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COURT DISMISSES CHALLENGE TO SELECTION METHODOLOGY FOR RAISE PROGRAMME FUNDING

Summary of Judgment

Mr Justice Humphreys, sitting today in the High Court in Belfast, dismissed applications challenging the methodology used by the Department of Education to allocate funding for the RAISE programme aimed at the reduction of educational disadvantage.

Introduction

The RAISE programme has its origins in the New Decade New Approach agreement. An expert panel, established to examine the links between educational underachievement and social disadvantage, published a report entitled “A Fair Start” which was agreed by the Executive in May 2021 and included a recommendation to create a Reducing Educational Disadvantage (‘RED’) programme¹. A programme board was established, supported by a Stakeholder Reference Group (‘SRG’) and this led to further engagement with Queen’s University (‘QUB’) and the Strategic Investment Board (‘SIB’). The potential reach of the programme was transformed by the Irish government making available €24M of Shared Island funding towards addressing educational disadvantage in Northern Ireland.

The first two applicants (JR338 - a primary school pupil in Finaghy, Belfast and JR339 - a post-primary school pupil in Beechwood, Derry) seek to challenge the selection methodology used by the Department of Education (‘DE’) to allocate funding for the RAISE programme. They contend that the selection methodology is unlawful, irrational, in breach of their Convention rights and discriminatory. They claim that geography and religion have been allowed to trump need. They assert the scheme discriminates against pupils in Belfast and Derry and, more widely, against Catholics. There was a further related but discrete challenge brought by the second applicant to the effective removal of criteria applicable to the funding of cross-cutting initiatives (‘CCI’s’) as part of the RAISE programme.

The third applicant, a pupil at an Irish language primary school in Belfast, advances a case based on the downgrading of the Free School Meals Entitlement (‘FSME’) as an indicator of need, which is said to be both irrational and discriminatory.

The development of the RAISE programme

The court outlined the methodology underpinning the development of the RAISE programme in paras [9] – [62] of the judgment. It entailed the use of the Northern Ireland Multiple Deprivation Measure (‘NIMDM17’) which ranks the 890 Super Output Areas (‘SOAs’) in Northern Ireland. Each SOA consists of approximately 820 households. These rankings are carried out by reference to seven domains: income deprivation, employment deprivation, health deprivation, education skills and training deprivation, access to services, living environment and crime.

¹ Later renamed the RAISE programme.

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The information underpinning some of these domains was identified as being suitable indicators to provide comparative data. These were: the proportion of school leavers not achieving five or more GCSEs at A* to C (including English and maths); pupil absence from school; the proportion of SEN pupils; the proportion of FSME pupils; the NIMDM17 income deprivation affecting children; and NIMDM17 health deprivation domain. A further indicator, based on crime and anti-social behaviour, was added later.

In May 2024, the Minister for Education received a submission outlining different approaches to the selection of localities for funding and their outcomes. It stated explicitly that the policy intent was to include programme delivery in each Local Government District (LGD). It was recognised that ranking solely on need would create a programme predominantly focused in Belfast and Derry and to facilitate a regional approach only areas in Belfast and Derry with ranking scores below 700 and 740 respectively would be included alongside the core Super Output Areas (SOAs).

The methodology ultimately approved by the Minister entailed shortlisting of SOAs on the basis of those in the 30% most disadvantaged in Northern Ireland for four or more of the seven domains noted above and ranking them using the GCSE indicator only². The application of the selection methodology resulted in 15 core SOAs, described as the most disadvantaged areas, across the 11 LGDs in Northern Ireland. The split of Belfast into its four geographical areas resulted in a total of 18 selected localities. The expressed aim of this approach was to form a coherent locality and to reach as many children and young people as possible. The final list of SOAs included as areas of influence appears at Annex 2 to this judgment.

