

Neutral Citation No: [2026] NICA 29	Ref: COL13012
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 25/030363/01/A03 25/030665/01/A03
	Delivered: 09/06/2026

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

Between:

**JR335 (A MINOR) ACTING BY JR335(1) FATHER AND NEXT FRIEND
AND
JR336 (A MINOR) ACTING BY JR336(1) HIS MOTHER AND NEXT FRIEND**

Applicants/Appellants

and

THE MINISTER AND THE DEPARTMENT OF EDUCATION

Proposed Respondents

and

THE EDUCATION AUTHORITY

Interested Party

**Mr S McQuitty KC with Ms S Kyle (instructed by Worthingtons Solicitors)
for the Applicants/Appellants
Mr A McGleenan KC with Mr P McAteer (instructed by the Departmental Solicitor’s
Office) for the Minister and Department of Education, the Proposed Respondents
Mr M Corkey (instructed by the Education Authority Solicitors) for the Education
Authority, an Interested Party**

Before: Treacy LJ, Colton LJ and Scoffield J

COLTON LJ (delivering the judgment of the court)

Introduction

[1] The appellants appeal the decision of McAlinden J (“the judge”) to refuse them leave to apply for judicial review of the proposed respondents’ decisions not to approve two proposals to transform the schools at which they attend to integrated

status under the Education Reform (Northern Ireland) Order 1989 (“the 1989 Order”).

[2] We are obliged to the counsel who appeared in this case for their helpful written and oral submissions which were of great assistance to the court.

Integrated education in Northern Ireland

[3] There is strong legislative and policy support for the development of integrated education in Northern Ireland.

The legislation

[4] The 1989 Order sets out the general functions of the Department of Education (“the Department”) and Education Boards in relation to integrated education. Specifically, prior to amendment, it provided in Article 64(1) that “it shall be the duty of the Department to “encourage and facilitate” the development of integrated education in Northern Ireland.

[5] Integrated education is now defined by section 1(1) of the Integrated Education Act (Northern Ireland) 2022 (“the 2022 Act”). It means the 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 children, or young persons, those who are experiencing socio-economic deprivation and those who are not, and those of different abilities.

[6] Section 1(2) defines an “integrated school” as being one which “intentionally supports, protects and advances an ethos of diversity, respect and understanding between those of different cultures and religions and of none, between those of different socio-economic backgrounds and between those of different abilities and which has also acquired integrated status (whether as a grant-maintained or a controlled integrated school).”

[7] Importantly, section 4(1) of the 2022 Act amended Article 64 of the 1989 Order to add what may be described as an enhanced duty to “support” integrated education. Thus, Article 64(1) now reads:

“It shall be the duty of the Department to encourage, facilitate and support the development of integrated education and to provide support for integrated education.” [our underlining]

[8] Section 5 of the 2022 Act provides a specific definition as to what “support” means in this context:

- “(a) 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), and
- (b) 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 future demand).”

[9] Section 6 of the 2022 Act went on to impose further duties on the Department and Education Authority in respect of consultation and ascertaining the demand for integrated education. It required the Department to prepare, publish and maintain a strategy for the encouragement, facilitation, support for and provision of integrated education.

The policy

[10] In terms of policy, the document “Schools for the Future, a policy for sustainable schools” was published in January 2009 and at para 2.14 says: “DE has a clear duty therefore to respond positively to parental demand for integrated and Irish-Medium education.”

[11] The Department published guidance entitled “Integration Works: Transforming your School” in December 2017 (“the 2017 Guidance”). The guidance confirms that the Department aims to encourage and facilitate the development of integrated education in line with parental preference. The document was produced to help school communities to consider the benefits of transformation to integrated education and to overcome any barriers they may feel exist to achieving this.

[12] Subsequently, the Department published “a Strategy for Integrated Education in Northern Ireland” in April 2023. At the same time it published an “Integrated Education Strategy Action Plan.” The Department has also provided a source of published guidance in relation to how development proposals contribute to the implementation of the Sustainable Schools’ policy, taking account of the new legislation introduced through the 2022 Act.

[13] In April 2024, the Department published “Integrated Education Act (Northern Ireland) 2022; Department of Education Section 10 Report to be laid before the Northern Ireland Assembly (April 2024).” This report provided an assessment of the performance of functions relating to integrated education in Northern Ireland as required by section 10 of the 2022 Act. It concluded that implementing the

provisions of the Act is a priority for the Department. It reported that considerable progress had been made since the commencement of the Act, notably on defining and taking action to meet demand for integrated education.

[14] Under the heading “Vision 2030”, the Department published a series of policy documents “A Strategy for Integrated Education 2025-2030”, an “action plan” for integrated education and proposed “benchmark data” relating to the action plan.

[15] Political endorsement of integrated education can also be found in section 14 of the Belfast (Good Friday) Agreement 1998 which provides:

“An essential aspect of the reconciliation process is the promotion of a culture of tolerance at every level of society, including initiatives to facilitate and encourage integrated education and mixed housing.”

[16] In the New Decade, New Approach document published in 2020 on the revival of the political institutions in Northern Ireland, the main political parties agreed as one of the Northern Ireland Executive priorities “To help build a shared integrated society, the Executive will support educating children and young people of different backgrounds together in the classroom.”

[17] Collectively, it may fairly be said that these provisions point towards strong support for schools who wish to transform to integrated status. However, as these appeals illustrate, all of the above must be read in the context of Article 92 of the 1989 Order which deals with proposals for acquisition of controlled integrated status. Specifically, Article 92(6) provides that:

“The Department shall not approve a proposal under this article in relation to a school 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.”

[18] It will be remembered that section 1(1) of the 2002 Act defines integrated education as being the education together of, *inter alia*, “reasonable numbers of both Protestant and Roman Catholic children.”

[19] The relationship and potential tension between Articles 64(1) and 92(6) of the 1989 Order is at the heart of these appeals.

The process for transformation

[20] Essentially, there are two means by which integrated schools are established. The first relates to the establishment of a new school with integrated status. The second relates to the transformation of existing schools to integrated status. These

appeals involve applications by two controlled schools to be transformed to integrated status. Transformation is defined by the Department as “the legal process in which a non-integrated school becomes integrated” – see the 2017 guidance.

[21] The procedure for acquisition of controlled integrated status is set out in the 1989 Order.

[22] Schools seeking approval for transformation are required to obtain support from parents for a transformation plan by means of a parental ballot (Article 70 of the 1989 Order).

[23] If a simple majority of those who vote in the ballot is in favour of applying for the proposed new status and at least 50% of those eligible to vote have done so, the Board of Governors of the school must submit a development proposal for transformation to integrated status to the Education Authority (“EA”). The proposal should comprise a Case for Change (“CfC”) together with a transformation plan.

