

Judicial Communications Office

15 October 2025

COURT DISMISSES CHALLENGE TO MINISTER'S DECISION ON INTEGRATED SCHOOLS

Summary of Judgment

Mr Justice McAlinden, sitting today in the High Court in Belfast, dismissed applications to challenge the Minister for Education's decisions not to approve proposals for the transformation of Rathmore Primary School and Bangor Academy and Sixth Form College to integrated status.

Background

In 2024, the Boards of Governors of Rathmore Primary School and Bangor Academy and Sixth Form College ("Bangor Academy") submitted Developmental Proposals ("DP") to transform their schools to integrated status¹. In September 2024, officials in the Department of Education ("the Department") submitted a departmental report to the Minister for Education ("the Minister"). The departmental reports were accompanied by documentation provided by the proposers including the Cases for Change ("CfC"). On 7 January 2025, the Minister refused the proposals. The father of a pupil at Rathmore Primary School ("JR335") and the mother of a pupil at Bangor Academy ("JR 336") challenged the Minister's decision by way of judicial review claiming, amongst other things, that he had misunderstood and misapplied the relevant legislation, failed to take relevant matters into account and failed to give reasons.

At the outset, the court said its role in such challenges is supervisory and limited to conducting an audit of the legality of the Minister's decision. Any challenge, in order to succeed, must establish *Wednesbury* irrationality or other illegality. It cited an earlier decision² which stated that, provided the relevant considerations have been taken into account and the decision-maker has not strayed into irrationality, it is not for the court to assess the weight to be given to any particular factor. It is generally not for the court to determine what factors are or are not relevant, unless this is clear as a matter of law. Nor is it for the court to dictate the level of inquiry in which the decision-maker must engage if they have considered an issue and determined not to embark on certain further enquiries, again subject to the over-arching threshold of *Wednesbury* irrationality. The court also noted the principles on the duty to give reasons set out in case law³.

Legislative Framework

The legislative framework controlling the transformation of a school to integrated status is set out in paras [11] – [20] of the judgment. Article 64(1) of the Education Reform (Northern

¹ Development Proposal 728 was to transform Rathmore Primary School to integrated status and DP 727 was to transform Bangor Academy and Sixth Form College to integrated status.

² *In re JR 264* [2023] NIKB 68.

³ *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin).

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Ireland) Order 1989 (“the 1989 Order”) imposes a duty on the Department to encourage, facilitate and support the development of integrated education and to provide support for integrated education. Section 5 of the Integrated Education (Northern Ireland) Act 2022 (“the 2022 Act”) sets out what is meant by “support” in Article 64(1) of the 1989 Order, stating that it means identifying, assessing, monitoring and aiming to meet the demand for the provision of integrated education within the context of area planning and the overall sustainability of the school estate (including, in particular, monitoring the number and success of applications for integrated education). Monitoring, in this context, means monitoring by reference to data collected in respect of the catchment and other areas. It also means providing sufficient places in integrated schools to aim to meet the demand for integrated education within the context of area planning and the overall sustainability of the school estate (including examining evidence of expected further demand). Article 92(6) of the 1989 Order provides that the Department shall not approve a proposal “unless it appears to the Department that, if the school were to become or be established as a controlled integrated school, the school would be likely to provide integrated education.”

The court noted that analysis of these legislative provisions reveals several key issues relevant to the transformation process:

- Firstly, and most importantly, the Department in making a decision on any transformation proposal is **bound** by the requirement of Article 92(6) of the 1989 Order in that it shall not approve a transformation proposal unless it appears to the Department that, if the school were to become, or be established as, a controlled integrated school, the school would be likely to provide integrated education (which in this context means education together in an integrated school of those of different cultures and religious beliefs and of none including reasonable numbers of both Protestant and Roman Catholic pupils). Article 92(6) requires the Minister to form a view and unless it appears to him that, if the school were to become a controlled integrated school, it would be likely to provide education together in an integrated school of, inter alia, reasonable numbers of both Protestant and Roman Catholic pupils, he cannot approve the proposal. The assessment of what constitutes reasonable numbers in the case of any application is for the Department/Minister to determine:

“The fact that the demand for integrated education outstrips the available provision of integrated education in the catchment area of the school wishing to transform is obviously relevant to the assessment of whether it is likely that reasonable numbers of both Protestant and Roman Catholic children will be enrolled in the school after transformation. But unmet demand in the catchment area must be demonstrated to include significant unmet demand amongst the minority religion at the school. It is a nonsense to suggest that unmet demand automatically means that reasonable numbers of both Protestants and Catholics will be achieved if it transpires that there is a very significant disparity in numbers before transformation and the unmet demand in the catchment area comes solely or overwhelmingly from the majority religion at the school.”