The DE described the rationale behind the approach as follows:

“The selection of localities ... was based on a methodology that included a desire to have a regional programme, to invest in disadvantage across Northern Ireland and embed collaborative working in a high number of localities that can be a long-lasting legacy after funding ends ... the intention was to achieve a balance in terms of the perceived political background of localities, an urban-rural split and a variety of scales of locality. It used the broad range of indicators outlined above to shortlist Super Output Areas and prioritised investment in those areas with the lowest levels of educational attainment”

The RAISE programme was announced on 31 May 2024 with the final list of localities published on 6 June. The formal programme was launched on 16 October 2024.

Cross-cutting initiatives

Cross-cutting initiatives (CCI's) formed a separate element of the RAISE programme, unconnected to the funding based on localities. The Minister decided not to adopt the

² The DE stressed that the only objective data available to it which represents an indicator of educational attainment in children of compulsory school age are the GCSE results. Ongoing industrial action involving teachers has meant that the data gathered in relation to younger children is generally unavailable.

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locality approach in relation to these projects but rather opened up applications to all schools³.

The grounds of challenge

1. *Frustration of the aims of the policy*

The applicants submit that the selection methodology adopted frustrates and departs from the stated aims of the programme namely, to tackle educational underachievement linked to socio-economic disadvantage. The court said to seek to extend this scheme in the manner asserted would represent considerable judicial overreach into the domain properly occupied by executive decision making. It said the case has not been made out that the chosen methodology frustrates the purpose of the scheme:

“It was never the case, applying the recommendations of the Fair Start report, that socio-economic deprivation would be sole qualifying criterion for funding. The applicants complain that “geography has trumped need” but it is a consistent feature of the analysis that a Northern Ireland wide, place-based programme was sought to be designed.”

The court said that while a different scheme could have been developed, it was not part of the court’s role to critique policy development:

“Given the stated nature of the scheme, and the presence of educational underachievement throughout Northern Ireland, it could not be said that by ensuring that there were localities in each LGD the DE was acting in a manner which frustrated the scheme. Indeed, as the scheme develops, and its work is evaluated through the use of the framework, evidence will be gathered to reveal whether, and to what extent, its goals are being achieved.”

The applicants also contend that the choice of the sole criterion of GCSE attainment for ranking shortlisted SOAs fails to give proper weight to the FSME criterion and runs counter to the stated objectives of the scheme. The court said that while the FSME indicator does play a role in the shortlisting of SOAs alongside other measures of deprivation, the Minister elected to use the GCSE criterion as the sole means of selection from the shortlist: “On his analysis this is, after all, a programme to target educational disadvantage and GCSE results provide the best available objective data on the issue. This represents classic policy development, informed by advice from officials and others.” This ground of challenge failed.

³ On 30 May 2025 the first seven specific projects were announced: Supporting Effective Professional Learning Clusters Programme; Online Science of Learning Programme; Reading with AI; Learning to Code Schools Programme; Primary Literacy and Numeracy/Transitions Support Programme; Holiday Revision Support Programme; and Alternative Education Models Pilot. In the case of a CCI programme, it was proposed that expressions of interest would be sought from all schools interested in participating (save for independent and preparatory schools). The selection of schools would then take place on a case-by-case basis. The intention is that the DE will assess the evidence of the impact of each of the CCI’s across a range of pupils in accordance with the published RAISE Evaluation Framework.

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2. *Discrimination*

JR338 and JR339 submit that the methodology breaches section 76 of the Northern Ireland Act 1998 ('NIA') which is concerned with direct discrimination. They contend that the methodology resulted in discrimination against Catholics on the following grounds: the RAISE localities were disproportionately located in LGDs with a majority of people identified as Protestant or other; the Minister's decision to use GCSE attainment as the sole criterion for selection from the shortlist; adopting a regional approach, rather than ranking SOAs on the basis of socio-economic deprivation, and requiring SOAs in Belfast and Derry to suffer greater disadvantage; and seeking to achieve a 'balance' in terms of perceived political background of localities.