[24] The plan and CfC should set out the rationale for the school’s proposals for change. In accordance with the Department’s policy, they should address the required evidence of unmet demand for integrated education, sustainability, planning context and religious balance. In addition, they should set out the school’s proposals for change to governance, ethos, curriculum and community links.

[25] Under Article 92(1) of the 1989 Order:

“It shall be the duty of the authority to submit the proposal for the acquisition of controlled integrated status for the school to the Department together with its views thereon.”

[26] Once submitted, the EA shares the development proposal with local schools that might be affected by it. Having done so, as appears above, Article 92(1) of the 1989 Order obliges the EA to submit the development proposal to the Department for Education together with its views thereon.

[27] Thereafter, there is a statutory two-month consultation period where the views of the public and educational stakeholders are considered by the Department. At the end of the consultation process Department officials make a recommendation to the Minister as to whether the transformation proposal should be approved.

[28] It is then for the Minister to decide whether to approve the proposal.

The proposals

JR335 / Rathmore Primary School / DP728

[29] Rathmore Primary School is a controlled primary school in the locality of Ards and North Down, on the outskirts of Bangor. JR335 is a Primary 7 pupil at the school. He has a statement of special educational needs. On 6 June 2023, a parental ballot for the proposed transformation of the school to integrated status showed that from 783 parents entitled to vote, 485 votes were cast (61.9% turnout) with 399 votes being in favour of the transformation (82.3%) and 86 against (17.7%).

[30] JR335's father voted in favour of the proposal. He is strongly in favour of integrated education for JR335. He recognises the benefit of this to a child with special educational needs, as integrated education now includes the education together of those of different abilities. It is his view that JR335 would benefit from this broader, expressly more inclusive ethos.

[31] On 10 November 2023, the Board of Governors submitted a proposal to the EA, for the school to transform to controlled integrated status, with effect from 1 September 2025 or as soon as possible thereafter.

[32] In line with its statutory duty under Article 14 of the Education and Libraries (Northern Ireland) Order 1986 ("the 1986 Order"), the EA wrote to 75 schools which, in its opinion, might be affected by the proposal. The EA received no objections. It received supportive responses from an affected school (Bangor Central Integrated Primary School) and the Controlled Schools Support Council ("CSSC").

[33] The EA published DP728 on 8 February 2024, indicating its support for the proposal, commenting that the school "is a sustainable school and maintains a healthy enrolment whose community breakdown and background is reflective of the area that the school draws its pupils from."

[34] During the two-month statutory objection period post-publication, DP728 received three responses in support of the proposal (one from Bangor Academy and Sixth Form College, one from the Northern Ireland Council for Integrated Education ("NICIE"), one from the CSSC) and no objections.

[35] Officials in the Department then provided a submission to the Minister which involved their detailed assessment of the development proposal.

[36] The submission is comprehensive. It provides a detailed analysis of schools in the area. It sets out the relevant statutory provisions and proposals relating to integrated education and transformation to integrated status. It provides detailed statistical analysis of the breakdown of admissions and enrolment at the school. It looks at other primary school provision in the area. It provides a breakdown of

variations based on religion at the school and other schools in the area. It notes the outcome of the pre-publication consultations and comments from NICIE.

[37] It is noted that one of the statutory consultees, the Integrated Education Fund (“IEF”), did not respond to the consultation process.

[38] Importantly, it makes an assessment against the transformation criteria set out in the 2017 guidance. It addressed the issues of unmet demand, sustainability, planning and religious balance.

[39] The submission specifically addresses the statutory duty of the Department to encourage, facilitate and support integrated education. Having done so, it sets out the two options for the Minister, that is to either approve or not approve the proposal. Ultimately, the recommendation is that “on balance, in the context of the statutory duty, current legislation and based on the evidence detailed above, it is recommended that you:

(i) approve DP728 that:

‘Rathmore Primary School will transform to Controlled Integrated Status with effect from 1 September 2025 or as soon as possible thereafter.’

[40] On 7 January 2025, the Minister decided not to approve DP728. The court notes that in making the decisions challenged in these appeals the Minister was at all times acting on behalf of the Department. He provided detailed comments explaining his decision in the following terms:

“I have carefully read, examined and considered all the papers and information pertaining to this proposal; I am also mindful of the statutory duty placed on my Department to encourage, facilitate and support Integrated Education. However, I have concluded that DP728 should not be approved.

Article 64(1) of the Education Reform (Northern Ireland) Order 1989 states:

‘It shall be the duty of the Department to encourage, facilitate and support the development of integrated education, and to provide support for integrated education.’

The article also states that:

'... the Department must in particular take account of any representations made under section 3 of the Integrated Education (Northern Ireland) Act 2022 (consultation) which relate to that duty.'

While the school is clearly sustainable, sustainability is not the only consideration.

Article 92(6) of the Education Reform (Northern Ireland) Order 1989 also states:

'The Department shall not approve a proposal under this Article in relation to a school 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.'

According to section 1(1) of the Integrated Education Act (Northern Ireland) 2022, integrated education means:

'The education together, in an integrated school, of -

- (a) those of different cultures and religious beliefs and of none, including reasonable numbers of both Protestant and Roman Catholic children and young persons;
- (b) those who are experienced in socio-economic deprivation and those who are not; and
- (c) those of different abilities.

While there is evidence pertaining to (b) and (c), I do not believe the first limb of this definition is met. The percentage of Catholic children at the school has ranged between 2 (two) and 3 (three) percent over recent years.

Whilst there is no legal definition of what constitutes reasonable numbers, I do not think that an overly rigid approach should be taken. The religious balance of transformed schools may vary depending on the local circumstances in an area. There will inevitably be grey

areas where reasonable people could differ. However, I do not believe that the historic and current 2-3% of Catholic children at Rathmore PS can, under any analysis, be said to constitute reasonable numbers even when considering the local demography of the area and the locations from where pupils attend. The proposal states:

‘The community balance in Bangor West states 64% are from backgrounds of a Protestant or other Christian Religions and 16% from Catholic backgrounds.’

This is also the conclusion of the submission (para 11.2).

‘The assessment of Rathmore PS as outlined above, shows that the school is a popular sustainable primary school. It has pupils who are experiencing social-economic deprivation and those who are not, and the pupils have a range of different abilities, therefore it can meet part 1(b) and 1(c) of the definition of integrated education definition. However, at present the school does not meet part 1(a) those of different cultures and religious beliefs and none, **including reasonable numbers of both Protestant and Roman Catholic children or young persons.**’ [emphasis added]

Examination and analysis of this issue and how it could be overcome has neither been set out in the proposal nor in any of the representations made from the advisory bodies under the provisions of the Integrated Education Act (Northern Ireland) 2022.