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- Secondly, great emphasis is placed on the duty imposed on the Department and the Education Authority to support the development of integrated education and to provide support for integrated education. The court said that “support” in this context represents a wide-ranging duty which involves the Department doing the best it can to promote integrated education and to take steps to ensure that the demand for integrated education in any particular area is met. However, that does not mean that Article 96(2) can be ignored:

“The meaning of the word support in this context must be informed by the provisions of Article 96(2) and what that entails is that the word support cannot mean giving blind approval to a DP [Development Proposal] which recognises that there is a very significant disparity in the numbers of Protestant and Catholic pupils in the school at present, with this disparity being reflective of a marked disparity in the catchment area, and yet having no evidence of unmet demand for integrated education within the minority community in the catchment area ...”

The court said that the word support in this context should not be interpreted as meaning that the Education Authority or the Department are obliged to give the green light to an obviously deficient proposal just for the sake of being able to demonstrate support for the cause of integrated education: “Such an approach runs directly contrary to the provisions of Article 96(2) of the 1989 Order as amended.” The court also highlighted that the language of Article 96(2) clearly signposts that significant deference should be given to the Minister’s assessment of whether it is likely that there will be reasonable numbers of both Protestant and Catholic pupils: “The phrase used is if it *“appears to the”* Minister and this phrase was clearly used deliberately, and its meaning must be respected.”

Documentation submitted in support of transformation

In both cases, CfCs and DPs were prepared after the transformation of the two schools was first mooted. Ballots of the parents were carried out and a majority in favour of transformation of those parents who voted was obtained in respect of both schools. The court noted, however, that the documents submitted in support of transformation were lacking in detail about how the numbers of Catholics attending the schools will be increased over time and, therefore, nothing of substance which would entitle the Department or Minister to conclude that the requirement of reasonable numbers set out in Article 92(6) could be satisfied in either instance.

Bangor Academy departmental report

The departmental report to the Minister recommended that he approve DP727. The court, however, commented that the report had invested the word “support” with a meaning which could not be sustained in the overall statutory context:

“In essence, in the absence of meaningful work to date [to show how the school intends to attract pupils from the minority religious community], in the absence of detailed plans or strategies to carry out specific work in the future, but with some evidence of an appreciation of the additional work that is required, the departmental officials felt that they could state that this provides some reassurance

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that it is likely that the College would attract reasonable numbers of Catholics and Protestants if transformation was permitted. This is indeed a leap of faith and a leap which is patently unjustified on the basis of the evidence provided in the CfC or DP.”

The departmental report stated that there was no information on what the school has been doing in the interim period since the CfC was submitted for publication and that there was insufficient evidence to demonstrate that it can achieve a reasonably mixed religious balance. It then went on to assert that the school, if it were to become an integrated school, would be likely to provide integrated education and that it is likely to meet the transformation criteria assessment. The court said that this is not what “support” means in this context and rather than being critical of the Minister for not agreeing with his officials, it would have genuine concerns about the strong possibility of a misinterpretation of the meaning of the word “support” by departmental officials leading to an inappropriate recommendation to the Minister for transformation in this case.

The Minister issued his refusal in respect of DP 727 (Bangor Academy) on 5 January 2025. The Minister said he did not think that an overly rigid approach should be taken to what constitutes reasonable numbers and that there would inevitably be grey areas where reasonable people could disagree as to what constitutes reasonable numbers in any particular case. He went on to state that he did not consider that the present or historic percentage of between 2% and 3% of Catholic pupils could under any analysis be said to constitute reasonable numbers. The Minister noted that the CfC did not specify how it plans to tackle the disparity regarding the percentage of Catholic pupils at the school when considered alongside the wider community breakdown as reflected in the census.

