

Judicial Communications Office

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COURT DISMISSES APPEAL AGAINST MINISTER'S DECISIONS ON INTEGRATED SCHOOLS

Summary of Judgment

The Court of Appeal¹ today dismissed an appeal against a decision to refuse leave to apply for a judicial review of the Education Minister's decisions not to approve proposals by Rathmore Primary School in Bangor and Bangor Academy and Sixth Form college for transformation to integrated status. The court concluded that the Minister's decisions were rational and lawful, and that no ground of challenge disclosed an arguable case with a realistic prospect of success.

Background

In 2023, the Board of Governors of Rathmore Primary School sought transformation to integrated status following a parental ballot in which 82.3% voted in favour, with a 61.9% turnout (DP728). The development proposal was supported by the Education Authority, and no objections were received. Departmental officials recommended approval. On 7 January 2025, the Minister refused approval, concluding that the school did not meet, and was unlikely to meet, the requirement of "reasonable numbers" of Catholic pupils, noting historic levels of 2-3%.

A similar proposal for transformation was made by Bangor Academy and Sixth Form College (DP727). A parental ballot resulted in 79.4% in favour, with 51% turnout. The proposal likewise received institutional support, though with some objections during consultation. Departmental officials again recommended approval. On 7 January 2025, the Minister refused approval for substantially similar reasons, concluding that the statutory requirement in Article 92(6) of the Education Reform (Northern Ireland) Order 1989 ("the 1989 Order") was not satisfied due to the low proportion of Catholic pupils and lack of evidence of future change.

The father of a pupil at Rathmore Primary School ("JR335") and the mother of a pupil at Bangor Academy ("JR 336") challenged the Minister's decision by way of judicial review claiming, amongst other things, that he had misunderstood and misapplied the relevant legislation, failed to take relevant matters into account and failed to give reasons. On 15 October 2025, the High Court refused leave to apply for judicial review to each of the applicants and they appealed against the decisions to the Court of Appeal.

Legislative and Policy Context

The case concerned the statutory framework governing integrated education, including Article 64(1) of the 1989 Order, as amended, imposing a duty on the Department to "encourage, facilitate and support" integrated education. Section 1 of the Integrated Education Act (Northern Ireland) 2022 ("the 2022 Act") defines integrated education, including the requirement for "reasonable numbers of both Protestant and Roman Catholic children." Article 92(6) of the 1989 Order provides that the Department "shall not approve" a proposal for transformation unless satisfied the school would be "likely to provide integrated education."

¹ The panel was Treacy LJ, Colton LJ and Scofield J. Colton LJ delivered the judgment of the court.

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The Court identified the relationship between these provisions as central, noting a tension between the duty to support integrated education and the mandatory requirement to refuse proposals not meeting the statutory definition.

Proceedings in the High Court

The appellants sought leave to apply for judicial review on multiple grounds, including breach of Article 64, error of law in applying Article 92(6), irrationality, procedural unfairness, and failure to take relevant considerations into account.

The High Court noted that the court's role in a case where it is contended that the decision maker did not look closely enough at a certain issue is a limited one. In effect, the court performs a supervisory role and should not engage in a merits assessment of the decision challenged. In order to succeed, applicants must establish some legal basis for the court to interfere in the impugned decisions.

The High Court refused leave, holding that Article 92(6) imposed a mandatory requirement and that the Minister's decisions fell within lawful bounds.

Issues on Appeal

The central issue on appeal was the relationship between Articles 64(1) and 92(6) of the 1989, and whether the Minister erred in concluding that the "reasonable numbers" requirement would not be met. The relevant provisions are:

- **Article 64(1)** - duty of the Department to encourage, facilitate and support the development of integrated education and to provide support for integrated education; and
- **Article 92(6)** - 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 including reasonable numbers of both Protestant and Roman Catholic pupils.

It was accepted that if the Minister lawfully concluded that Article 92(6) was not satisfied, he was obliged to refuse approval. The court considered there was a tension between the respective duties imposed by Article 64(1) and Article 92(6) and said they do not sit easily together. 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. Article 92(6) pulls in the other direction in circumstances where, notwithstanding support for transformation and the obligations 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.

The court held that the deliberate outworking of Article 92(6) 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

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therefore obliged to refuse it (or, in the alternative, defer consideration until so satisfied based on further evidence or enquiry). It was pointed out that Articles 64(1) and 92(6) were both amended by the 2022 Act and it was open to the legislator to dilute or amend the obligation in Article 92(6) but this was not done.

The court considered 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. It said that 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:

“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. 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.”

The court then considered the evidence in relation to each of the proposals. It said it was 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, the court’s view was 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.”

That said, the court fully agreed 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 and 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

The court noted departmental officials’ concerns regarding the lack of evidence provided on action taken to date to grow and increase applications from the minority Catholic community to help achieve a reasonable religious balance at the school should it be transformed. There is no definition in the 2002 Act of what is meant by “reasonable”. The court recognised that in

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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. Also, that the statute clearly permits flexibility.

The court held it was open to the Minister to conclude that the school's 2-3% Catholic enrolment did not constitute reasonable numbers, and that evidence of future improvement was insufficient. It commented that the Minister had regard to relevant considerations, including statutory duties, demographic context, and deficiencies in the proposal's evidence and concluded that his decision was neither irrational nor in breach of Article 64(1).

Proposal No. 728 - Bangor Academy

The court reached the same conclusion in respect of Bangor Academy, finding that the Minister was entitled to determine that current and projected enrolment figures would not meet the statutory requirement. Again, the absence of concrete measures to attract pupils from the minority community supported the Minister's conclusion. The court said the Minister had considered all the relevant information made available to him and identified the appropriate statutory obligations and duties. It concluded that the Minister's decision was lawful, rational, and supported by evidence.

Other Grounds

It was argued that the Minister failed to exercise his discretion under Article 92(8) of the 1989 Order to require the Education Authority "to submit a further proposal within such period as the Department may direct." The High Court held that this provision provides a power and does not impose an obligation, noting that it is open to the proposers to bring forward fresh proposals with stronger evidential bases to address the issue of reasonable numbers if they wish. The court agreed with this conclusion, adding 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 Education Authority, the NI Council for Integrated Education and the Integrated Education Fund should they wish to bring forward fresh proposals.

The appellants contended there was a failure by the Department/Minister to carry out further reasonable enquiries. The court agreed with the High Court that the Minister had sufficient material before him for consideration when making his decision.

A further ground of appeal was that the Minister failed to give adequate reasons for his decisions. This was rejected as the court found that adequate reasons had been provided in accordance with established principles.

The final ground of appeal was that, in the case of Bangor Academy, the Minister failed to take into account, or misdirected himself, in relation to evidence that integrated education was over-subscribed in the relevant area. The court held this was an issue upon which the Minister was clearly sighted and while accepting 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 irrational or unsustainable.

Post-decision policy

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On 4 September 2025, after the High Court decision, the Minister presented a written statement to the NI Assembly referring to the Department's position paper on "reasonable numbers." The court said that 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

The Court of Appeal concluded that the Minister properly applied Article 92(6) of the 1989 Order, that his decisions were rational and lawful, and that no ground of challenge disclosed an arguable case with a realistic prospect of success. Accordingly, the appeals were dismissed and leave to apply for judicial review was refused in each case.

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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