I then consider whether at some point in the future there are likely to be reasonable numbers of Catholic children at the school. I note from the submission:

‘The Department notes that no Expression of Interest Forms were submitted to demonstrate how this might be addressed should the school transform to Integrated status. No evidence has been provided of practical steps taken since the submission of the proposal to attract pupils from different cultures and religious beliefs, and none, including reasonable numbers of

Protestant and Roman Catholic young persons.’

Given the absence of such evidence, as well as historic and current enrolments, the demography of the area and alternative integrated and Catholic maintained primary provision available, I have to conclude requirements of section 1(1)(a) of the Act have not been and will not be met if the proposal were to be approved.

I am not therefore of the view that the statutory test of whether it was likely the school would provide ‘integrated education’ namely, the education together of those of different cultures and religious beliefs and of none, including reasonable numbers of both Protestant and Roman Catholic children or young persons has been met.

In conclusion, I repeat the terms of Article 92(6) of the Education Reform (Northern Ireland) Order 1989 which states:

‘The Department shall not approve a proposal under this Article in relation to a school 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.’”

[41] JR335 sought leave to challenge this decision by way of judicial review.

JR336 / Bangor Academy and Sixth Form College / DP727

[42] The proposal in relation to the school attended by JR336 followed a similar path to that of Rathmore Primary School. He attends Bangor Academy and Sixth Form College (“Bangor Academy”) which is a controlled secondary school in the locality of Ards and North Down, centrally located in Bangor.

[43] In March 2022, the Board of Governors of the School passed a resolution to initiate a parental ballot on a proposal to transform the school to that of controlled integrated status. The ballot which took place from 6 May 2023 to 6 June 2023 records that there were 2,656 eligible voters and 1,355 votes cast of which 1,353 were considered valid. Overall, there was a 51% turnout. 1,074 (79.4%) voted in favour of the proposal and 279 (20.6%) voted against the proposal.

[44] The applicant, JR336, indicated to his mother that he was in favour of integrated education. Accordingly, she voted in favour of the proposal.

[45] On 6 November 2023, the Board of Governors submitted a proposal, accompanied by a CfC and a transformation plan, to the EA, for the school to transform to controlled integrated status from 1 September 2025, or as soon as possible thereafter.

[46] Following receipt of the submission, the EA wrote to all schools which in its opinion might be affected by the proposal. Seventy-five schools were contacted. No objections were received. One school, Bangor Central Integrated Primary School, supported the proposal and another, Glenlola Collegiate, noted it. The CSSC expressed its support.

[47] The EA published DP727 on 5 February 2024 indicating its support for the proposal.

[48] During the two-month statutory objection period post-publication, the Department received two objection responses, one from the Board of Governors of Glenlola Collegiate, and one from a member of the public. Letters of support were received during this period: from Knockmore Primary School, the NICIE and CSSC. The IEF did not respond to the consultation process.

[49] As was the case with DP728, officials from the Department provided a detailed assessment of the proposal in a written submission to the Minister, adopting a similar template. It is not necessary to set this out in any further detail at this stage.

[50] In summarising their advice to the Minister, officials provided reasons for and against approval.

[51] Ultimately, the recommendation was again that “on balance, in the context of the statutory duty, current legislation and based on the evidence detailed above, it is recommended that you:

- (i) Approve DP727 that:

**Bangor Academy and Sixth Form College
will transform to controlled integrated
status with effect from 1 September 2025 or
as soon as possible thereafter.”**

[52] The Minister did not approve proposal DP727 on 7 January 2025 (the same date as he did not approve DP728). The reasons for his non-approval are similar to those given in respect of DP728. For completeness we set out the content of the Minister’s decision in full:

“I have carefully read, examined and considered all the papers and information pertaining to this proposal; I am also mindful of the statutory duty placed on my Department to encourage, facilitate and support Integrated Education. However, I have concluded that DP728 should not be approved.

Article 64(1) of the Education Reform (Northern Ireland) Order 1989 states:

‘It shall be the duty of the Department to encourage, facilitate and support the development of integrated education, and to provide support for integrated education.’

The article also states that:

‘... the Department must in particular take account of any representations made under section 3 of the Integrated Education (Northern Ireland) Act 2022 (consultation) which relate to that duty.’

While the school is clearly sustainable, sustainability is not the only consideration.

Article 92(6) of the Education Reform (Northern Ireland) Order 1989 also states:

‘The Department shall not approve a proposal under this Article in relation to a school 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.’

According to section 1(1) of the Integrated Education Act (Northern Ireland) 2022, integrated education means,

‘The education together, in an integrated school, of –

- (a) those of different cultures and religious beliefs and of none, including reasonable

numbers of both Protestant and Roman Catholic children or young persons ...;

- (b) those who are experiencing socio-economic deprivation and those who are not; and
- (c) those of different abilities.'

While there is evidence pertaining to (b) and (c) I do not believe that the first limb of this definition can be met. In such circumstances Article 92(6) cannot be satisfied.

The percentage of Catholic children at this school has ranged between 2 (two) and 3 (three) per cent over recent years.

Where there is no legal definition of what constitutes reasonable numbers, I do not think that an overly rigid approach should be taken. The precise religious balance of transformed schools may vary depending on the local circumstances in an area. There will inevitably be grey areas where reasonable people could differ. However, I do not believe that the historic and current 2-3% of Catholic children at Bangor Academy can, under any analysis, be said to constitute reasonable numbers even when considering the local demography of the area and the locations from where pupils attend. Ards and North Down LGD has 11% of its population from the Catholic community and the settlement of Bangor 9%.

This is also addressed in para 245 of the submission, which states:

'However, at present the school does not meet Part 1(a) of those of different cultures and religious beliefs and none, **including reasonable numbers of both Protestant and Roman Catholic children or young persons.**'
[Emphasis added]

I then considered whether at some point in the future there are likely to be reasonable numbers of Catholic children at the school. I note from the submission (para 59), 'the CfC does not specify how it plans to tackle the disparity regarding the percentage of Catholic students at

the school when considered alongside the wider community breakdown as reflected in the census. It simply provides evidence of awareness of the disparity and of a stated intent to explore strategies to rectify it.’

This is unsurprising. Given the community breakdown, extremely limited current and historic enrolments from the Catholic community and the availability of other well-regarded options for Catholic education, including both Catholic maintained and other integrated options, I would anticipate that integrated status for Bangor Academy is unlikely to have more than a marginal impact on the number of Catholic children attending the school. Even on the most optimistic analysis, it would appear highly unlikely that reasonable numbers could be achieved. Examination and analysis of these issues and how they could be overcome have neither been set out in this proposal nor in any of the representations made from the advisory bodies under the provisions of the Integrated Education Act (Northern Ireland) 2022.

In conclusion, I repeat the terms of Article 92(6) of the Education Reform (Northern Ireland) Order 1989 which states:

‘The Department shall not approve a proposal under this Article in relation to a school 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.’”