In summary, applying the statutory test, the Minister said he did not consider that the reasonable numbers requirement is currently met or that it could be met if the proposal was approved. The court noted that under the legislation, the Minister is not required to define what reasonable numbers would be either in absolute terms or in percentage terms in the context of any particular proposal or to define the period of time that he considered should be allowed for reasonable numbers to be reached. He is simply required to make an assessment in accordance with the terms of Article 92(6) of the 1989 Order. In this case, the Minister said that, even on the most optimistic analysis, it would appear highly unlikely that reasonable numbers could be achieved. He noted that examination and analysis of these issues and how they could be overcome were not set out in the proposal nor in any of the representations made by the relevant bodies.

The court concluded that the Minister could not be faulted for concentrating on the key issue and addressing the matter which in essence “operates as a knockout blow to any proposal”. It said the Minister cannot in law approve a proposal unless he considers it likely that reasonable numbers presently exist or will be achieved:

“The Minister determined that he could not be so satisfied and even if a heavy-handed review was permitted, it would be hard to find fault with the Minister’s reasoning, let alone conclude that it was irrational or *Wednesbury* unreasonable.”

Rathmore Primary School departmental report

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The departmental report in this case recommended that the Minister approve DP 728. The report noted that there are three other integrated primary schools within a six-mile radius of Rathmore Primary School and that the availability of integrated primary school places in this area exceeds the demand for such places. Between 2018 and 2023, the percentage of Catholic pupils at the school has varied between 3.8% and 2.92%. During that period the highest number of Catholic pupils was 24 out of a total of 632 in 2020/2021 and the lowest number was 17 out of a total of 583 in 2022/2023.

The CfC recognised that the number of children identifying as Catholic is low. A Transformation Action Group (“TAG”) was established by the school and together with the principal, they created a Transformation Plan 2023-2026. However, the departmental report noted that the school had not provided evidence of progress to date on attracting the minority community and that the TAG had provided insufficient evidence on action taken to date to grow and increase applications from the minority community to help achieve a reasonable religious balance at the school. The report however stated that while it appeared that there was still work to be done by the school before full transformation to Integrated status, it appeared that the school was ‘likely’ to provide ‘integrated education’ based on the current definition. The court said this assertion was without any evidential foundation and that it could only be explained by a misinterpretation of the word ‘support’ in the legislative framework.

The Minister made his decision in respect of DP 728 on 7 January 2025. He again noted the lack of examination and analysis of the issue of how the school would address the issue of reasonable numbers. The court again commented that the Minister cannot in law approve a proposal unless he considers it likely that reasonable numbers presently exist or will be achieved. The court said that even if a heavy-handed review was permitted, it would be hard to find fault with the Minister’s reasoning, let alone conclude that it was irrational or *Wednesbury* unreasonable.

The applicant argued that a light-touch review by the court was inappropriate because the Minister disagreed with his officials when coming to his decisions and, secondly, the statutory strategy which was in place at the time was subsequently successfully challenged. The court dismissed this first strand of the argument because there was no authority in the case-law to support the proposition that just because a Minister disagrees with his officials, a more intense degree of scrutiny is required in any subsequent JR challenge: “Ministers are entitled to disagree with officials. That is part and parcel of the democratic process. In any event ... the recommendations of the departmental officials in these cases is only explicable on the basis of a misinterpretation of the word support.” The court said the second strand of the argument was equally firmly tethered to the ground. While it was correct to say that the statutory strategy which was in place at the time was challenged it was only successful because it did not contain targets and measurable benchmarks which was wholly divorced from the reasons for the decisions in these instances.

Specific grounds of challenge

Acting in breach of the legislation

The court said the Minister was acting consistently with the scheme provided by the 1989 Order and 2022 Act in applying Article 92(6) in the way that he did: “He cannot be accused

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of acting in breach of Article 64 by applying the mandatory provisions of another article forming part of the same coherent statutory scheme.”

Decision based on mistake of fact

It was alleged that the decision on DP 727 was made “based on the mistaken and plainly material factual assumption that there were other integrated options available in the relevant area, when, in fact, integrated education is oversubscribed and where the submission to the Minister had noted that such places were ‘extremely limited’ in this area.” It was argued that the information provided by the Integrated Education Fund (“IEF”) clearly demonstrated that the Minister made his decision on the basis of a mistake of fact and that the increase in numbers of Catholic pupils in other post-primary integrated schools in the general area demonstrated that the number of pupils attending Bangor Academy in future years would increase until reasonable numbers were achieved. The information provided by the IEF was not brought to the attention of the Minister in advance of his decision making.