The question for the court was whether the applicants, or a class of persons represented by the applicants, have been subjected to less favourable treatment on the grounds of their religious belief than an actual or hypothetical comparator (no case having been advanced in relation to political opinion). In their pleaded case the applicants did not identify any relevant comparator, whether actual or hypothetical and simply said that the scheme "discriminates against Catholics" without identifying any less favourable treatment meted out to them as individuals. The case was advanced on behalf of a "class of persons", namely Catholics, using Protestants as the relevant comparator. The applicants also place significant emphasis on the statement made by the DE that: "the intention was to achieve a balance in terms of the perceived political background of localities, an urban-rural split and a variety of scales of locality." They say the downgrading of Belfast and Derry is a product of the desire to achieve a balance and that, in turn, has caused disadvantage to Catholics who live in these urban areas in significant numbers.

The court commented that the reference to achieving balance refers to the policy decision made to ensure that the programme was Northern Ireland-wide and not limited to specific areas. It said this decision clearly had consequences for the urban areas, which were identified and recognised, but this did not mean that those consequences were on the grounds of religious belief.

The applicants further contend that the position was exacerbated by the decision to use GCSE attainment as to the sole criterion for selection since, on the evidence, Catholics outperform Protestants at GCSE. The court said that whilst any decision involving the selection methodology was bound to have consequences, this does not equate to direct discrimination. In a programme designed to target educational underachievement, it is not surprising that those areas of relatively high attainment would be less likely to be included:

"None of this suggests that decisions were made "on the ground of religious belief." Some of the decisions made during the methodology selection process may have had an impact on the religious make up of those who will ultimately benefit from the scheme funding but that is a very different thing from establishing that decisions were made on the grounds of the religious belief of certain individuals or a group of individuals. On proper analysis, the section 76 breach has simply not been established on the evidence in this case. "

3. *The ECHR claim*

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The applicants contend that the selection methodology breaches their rights under article 2 Protocol 1 ECHR ('A2P1') and article 8 ECHR when read in conjunction with article 14, contrary to section 6 of the Human Rights Act 1998. The court held that the applicants' ECHR claim must fail as they do not meet the criterion of being a victim of an unlawful act. Having heard full argument, however, the court went on to consider the merits of the claims. Case law⁴ states the approach for domestic courts should be: the alleged discrimination must relate to a matter within the 'ambit' of one of the ECHR rights; only differences in treatment based on an identifiable characteristic or 'status' can amount to discrimination for the purposes of article 14; there must be a difference in treatment of persons in analogous situations; such a difference of treatment is discriminatory if it has no objective and reasonable justification; and the state enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment.

On ambit, the court said there is no suggestion that being denied funding by the RAISE programme is itself a breach of A2P1 or article 8. RAISE funding is not provided to schools or pupils directly. It is instead targeted at areas and seeks to engage with a range of community groups, voluntary organisations and schools in order to deliver its objectives.

The first and second applicants say that they are being treated differently on the grounds of their religion, and also on the basis that they are from Belfast and Derry and therefore disadvantaged. The persons in analogous positions identified are those children who could potentially benefit from the RAISE scheme and who live in other areas or are Protestant. The third applicant relies on her status as being a FSME pupil and cites as a comparator a FSME pupil in a locality selected for RAISE funding. The court said the claim of differential treatment on the ground of religious belief must fail for the same reasons as the claim of direct discrimination as the difference in treatment does not arise as a result of the claimed status. The court also said that even if one accepts that FSME could be a status, there is no differential treatment on that ground. The localities selected for funding have satisfied a variety of criteria to be shortlisted, then either been identified as core SOAs through the GCSE criterion or been identified as neighbouring areas of influence. Whether or not an individual pupil is entitled to free school meals does not impact on any eligibility to RAISE funding.

A wide margin is usually allowed to the state when it comes to general measures of economic or social strategy, the language used by the courts sometimes requiring that such a measure be "manifestly without reasonable foundation". The court noted the voluminous evidence in this case, the involvement of multiple experts in the educational field and the detail surrounding the development of the methodology to understand that it was not arrived at on a whim. It said there is scope for debate as to whether a different method would have arrived at either simpler or more effective outcomes but that is very far from saying that the existing scheme has no reasonable foundation. On the key question, as to whether there is a difference in treatment based on a relevant status which does not have an objective and reasonable justification, the court held that the article 14 claim cannot succeed.