[53] JR336 sought leave to challenge this decision by way of judicial review.

The High Court judgment

[54] The judge refused leave to each of the appellants. They now appeal those refusals to this court.

[55] In para [2] of his judgment, the judge summarised the grounds of challenge in the following way:

“(a) Breach of Article 64 of the Education Reform (Northern Ireland) Order 1989 (“the 1989 Order”);

- (b) Misdirection/error of law in understanding and applying Article 92(6) of the 1989 Order;
- (c) Misdirection/error of fact in JR336's application;
- (d) Failure to consider Article 92(8) of the 1989 Order;
- (e) Failure to take relevant matters into account;
- (f) Failing to apply/follow relevant guidance;
- (g) *Wednesbury* irrationality;
- (h) Failure of inquiry;
- (i) Procedural unfairness in JR335's case;
- (j) Failure to give reasons; and
- (k) Making decisions 'against the backdrop of an unlawful Strategy and Action Plan.'

[56] Before analysing the factual background to the case, the judge reminded himself of the supervisory role to be performed by the court which is limited to conducting an audit of the legality of the proposed respondents' decisions.

[57] He referred to the judgment of Scoffield J in *JR264* [2023] NIKB 68, at para [64]:

"Given the nature of many aspects of the applicant's challenge, it is also worth summarising the legal position which applies where it is contended that the decision-maker did not look closely enough at a certain issue. 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. Nor is it generally for the court to determine what factors are or are not relevant, unless this is clear as a matter of law (for instance, where these are set out in the governing statutory scheme). 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. These limitations are reflected in Hallet LJ's helpful summary of

the law relating to duties of inquiry in public law at para [100] of her judgment in *R (Plantagenet Alliance) v Secretary of State for Justice* [2014] EWHC 1662 (Admin).”

We agree that this reflects the proper approach to be applied in the context of the present challenge. The court’s role is a limited one. It in effect performs a supervisory role and should not engage in a merits assessment of the decision challenged. In order to succeed the appellants in these cases must establish some legal basis for the court to interfere in the impugned decisions which was not adequately dealt with in the decision of the judge refusing leave.

[58] The grounds of challenge were diffuse as were the grounds of appeal. At the hearing, Mr McQuitty conceded correctly that, as a matter of law, if the Minister properly formed the view that the requirement of Article 92(6) was not met then he was obliged not to approve the proposals. If he did form this view properly, then the other subsidiary grounds of appeal fall away.

[59] Therefore, this issue is the central focus for the appeals. Mr McQuitty argues that the question raised is to what extent does the Article 64(1) duty impact on the mandatory assessment required by Article 92(6). He accepts that Article 64(1) does not dilute the obligation under 92(6) but argues that it must influence the assessment of what constitutes a reasonable number of Protestant and Catholic children or young persons in a given case. His central submission is that neither the Minister nor the judge properly engaged with this key question.

[60] At this stage, we propose to analyse this issue, being fundamental to the determination of the appeal. We will then go on to consider other issues raised in the appeal.

The relationship between Articles 64(1) and 92(6) of the 1989 Order

The judge’s consideration

[61] In his judgment, the judge sets out the relevant statutory provisions. Importantly, he focuses on Article 92(6) of the 1989 Order and says:

“[23] Careful analysis of these legislative provisions reveals that there are a number of 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 mandatory requirement of Article 92(6) the 1989 Order, as amended by the Integrated Education Act (Northern Ireland) 2022. The statutory language is clear and unambiguous. The Department 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.

[24] The requirement of Article 92(6) of the 1989 Order is not a requirement to be balanced against other factors. It requires to be applied. It requires the Department, that is the Minister when the decision is being taken by him, 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." [McAlinden J's underlining]

[62] The judge proceeds to analyse the documentation submitted in support of the two development proposals. Having done so, he describes Mr McGleenan's submission, repeated before us, to the effect that the documentation in support of the transformation proposals was "under-cooked" as "charitable."

[63] The primary focus of his criticism relates to the lack of evidence to suggest that the transformed schools will in due course attract reasonable numbers from the minority Catholic population in the catchment area, so as to satisfy the definition in section 1(1) of the 2022 Act.

[64] Reading the judgment, it is clear the judge considered that in order to establish "unmet demand" it was necessary to establish a demand for integrated education within the *minority* community in the catchment area, that is, in the Protestant or Catholic community which was then under-represented in the school. In respect of both proposals, he is critical of the failure of both schools to take concrete steps to demonstrate how the numbers of those from the Catholic community would increase if transformation took place.

[65] In this vein, at para [25] he says:

"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."

[66] Having critiqued the proposals in that context, the judge turns to the impugned decisions and addresses the grounds of challenge.

[67] Returning to the relationship and potential tension between Article 64(1) and Article 92(6) of the 1989 Order, he says this at para [72] of his judgment:

“Turning now to address the specific grounds of challenge in these cases, it is not correct to say that Article 64 of the 1989 Order modifies or dispenses with the requirements of Article 92(6). Article 92(6) was amended to its current form by the 2022 Act, the same Act which amended Article 64 to its current form. The requirements of Article 92(6) are clear and the statutory scheme as amended has to be read as a coherent whole. The legislature has decided that the requirements in Article 92(6) should be applied alongside Article 64. 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 of acting in breach of Article 64 by applying the mandatory provisions of another article forming part of the same coherent statutory scheme.”

Our consideration

[68] Before considering the evidence relevant to each of the proposals, we make some general comments.

[69] In our view, the judge was correct in the passages we have quoted above to refer to the mandatory language of Article 92(6) and the broad area of judgment accorded to the Minister reflected by the use of the words “unless it appears to the Department.” This sets the context for any legal challenge to the impugned decisions.

[70] We consider that there is indeed a tension between the respective duties imposed by article 64(1) and article 92(6). They do not sit easily together.

[71] Article 64(1), read with section 5 of the 2022 Act, pushes the decision maker in the direction of approving proposals for transformation when the necessary parental support is established and/or there is evidence of unmet demand.

[72] Article 92(6) pulls in the other direction in circumstances where, notwithstanding support for transformation and the obligation to support integrated education, the decision maker must nonetheless be satisfied that if a proposal is

approved it is likely that there will be a reasonable number of Protestant and Catholic students attending the school.

[73] That said, we agree with Mr McGleenan when he argues that the court cannot escape the deliberate outworking of Article 92(6). It has the effect of disempowering the decision maker from approving a proposal if he or she is not satisfied that the reasonable numbers requirement will be met. In such a case he or she could not approve a proposal and is therefore obliged to refuse it (or, in the alternative, defer consideration until so satisfied based on further evidence or enquiry).

[74] Mr McGleenan rightly points out that Articles 64(1) and 92(6) were both amended by the 2022 Act. It was open to the legislator to dilute or amend the obligation in Article 92(6) but this was not done.