The court held, however, that there was no evidence to suggest that the Minister made his decision on the basis of a mistake of fact:

“There were no mistaken factual assumptions in this case. There is absolutely no evidence to suggest that the Minister has not appreciated or taken into account matters which were addressed in the submissions provided to him and which, no doubt, he has read and relied upon in making his decisions. ... There is absolutely nothing to indicate that the issue of over-subscription was not taken into account. Crucially, there is not one shred of evidence in any of the documentation that this over-subscription largely, substantially or significantly results from the demand for integrated education in the local Catholic population.”

Failure to take relevant matters into account

The applicants asserted that the Minister was not entitled to take into account the availability of other well-regarded options for Catholic children including both Catholic maintained and other integrated options and the submission that the Minister cannot take any account of other provision outside the integrated sector. The court said it was clear that the Minister cannot take into account the availability of other sectoral places when addressing the issue of oversubscription or lack of provision, but he clearly can take into account such provision when it comes to judging whether there is likely to be a demand for integrated education in the Catholic community as opposed to the Protestant community, especially when there is absolutely no evidence proffered to suggest that such a demand exists within the local Catholic community.

Failure to consider exercising discretion

The applicants argued that the Minister failed to consider exercising his discretion under Article 92(8) of the 1989 Order to require the Education Authority to submit a further proposal. The court said that while Article 92(8) provides a power it does not impose an obligation. In such a challenge it is for the applicant to show that the deciding body did not have regard to changes in material considerations before issuing its decision. The court said

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the applicants cannot meet this hurdle in either of these cases as the Minister was provided with, read, and took into account all of the written materials to make his own decisions, which he did:

“These are matters of judgment for the Minister and the court will be very slow to interfere with such a judgment in the absence of obvious and identifiable irrationality.”

Referring to the Strategy for Integrated Education, the court noted that it was not explicitly referenced in the submissions to the Minister. It said the law does not require that every policy is to be cited in submissions, reports or decisions and it cannot be plausibly argued that the Minister was unaware of the Strategy:

“In any event, the Strategy does not displace the Minister’s obligation to consider the individual merits of any given proposal and, in particular, the application of Article 92(6). The decisions taken were not inconsistent with the Strategy and the applicants have not alleged and cannot hope to establish that some part of the Strategy would have pointed towards a different decision in these cases. This ground of challenge again reduces to an attack on the weight attached to various considerations set out in the material before the Minister and the overall balance struck in making the decisions, both of which are quintessentially matters which are exclusively for the decision-maker, subject only to *Wednesbury* irrationality; a high hurdle which the applicants cannot meet in this case.”

Failure to take into account relevant policy

The applicants argued that the Minister failed to take into account and departed from the following policy documents: Integration Works (particularly as to ‘reasonable numbers’); the Sustainable School’s Policy; the ‘Call for Transformation’; and the then extant Strategy and Action Plan. These matters were not pursued in the course of oral submissions before the court. The court repeated that the Minister was required to apply the provisions of Article 92(6) and that reliance tentatively placed by the applicants on other provisions and policies was misguided.

Failure to make reasonable inquiries prior to decision making

The applicants attempted to argue that the Minister failed to make reasonable inquiries prior to making his decisions in these cases. The court, however, said this could not be made out in the context of these cases when one considered the information provided, gathered and set out in the submissions for consideration. It was also submitted that the decision in *JR335* was contrary to the requirements of procedural fairness because the Minister counted the alleged inactivity of the school since the submission of their proposal as this was not a requirement and the school had no notice of any such requirement. The court said that in the absence of any concrete proposals as to how to address the issue of reasonable numbers, it was clear that the Minister looked to see whether the school had done anything concrete prior to transformation which might suggest that reasonable numbers could be achieved. The Minister in his decision simply noted the absence of any evidence which would entitle him to be satisfied that the requirements of Article 92(6) could be met. In these circumstances, the Minister had no power to approve the DPs and, to the contrary, was required to not approve them.

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Failure to give adequate reasons

The court said that a reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision. It considered that adequate reasons for both decisions had clearly been given, having regard to the content of the Minister's written records of his reasons read together with the materials before him and considered by him. It said the fact that the applicants disagree with the reasons given and the judgments made on the Article 92(6) point was of no relevance to whether the reasons given are adequate.

