference to children who are recognised as Jewish by the Office of the Chief Rabbi (OCR) or are following or undergoing an OCR-approved conversion course.

JFS was over-subscribed when E applied on behalf of his son M in 2007. E did not provide material to enable the OCR to confirm that his son would be recognised as Jewish and E's application was refused.

E appealed on the basis that the JFS admission policy is unlawful because it is racially discriminatory.

A3 What did the Court of Appeal decide?

The Court held that any selection criteria (whether schools admissions criteria or otherwise) that gives a priority to a person who is Jewish in orthodox terms, whether by matrilineal descent or conversion, is a decision that is based on the ethnicity of the person and is, therefore, direct discrimination on racial grounds.

The Court of Appeal held that discriminating between "Jewish" and "non-Jewish" children is permissible if done on religious grounds but unlawful if done on racial grounds.

A4 Why do we consider that the Court of Appeal's decision is wrong?

The School argued (supported by the United Synagogue) that the admissions policy of JFS is based on a religious and not a racial or ethnic view of who is a Jew, and is therefore lawful. That argument was considered by the lower court and accepted.

The flaw in the direct discrimination finding is the incorrect assumption that people who are Jewish under Jewish religious law are also of Jewish ethnic origin for the purposes of the Race Relations Act.

The two groups overlap but they are not equivalent or identical groups.

Any person of any ethnic origin can convert to Judaism and once converted a person is Jewish, and a female convert will pass Jewish status to her future children.

A5 How much has this cost the US?

The United Synagogue has incurred over £150,000 to date on this case, and the JFS has also incurred a significant sum. We will be looking for financial assistance from across the community.

A6 Has the Chief Rabbi, as the religious authority of the US, fully supported this action?

Yes. As his statement today makes abundantly clear, he considers this to be a matter of deep concern to the community.

B Consequences for Jewish Schools

B1 Is it lawful for Jewish schools to select only Jewish children?

The law prohibits racial and religious discrimination. However, faith schools like the JFS are exempted from the prohibition of religious discrimination and, if oversubscribed, may give priority in admissions on the basis of faith. No school is ever permitted to discriminate in its admissions policy on racial grounds.

B2 Are Jewish schools being treated differently from other faith schools?

Yes. Other faith schools can select on the basis of membership. Jewish schools cannot.

B3 Does this decision apply to all schools who select based on Jewish status?

This decision affects any branch of Judaism that defines who is a Jew on the basis of descent (whether matrilineal or patrilineal). Jewish schools of any denomination (Reform, Liberal, Masorti, Charedi, Orthodox, Federation etc.) will be prohibited from giving priority to applicants who are a member of the Jewish faith.

B4 How do Schools lawfully admit Jewish children?

The Court held that a school can admit only "Jewish" children and may adopt its own working definition of what makes a child "Jewish" but only so long as it does not use a racial criterion in that selection. Going forward, this means that any admissions policy based on who is Jewish must depend on religious practice rather than the test under Jewish religious law as to who is a Jew or any other test, however indirect, which involves descent.

In future, all Jewish schools (whether state or independent) will need to adopt a

religious practice test, until such time as the Court of Appeal's ruling is successfully overturned or a legislative amendment is made.

B5 If an institution adopts a faith-based admission criterion such as Shabbat observance, could an Orthodox institution reject a non Orthodox convert who purports to keep Shabbat?

Provided that the individual meets the admission criterion, in this case Shabbat observance, the institution could not reject his application on other grounds that could amount to racial discrimination.

B6 Will the OCR/London Beth Din be issuing any guidance?

The OCR will issue guidance on a religious practice test in due course. The London Beth Din is currently in consultation with the Chief Rabbi to find a practice test that would meet the needs of our communities whilst complying with the law as it currently stands.

B7 Does this decision affect independent Jewish schools as well as state schools?

Yes. Independent schools are similarly subject to the Race Relations legislation and would equally be discriminating unlawfully by giving preference by reference to Jewish applicants unless they also applied an observance test rather than a membership one.

C. Consequences for the wider Jewish community

The provision of any goods or services (unless it falls within one of the limited exceptions in the Race Relations Act, for example services provided by a charitable entity) is potentially covered by the judgment, not just the educational sector.