[75] We consider that the intention behind Article 92(6) and the statutory scheme is clear. In short, if there is not a reasonable number of Catholic and Protestant pupils attending a school then it is not an integrated school as defined by the legislation. Whether that should be so, or remain so, is a matter for the Assembly; but the court (and the Department and Minister) must simply apply the law as it now stands.

[76] The legislation requires to be read as a cohesive whole. The duty to support integrated education does not compel the approval of all proposals which have parental support.

[77] The question remains, of course, what is meant by a “reasonable number” in this context. The answer to this question reduces to one of judgment by the Minister.

Article 92(6) – The evidence

[78] We now turn to consider the evidence in relation to each of the proposals. The Minister was provided with a vast amount of material in respect of both submissions. In this judgment we highlight only what we consider to be the most relevant factors. This is not intended to be exhaustive.

[79] As we have said, the Department/Minister can only approve the development proposals if Article 92(6) is satisfied. The detailed submissions from the departmental officials address each of the factors to be considered when assessing a development proposal in accordance with the 2017 guidance. In addition, the submissions provide relevant evidence on the religious affiliation of children at the two schools and in the local area.

[80] It is important to distinguish the significance of religious balance in determining unmet demand and its significance in determining whether the requirements of Article 92(6) of the 1989 Order are met. As is clear from the policy documents published by the Department and as a matter of principle, our view is

that if a majority of parents at a school, even if they are members of an overwhelming religious majority in a particular region, is in support of integrated education, that does constitute evidence of relevant unmet demand. In our view, that desire should be respected and is sufficient to meet the test of unmet demand. Further, a majority of those who do not describe themselves as either Protestant or Catholic may have a strong wish for their school to be transformed to integrated status. On this issue, we would diverge from the approach of the judge. For this purpose, evidence of unmet demand should not be constrained to that of the traditional community in Northern Ireland which happens to be in the minority.

[81] That said, we fully agree with the judge's analysis that, in order to satisfy the requirements of Article 92(6) of the 1989 Order, the Minister/Department must be satisfied that if the school does transform it will provide integrated education in the sense that the school will include reasonable numbers of both Protestant and Catholic children or young persons. Assessing whether that is achievable is essentially a matter of judgement, which means, in the context of these schools, whether Catholic children are likely to attend in sufficient numbers to meet the requirements of Article 92(6). It is through this prism that the potential for Catholic children to attend the transformed school must be viewed. It is in this context that the demand for integrated education within the minority community in the catchment area should be considered.

Proposal No 727 - Rathmore Primary School

[82] In relation to Rathmore Primary School figures show that since 2015/2016 to 2023/2024 the percentage of Catholic pupils at the school has ranged between 2.51% and 3.11%. The percentage has declined with the most recent figure for 2023/2024 being 2.9%. It is notable that the percentage of "other Christian/non-Christian/no religion/unknown" is currently as high as 48.28% having risen steadily in previous years from the 40% range. The percentage of Protestant children at the school was 56.27% in 2015/2016. It has reduced to 51.8% in 2022/2023 and 48.82% in 2023/2024.

[83] The religious diversity in the locality according to the 2021 census data for Bangor west and central Bangor combined is 14% Catholic, 65% Protestant and other Christian, 1% other religions and 20% no religion.

[84] In terms of integrated provision in the area, there are three integrated primary schools within a six-mile radius of Rathmore PS. Bangor Central Integrated Primary School (CIPS); Glenraig IPS, located in Holywood, Co Down, which is 3.8 miles from Rathmore PS; and Loughries IPS, Newtownards/within a six-mile radius of Rathmore but 7.6 miles away by road.

[85] Although there are issues about falling enrolment and financial deficits, overall, the departmental officials advised that the school meets the sustainability requirement.

[86] It is self-evident that the Minister, exercising his judgement, was entitled to conclude that the school does not currently meet the requirements of section 1(1)(a) of the 2002 Act in that it does not include reasonable numbers of both Protestant and Catholic children or young persons. That, of course, is not the end of the matter as in deciding whether to approve the proposal it is necessary to look forward and assess whether the school would “be likely” to provide integrated education, as per Article 92(6) of the 1989 Order. This involves forecasting what will happen if transformation is approved.

[87] In this regard, there are obvious concerns, which have been highlighted in the officials’ submission to the Minister. Thus, at para 8.4 of the submission it is said:

“The CfC does not detail what actions have been taken to encourage community engagement and to determine what level of uptake there might be from the minority community, although it does acknowledge that further action needs to be taken to address this. No expression of interest forms were submitted to provide evidence of projected demand for integrated provision.”

[88] In a similar vein, para 8.44 says:

“The CfC recognises that the number of children identifying as Catholic is low, although it has remained steady. The school notes that within the Catholic Church, primary aged children are prepared for their sacraments at this stage and Rathmore does not currently offer this teaching, however, the school is considering community options as a first step to delivering this. No action appears to have been taken to date to address this, but it is mentioned in the TAP [Transformation Action Plan].”

[89] Referring to the Department’s guidance, it was noted at para 8.48 that:

“... the department will consider evidence of how the school intends to attract pupils from the minority religious community eg making links with non-traditional pre-school settings or expression of interest forms from the minority community. Rathmore PS has not provided evidence of progress to date on attracting the minority community.”

[90] Para 8.57 notes that the transformation plan included in the CfC “contains 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.” When the submission assesses the merits of the CfC against the transformation criteria it notes at 8.60 that the school:

“... has not provided evidence of demand from the wider community, particularly the Roman Catholic community, which is under-represented at present.”

[91] At para 8.61 it is noted that:

“There is limited information of the practical steps that would provide assurance that it is likely to meet all requirements under the art, with much of the documentation including the TAP, setting out only in broad terms what the school believes it needs to do or will explore should the proposal be accepted.”

[92] The submission continues at 8.62:

“While it is recognised that some of the steps cannot be taken place (sic) in advance of the approval such as the reconstitution of the BoG, it would have been expected that in the period from January 2023, the school will have begun to create links with local churches, pre-schools and voluntary groups to assess demand for integrated provision in the local community. The school does not have a religious balance that is reflective of the local area and there has been no significant change in the religious make-up of the school since the journey began in 2022. There is insufficient evidence at this stage to demonstrate that it can achieve a reasonably mixed religious balance. There are no expression of interest forms submitted or details of engagement with local pre-school or voluntary groups.”

[93] The submission is critical of the failure of the CfC to provide evidence of steps that have been taken since it was submitted for publication. There is no update on progress. It is pointed out that other schools seeking transformation have set up information stalls at local events, introduced additional sports such as gaelic football and invited assembly speakers from a range of local churches. Press articles are published in the local newspapers to highlight their intention to transform and provide clarity to the community on the new identity. This type of information is absent in this proposal.