Written Ministerial Statement on Reasonable Numbers

On 4 September 2025, the Minister presented a Written Ministerial Statement ("WMS") to the Northern Ireland Assembly which referred to the Department's Position Paper on 'Reasonable Numbers'. The WMS provides background information in relation to the issue of reasonable numbers and how the Department has interpreted that phrase. Subsequent to the enactment of the 1989 Order, the Department adopted a policy that a new integrated school should attract 30% of its pupils from the minority community in the area where the school is situated. Existing schools transforming to integrated status were to demonstrate the ability to achieve a minimum of 10% of their first-year intake drawn from the minority tradition within the school's enrolment and the potential to achieve a minimum of 30% in the longer term.

The WMS asserts that educating reasonable numbers of Protestants and Catholics is, therefore, the core defining feature of integrated education since inception. It states that "While a rigid approach should not be taken to 'reasonable numbers' what constitutes reasonable numbers should be considered having regard to, the intention of the 1989 Order, the NICIE Statement of Principles, and the underlying rationale of contact theory that there should be a reasonable balance between Protestant and Catholic children." The WMS explains that positive contact between groups, particularly those involving equal status, shared goals, co-operation, and institutional support, are most effective in fostering positive attitudes and behaviours. The WMS then set out the following statement of general principle that will be applied in the context of proposals to Transform to Integrated status.

"To ensure the process of Transformation is both well-grounded at the outset and capable of developing over time, the Department will expect, as a general principle, the proposer to provide evidence that the school is likely to be able to attract at least 10% of its total year 1 or year 8 from the minority religion, or in those schools seeking to transform to Integrated status, 15% of the combined number of Protestant and Catholic year 1 or year 8 pupils, in the first year of Transformation.

There may be exceptions to this general principle however, and each case will be considered in its own unique circumstances regardless of the percentage of Protestants and Catholics evidenced by the proposer.

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Evidence is also required that this is likely to increase over the next 7 years to achieve reasonable numbers from the minority religion and an aspiration for the relative proportions of the two groups to be similar.”

There then follows an analysis of ‘reasonable numbers’ in the six post-primary schools that have transformed to integrated status. In essence, none of these schools come close to the 40:40:20 aspiration and none seem likely to do so at any point in the foreseeable future. The picture is not much better in the 25 primary schools that have transferred to become Controlled integrated schools. The WMS goes on to make the following point:

“These figures reveal that the transformation of schools to integrated status has had limited success in achieving balanced religious demographics, particularly between Protestant and Catholic pupils. Despite the aspiration for a 40:40:20 balance (Protestant: Catholic: Other), few of the transformed schools – primary and post-primary – come close to this target, and many are less balanced now than when they first transformed. In several cases, the minority community (whether Protestant or Catholic) remains significantly under-represented sometimes by ratios as high as 10:1. Even in schools transformed decades ago, reasonable numbers of both communities are not present, and some have seen declines in diversity. These patterns suggest that transformation unlike newly established integrated schools is not producing demographic integration and the reasonable numbers which define integrated education.”

The court said this demonstrates the clear determination by the present Education Minister to assert the importance of the Article 92(6) requirement of ‘reasonable numbers’ and to explain the rationale behind that requirement. It commented that through the mechanism of this WMS, the Minister is trying to ensure that schools that are permitted to transform have a realistic chance of achieving reasonable numbers. The court said this judicial review, when carefully examined, is an attempt by some proponents of integrated education to effect a reversal of the realistic stance taken by the Minister by arguing that the introduction of the word ‘support’ in the legislative framework in 2022 somehow means that a very lax attitude to the requirement of ‘reasonable numbers’ should be adopted:

“Such an attempt is doomed to failure for all sorts of reasons, but I would highlight one. The courts are not here as tools to be used by one party or another in disputes or arguments on socio-economic, cultural, educational, healthcare or other policies. The courts are here to uphold the rule of law, to clarify what the law means and to assist in ensuring that private citizens, corporate or other entities and government bodies and agencies act in a lawful manner and can avail of the protections the law affords them. All too often now, matters are brought before the courts in the guise of a legal challenge when in fact they are blatant policy challenges. Such litigations strategies are to be deprecated.”

The court refused leave to apply for judicial review in both cases.

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NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available shortly on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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