3. *Substantive or outcome irrationality*

The applicants argue that the outcomes produced by the methodology result in arbitrariness. The court noted that the evidence in this case reveals that the formulation of policy around

⁴ *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26

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the RAISE programme was a complex, multi-factorial question which engaged many officials and experts. It said there is no binary right or wrong answer to how to allocate funding of this level in order to achieve the goals of the programme but what is clear is that the decisions made around RAISE were arrived at following a lengthy process, weighing up the pros and cons of different proposed approaches. This is classically a matter for Ministers, on the advice of officials, and ought only to be the subject of light-touch rationality-based review.

The court found there was nothing irrational about the selection methodology adopted in this case. It sought to address the core issues of socio-economic deprivation and educational underachievement in a particular way through the shortlisting and ranking process. It was never intended to simply select the most deprived areas of Northern Ireland and provide them with educational funding. The policy decision encouraged a Northern Ireland-wide approach, and the creation of localities. This meant that not all the most deprived SOAs would be ultimately selected and necessitated a degree of flexibility in identifying the areas to be included. There were rational reasons for this approach and for the courts to look behind them would be to engage in an impermissible merits-based challenge. The applicants' claims, therefore, do not surmount the significant hurdle of establishing substantive irrationality.

4. *Procedural or process irrationality*

The case advanced by the third applicant is that the DE failed to take into account a report of Ulster University in relation to the FSME indicator⁵ and, in doing so, thereby failed to take into account a material consideration. The court said the evidence presented to court reveals that the DE did take FSME into account as a material consideration since it was one of the seven domains used to shortlist SOAs, along with other indicators of deprivation. It said that broadening this range of criteria away from FSME could not be condemned as *Wednesbury* unreasonable. Further, the court commented that one need only consider the exhibits to the affidavits in this case, containing countless drafts of policy papers, advice from relevant stakeholders and experts, the input from the SIB, a plethora of Ministerial submissions and the detailed, complex data, which was considered, to realise that this point can have no substance. This ground of challenge must also fail.

5. *Adequacy of reasons*

The methodology adopted by the DE was published on 2 December 2024. An invitation was extended to anyone to contact the relevant officials in the DE for further information or support. The court said it cannot, therefore, be argued that there was any lack of reasons given for the decisions made around the methodology adopted. It added that no viable case of substantial prejudice was advanced by any of the applicants.

Irish Medium

The third applicant also advanced a case that the respondent has breached its duty under Article 89 of the Education (Northern Ireland) Order 1998 to encourage and facilitate the development of Irish-medium education. The court noted, however, that Ciarán Catney of Comhairle na Gaelscolíochta (CnaG), the body established to promote and facilitate the development of Irish-medium education pursuant to the statutory duty, was a member of the SRG. Proposals made by representatives of the Irish medium sector were contained in one of

⁵ Report published in March 2024.

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the draft policy papers published in September 2023. On 24 June 2024 DE officials met with Mr Catney and discussed the potential of the RAISE programme for Irish language schools. Further meetings took place on 14 March 2025 and representatives of CnaG have been involved in the development of the Strategic Area Plans. The court concluded the claim made with respect to the Irish-medium sector is without any evidential foundation and therefore dismissed.

Cross-cutting initiatives

A late challenge to the element of the RAISE programme which relates to the CCIs was introduced by the second applicant who claims that by opening up eligibility for CCI's to all schools the DE has removed the link between the programme and socio-economic disadvantage and thereby departed from the Fair Start recommendations. The DE, however, submitted that socio-economic disadvantage and educational underachievement are to be found to some extent in every school in Northern Ireland. By opening up applications to all schools, the number of children who might benefit from RAISE funding through the CCI's has been broadened. The key will be to evaluate the success of these initiatives rigorously to ensure that the aims of the programme are being achieved. The court found that the second applicant has not established an arguable case in relation to the CCI's with a reasonable prospect of success and leave on this ground is refused.

Conclusion

For all these reasons, none of the applicants' grounds of challenge are made out. The applications for judicial review are therefore dismissed.

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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