[94] It is against this background that Mr McGleenan submits that the submission is “under-cooked”, a comment with which the judge plainly agreed (see para [62] above).

[95] The court recognises that in making the decision as to whether it is likely that the school, if transformed, will provide integrated education as defined by the 2022 Act, the Department/Minister must exercise a degree of judgement. The statute clearly permits flexibility. There is no definition of what is meant by “reasonable.” There is also a degree of speculation involved in assessing whether the criterion is “likely” to be achieved should the proposal be approved and the transformation process takes place.

[96] On this issue the appellant introduced evidence from the IEF which collated all data held by them relating to the effect of transformation to integrated status in achieving increased numbers from the relevant under-represented Protestant/Catholic students prior to transformation. Mr McGleenan pointed out that the IEF did not respond to the consultation process in respect of these proposals. It is clear that the information which was contained in the evidence was not presented in this form to the Department prior to the Minister’s decision. Mr McQuitty counters that the information upon which the evidence was based was always available to the Department.

[97] In any event both sides argued that the data supported their respective cases. We have carefully considered this evidence. We do not consider it impacts on our consideration of this case. The statistics demonstrate that in *some* schools transformation has had a significant impact in addressing religious balance at the school. In other schools there has been no or little improvement in religious balance.

[98] We accept, as a matter of common sense, that transformation to integrated status has the potential to increase the number of students from an under-represented religion at a particular school. Ultimately, whether this is likely to be achieved remains a matter of judgement in each case.

[99] Equally, the reasonable numbers requirement must be viewed in the context of Article 64(1) of the 1989 Order. That said, it would not be consistent with the Minister’s statutory duty for him to simply approve a proposal and hope for the best in terms of achieving an increase in Catholic pupils at the school.

[100] Turning to the decision of the Minister, it is clear that he was fully sighted of all relevant material in the submission provided by the Department. It is also clear that he has referred to all relevant matters he is obliged to consider. The basis for his decision is clearly set out.

[101] He expressly refers to Article 64(1) of the 1989 Order and accepts that the school is sustainable. Turning to the requirements of section 1(1) of the 2022 Act, he correctly identifies the current situation at the school. It is not in dispute that it does not meet the “reasonable numbers” criterion. He recognises, properly, that an overly rigid approach should not be taken. He recognises that the religious balance of transformed schools may vary depending on the local circumstances in an area

and that there will inevitably be “grey areas where reasonable people could differ.” He adds that he does not believe that the historic and current 2-3% of Catholic children attending the school could be said to constitute reasonable numbers in a context where the community balance in Bangor West indicates that 64% are from backgrounds of a Protestant or other Christian religion and 16% from Catholic backgrounds.

[102] In approaching the issue in this way, we consider that the Minister has had adequate regard to his obligations under Article 64(1) of the 1989 Order. The lack of a rigid approach and the degree of flexibility mentioned by the Minister recognises that in certain scenarios there may well be a significant imbalance in numbers between Protestant and Catholic students, but that nonetheless the requirement of reasonable numbers will be met.

[103] Having rationally concluded that the school does not currently meet the criteria of reasonable numbers, the Minister goes on to consider whether “at some point in the future there are likely to be reasonable numbers of Catholic children at the school.”

[104] He then refers to some of the sections in the officials’ submissions which are critical of the lack of plans to address the religious imbalance which we have highlighted above and concludes that:

“I am not therefore of the view that the statutory test of whether it was likely the school would provide ‘integrated education’, namely the education together of those of different cultures and religious beliefs and of none, including reasonable numbers of both Protestant and Roman Catholic children or young persons has been met.”

[105] In our view, it cannot be contended with a realistic prospect of success that the Minister is in breach of the duty under Article 64(1) of the 1989 Order. Rather, he has properly complied with his obligation under Article 92(6) of the 1989 Order. Nor can it be arguably contended that the Minister’s decision and reasoning is irrational or *Wednesbury* unreasonable. There is no legal basis upon which the court could properly interfere with his decision based on an alleged failure to comply with the provisions of Article 64(1) of the 1989 Order. On the contrary, he has complied with his statutory duty under Article 92(6) of the 1989 Order. There is a rational and evidential basis for his decision.

Proposal No 727 – Bangor Academy and Sixth Form College

[106] A similar pattern emerges in relation to DP727. The submission to the Minister from the departmental officials carries out the same exercise as it did in relation to DP728.

[107] According to the submission, enrolment in the school is over-subscribed. The department's assessment is that it is a popular and sustainable post-primary school.

[108] In the catchment area, there are five alternative controlled post-primary schools within a ten-mile radius of the college. In terms of integrated provision, there are two integrated post-primary schools within a ten-mile radius of the college. The percentage of Catholics attending the school ranges between 2.4% and 3%, the highest percentage being in 2023/2024. The percentage for Protestant pupils is 57.5% and others 39.4% as of 2023/2024. As is the case in Rathmore Primary, the number of pupils from a Protestant background and Catholic background remain relatively constant but there has been a growing number of pupils identifying as other/no religion/unknown.

[109] As was the case with DP727, it was clearly open to the Minister to rationally determine that the current percentages would not satisfy the criteria of a reasonable number of Catholic students as required by section 1(1)(a) of 2022 Act. Indeed, any other conclusion could be said to be surprising.

[110] As to whether this is likely to change as a result of transformation, again as was the case in DP727, when one analyses the submissions, officials are critical of the CfC in support of the proposal. This is plain from the following extracts.

[111] At para [59] it is said:

“However, the CfC does not specify how it plans to tackle the disparity regarding the percentage of Catholic students at the school when considered alongside the wider community breakdown as reflected in the census. It simply provides evidence of awareness of the disparity and of a stated intent to explore strategies to rectify it.”

[112] Looking at the assessment of the proposal against the transformation criteria, the result of the transformation ballot raises some issues. As will be seen from the figures set out in para [43] above, there was only a 51% turnout with 20.6% of those voting against the proposal. Only 44% of the parental body of the school supported the proposal. Whilst this could hardly be described as a ringing endorsement for transformation, the submission nonetheless concludes at para [95]:

“Regardless of these numbers, the ballot process and outcome are valid, those eligible to vote were provided the relevant opportunity to do so and no inference can or could therefore be drawn in the terms stated by way of objection.”

[113] It is noted that the proposal was strongly supported by staff, namely 80% as opposed to 20% who were unsure and wanted more information.

[114] Importantly, for the purposes of this appeal, information supporting the conclusion that a reasonable number of Catholic students could be achieved post-transformation was not promising.

[115] On this issue the key passages in the submission include:

“176. Additionally, the department’s transformation guidance states that ‘the school should demonstrate how it intends to attract pupils from the minority religious community. For example, making links with non-traditional pre-school settings.’

177. The CfC states ‘the Transformation Plan is a deliberate and intentional document designed to show how Bangor Academy and Sixth Form College School will develop an Integrated ethos and how it will avail of the school improvement opportunities presented by the Transformation process ... The plan, in particular, outlines how the school will work to engage its minority community over the next three years and how it intends to further develop local connections across all the cultures and traditions that are currently represented within the school. As the school moves through its Integration Journey, a long-term objective will be achieving the Excellence in Integrated Education Award.’

178. It further states that ‘Bangor Academy has worked on identifying the cultural background of its families, with a particular focus on understanding ‘other.’ The school recognises that there is an imbalance of children from a Catholic background and will consider strategies to address this.’

179. Therefore, the CfC indicates that an awareness of the low number of children identifying as Catholic in the school, but that while the percentage is low, it has remained steady over the past number of years and that a number of families have expressed that they specifically chose Bangor Academy and Sixth Form College due to its inclusive and mixed community ethos. It does not, however, specify how it plans to tackle the low numbers of students identify as Catholic despite being aware of the issue and expressing intent to explore strategies to rectify

it. There is no information provided in the CfC demonstrating who it has approached in order to attract pupils from the minority religious groups, rather it hints of (sic) what it will do. [our underlining]

180. NICIE in its commentary is also aware of the low number of Catholic pupils attending the school and states 'NICIE is aware that the overall representation of the Catholic community in the immediate area surrounding the school is approximately 12.6% (NISRA 2021 census). Thus, a reasonable balance for the year end may mean a representation of anywhere between 10%-15%. However, the high level of over subscription puts the school in a strong position to achieve a higher balance over time. If approval is given, NICIE will emphasise the importance of the amendment of the admission criteria, although this will remain the decision of the BoG.'

181. This comment from NICIE cannot be substantiated. There is no evidence to confirm or support any assertion that those children who do not gain a place at Bangor Academy and Sixth Form College are of a Catholic tradition or that their current level of oversubscription is in any way a reliable indicator of the future religious balance of the pupil cohort."

[116] The submission points out that those who seek transformation should demonstrate how they intend to attract pupils from the minority religious community. It recognises that the 2022 Act does not set out a requirement that a school should/must be integrated at 'day one' but it must appear to the Department that if the school were to become, or to be established as an integrated school, it would be likely to provide integrated education. Thus, at para 189:

"The department would expect that work undertaken by the school to date would provide assurance that it is likely to meet the requirements under the Act. Although the College could and should have set out more detail on progress to date, the level of detail in the CfC provides some evidence of an appreciation of the additional work that is required, much of which can only take place if the school is approved for transformation. As such, it provides a degree of assurance that the college is likely to meet the requirements of the 2022 Act, should it progress such work in the event of approval of the DP."

[117] The assessment goes on to say:

“205. Bangor Academy and Sixth Form College sufficiently meets Article 1(1)(b) and (c) of the 2022 Act. However, while the proportion of pupils attending Bangor Academy and Sixth Form College from Protestant, Catholic and other backgrounds has remained consistent across the past five years, there is insufficient evidence to demonstrate that it can achieve a reasonably mixed religious balance. While the Transformation Plan indicates that the school will work to attract more applications from the minority community, it does not detail what the college will do to achieve this, or what it currently does. [our underlining]

206. The CfC provides information on the level of engagement that has been undertaken by the school in respect of the transformation process. The school has embraced the opportunity to seek Transformation. There has been open communication and engagement inside the school and with the wider community. The school has demonstrated a commitment to the Transformation process and the proposal to Transform has been supported by the EA and the CSSC. However, it appears that it has not demonstrated that it has progressed to any significant degree all potential practical steps that would provide assurance that it is likely to meet all requirements under the Act, with much of the documentation set out only in broad terms of what the College believes it needs to do or what it will explore.” [our underlining]

[118] In its summary, the submission sets out reasons to “not approve” the proposal.

[119] Unsurprisingly, these focus on the potential to attract a reasonable proportion of Catholic students.

[120] It recognises that there is an awareness on behalf of the school to address this issue. It repeats, however, that there is no evidence of the steps taken to date to do so. Department guidance indicates that to maintain the momentum of the transformation process during the change period before a formal decision is made on the DP, schools should start the process of cultural and operational change where possible, allowing the Department, when considering the school’s DP, to see meaningful and demonstrable ways the school community is committed to integration. The submission points out “however, there is no information on what the school has been doing in the interim period since the CfC was submitted for publication.”

[121] Somewhat surprisingly, considering this commentary, it is concluded at para 208:

“... on balance, and by reference to the details set out in the Transformation Action Plan (which is clearly timetabled and which logically identifies the key areas that the College needs to address) that Bangor Academy and Sixth Form College is likely to meet the transformation criteria assessment.”

[122] In supporting the approval of the proposal, the focus is on the Department’s duty to encourage and facilitate integrated education with particular emphasis on Article 64(1) of the 1989 Order.

[123] The Minister again set out the reasons for his decision in considerable detail. He has been fully sighted on all the relevant material submitted by his officials. He commences with an acknowledgement of the Department’s duty under Article 64(1) of the 1989 Order. In considering the requirements of Article 92(6) he recognises that there is no legal definition of what constitutes reasonable numbers. He correctly says, in our view, “that an overly rigid approach should not be taken.” He concludes that the historic and current 2-3% of Catholic children at Bangor Academy could not under any analysis be said to constitute reasonable numbers when considering the local demography of the area and the locations from where pupils attend. He notes that Ards and North Down LGD has 11% of its population from the Catholic community and the settlement of Bangor 9%.

[124] It cannot seriously be disputed that at present the school does not meet the requirements of section 1(1)(a) of the 2022 Act. Having stated this, the Minister goes on to consider whether “at some point in the future there are likely to be reasonable numbers of Catholic children at the school.” He comments on the fact that the CfC does not specify how it plans to tackle the current disparity. He concludes that:

“Even on the most optimistic analysis, it would appear highly unlikely that reasonable numbers could be achieved. Examination and analysis of these issues and how they could be overcome have neither been set out in this proposal nor in any of the representations made from the advisory bodies under the provisions of the Integrated Education Act (Northern Ireland) 2022.”

[125] In coming to that conclusion, the Minister does not approve the proposal.

[126] In our view, as was decided by the judge, this is a rational decision which could not be described as *Wednesbury* unreasonable. The Minister has considered all the relevant information made available to him. He has identified the appropriate

statutory obligations and duties. He concluded (and this is accepted) that the current breakdown of the religious percentages in the school does not meet the requirements of section 1(1)(a). Having considered all the material, he concludes that if it were to be established as a controlled integrated school, it would not be likely to provide integrated education as required. He has set out the reasons for that conclusion. That was a conclusion that was within the scope of the judgment open to him. There is a rational and evidential basis for that judgment. Having reached that conclusion, he was required under Article 92(6) to not approve the proposal. As was the case in DP728, the degree of flexibility recognised by the Minister means that the apparent tension between Articles 64(1) and 92(6) can be resolved depending on the particular circumstances of a proposal. We consider that there is no legal basis upon which the court could properly interfere with his decision based on an alleged failure to comply with the provisions of Article 64(1) of the 1989 Order. On the contrary, he has complied with his statutory duty under Article 92(6) of the 1989 Order.

Other issues

Article 92(8)

[127] On the discrete issue of the Minister's failure to consider exercising his discretion under Article 92(8) of the 1989 Order to require the EA "to submit a further proposal within such a period as the Department may direct", the judge points out that this provision provides a power and does not impose an obligation. He says at para [81] of his judgment:

"There is nothing to indicate that either of these cases was a case in which that power to direct a further proposal should have been exercised, having regard to the reasons for the refusals. The proposers are not prevented from bringing forward fresh proposals. The Minister has clearly indicated what the problem is in both cases. ... The proposers who incidentally did not see fit to challenge the Minister's decisions, can bring forward fresh proposals with stronger evidential bases to address the issue of reasonable numbers, if they wish."

We agree with this conclusion. We would add that consistent with the statutory obligation to support integrated education it is open to both schools to seek advice and guidance from the Department, the EA, NICIE and IEF should they wish to bring forward fresh proposals for transformation to integration. Any further proposal would fall to be considered on the basis of the evidence as it stood at that time.

Failure to carry out further enquiry

[128] On the issue of a failure to carry out further reasonable enquiries, the judge refers to the relevant authorities and, in particular, quotes from the judgment in *R (Plantagenet Alliance)* [2014] EWHC 1662 (Admin).

[129] He concludes:

“[90] It simply cannot be said that there has been insufficient inquiries made in the context of these when one considers the information provided, gathered and set out in the submissions for consideration. It is for the decision maker to decide if it is content that the information before it is sufficient, subject only to *Wednesbury* irrationality within the context of the decision-making under consideration. In summary, the high hurdle of irrationality/*Wednesbury* unreasonableness has not been surmounted in this case.

Again, we agree with this conclusion.

Failure to give adequate reasons

[130] As to the failure to give adequate reasons, the judge dealt with this in paras [94]-[95] of his judgment in the following way:

“[94] In relation to the alleged failure to give adequate reasons, the classic formulation of the test which is applied in any reasons challenge remains that of Lord Brown in *South Bucks District Council v Porter* (No 2) [2004] UKHL 33 at para [36]:

‘Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision ... The reasons need refer only to the main issues in the dispute, not to every material consideration ... Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. 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.’

[95] Adequate reasons for both decisions have 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. That the applicants disagree with the reasons given and the judgments made on the Article 92(6) point is of no relevance to whether the reasons given are adequate. In these cases, they clearly are."

[131] Once more, we find no fault with this analysis.

Specific issue relating to JR336

[132] Mr McQuitty complains on behalf of JR336 that the Minister failed to take into account or alternatively misdirected himself in relation to evidence that integrated education was over-subscribed in the relevant area. Thus, in the section 10 report referred to at para [13] above, the Department's analysis indicated that there is demand for post-primary integrated education in excess of supply in six localities, including Ards and North Down. The section 10 report commissioned NICIE to issue a "call for transformation" suggesting that schools in the identified localities consider transformation to integrated status to meet demand. The Departmental submission at para [200] states that:

"The closest integrated post-primary schools in the area are generally over-subscribed. In considering a DP for Transformation it is essential that the new integrated school will be viable and sustainable in the long-term. There is evidenced demand for post-primary education in the North Down and Ards area as well as integrated provision, with available places in local integrated schools extremely limited."

[133] It is argued that this evidence was not taken into account by the Minister when considering whether transformation would result in an increased number of Catholic students applying for admission to the new school.

[134] This is an issue upon which the Minister was clearly sighted. It should be assessed having regard to his critique of the failure of the proposal to specify how it plans to tackle the disparity regarding the percentage of Catholic students at the school when considered alongside the wider community breakdown. He suggests that this is unsurprising. He states:

"Given the community breakdown, extremely limited current and historic enrolments from the Catholic community and the availability of other well-regarded

options for Catholic children, including both Catholic maintained and other integrated options, I would anticipate that integrated status for Bangor Academy is unlikely to have more than a marginal impact on the number of Catholic children attending the school.”

[135] Whilst we accept that evidence of over-subscription is a factor which could support an argument that increasing numbers of Catholic students would apply to the school in the future, it could not be said that this factor renders the decision of the Minister as set out above irrational or unsustainable. It was taken into account by the decision-maker, and we do not find it arguable that he gave it so little weight as to stray into *Wednesbury* irrationality.

Post-decision policy

[136] We note that on 4 September 2025, after the impugned decisions, the Minister presented a written statement to the Northern Ireland Assembly referring to the Department’s position paper on “reasonable numbers.” The statement outlines the background to the introduction of the reasonable numbers requirement in the 1989 Order, when the then Minister, Dr Brian Mawhinney, accepted that a rigid definition should not be applied. However, he stated that, “it is axiomatic that an integrated school should have a reasonably substantial representation of pupils from both backgrounds.”

[137] Subsequent to the 1989 Order the Department adopted a policy on reasonable numbers 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 (Protestant or Roman Catholic) within the school’s enrolment and the potential to achieve a minimum of 30% in the longer term.

[138] The statement endorses the importance of balance in delivering the aspirations of integrated education.

[139] Importantly, it sets out the Department’s current position on “reasonable numbers” in the following way:

“12. 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 statement that follows in italics is the general principle that will be

applied in the context of proposals to transform to integrated status.

General principle

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 proposal 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 a 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 as evidenced by the proposer.

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

[140] Understandably, the position paper focuses on the reasonable numbers requirement in relation to Catholic and Protestant students. That said, it should be recognised that section 1 of the 2022 Act also refers to those of “different cultures and religious beliefs and none.” This aspect may become more significant in light of the increasing numbers of students who do not identify as either Protestant or Catholic (in which case, we understand, the alternative basis of considering the matter, namely that 15% of the combined Protestant and Catholic intake should be from the minority community of those two, would be more relevant).

[141] Those parents, students and staff who aspire to achieving integrated status, including the appellants in this case, are not forever barred from achieving that status. Ongoing work in the schools, complemented by assistance from the statutory agencies leaves open the possibility of stronger, more evidence-based proposals in the future. If an even more generous approach to transformation proposals is sought, that is a matter for the Assembly or, within the constraints of the current legislation, for Departmental policy as to the approach to reasonable numbers to be adopted either by the current or a future Minister for Education. These are not matters for the court.

Conclusion

[142] For all the reasons set out above, this court agrees with the decision of the judge. We therefore dismiss the appeals and refuse leave to apply for judicial review in each case.