

Written Ministerial Statement

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Department of Education

DEPARTMENT OF EDUCATION UPDATE ON JUDICIAL REVIEW ON 'REASONABLE NUMBERS' – OCTOBER 2025

Published on Monday 27 October 2025.

Mr Givan (The Minister of Education): Today, I am updating the Assembly in light of the judgment of McAlinden J in the High Court in Northern Ireland on 15 October concerning an application for leave for Judicial Review in relation to the application of two Bangor schools to transform to integrated status.

On 7 January, I announced that I had refused applications by Bangor Academy and Rathmore Primary School to transform to integrated status on the basis that I did not believe that the precondition that reasonable numbers of Protestant and Catholic children would be likely and therefore the test set out in Article 92(6) of the Education Reform (Northern Ireland) Order 1989 and section 1(1) of the Integrated Education Act (Northern Ireland) 2022 had not been satisfied.

For the sake of completeness, links to the full decisions are available at [DP 727 - Bangor Academy & 6th Form | Department of Education](#) and [DP 728 - Rathmore Primary School | Department of Education](#).

These decisions were widely reported at the time and were the subject of discussion both in the media and in the Northern Ireland Assembly. In particular, an urgent question by Connie Egan MLA was tabled on 13 January in relation to the matter. The Hansard record of the debate can be found at [Official Report - Connie Egan MLA Urgent Question](#).

On 5 and 6 March, my department received pre action protocol letters in relation to both schools. These applications were heard on 24 and 25 September and a decision was ultimately handed down on 15 October.

A summary of the decision can be found at [Summary of Judgment - JR 335 and JR 336 - Integrated Education](#) and the full judgement is available at [Full Judgment JR 335 & JR 336 - Integrated Education](#).

The court dismissed both applications but the judgment clarifies a number of key issues in relation to the 'reasonable numbers' test and has important implications for future decisions. The judgment also answers many of the questions that members raised at the time concerning my decisions and criticisms that were made of the decisions that I took.

It is for these reasons that I now set out my response to the judgment. This Written Ministerial Statement should be read alongside my 'Reasonable Numbers' paper published on 4 September. Criticism of my decisions were widespread both by Members of the Assembly and further afield. Many of these criticisms were clearly made in ignorance of the underlying statutory provisions. While expressed in various ways criticisms largely fell into a number of discrete categories. I respond at some length and quote from some of those who made such allegations to set the record straight.

Firstly, it was suggested that I had got the decision wrong.

Paul Caskey of the Integrated Education Fund said the decision was *"hard to comprehend ... In reaching this flawed decision, the Minister has clearly rejected not only the desire of the school community but also the advice of his own officials ... It is hard to comprehend how such decisions reflect the Department of Education's statutory duty to support, encourage and facilitate integrated education."*

Nick Mathison MLA also said, *"The Minister's narrow and selective interpretation of the legislation contradicts both the recommendations of his officials and the precedent set by previous successful school transformations."*

"My colleague Kellie Armstrong's Integrated Education Act in the last Assembly mandate clearly outlined the Department of Education's duty to encourage, facilitate and support integrated education. These decisions are entirely contrary to that."

"I will be seeking answers from him in the Assembly as a matter of urgency, as those who overwhelmingly voted to transform to integrated status will no doubt be asking serious questions about the Minister's judgement."

In sharp contrast to the allegations, Mr Justice McAlinden at para 35 of his judgment stated,

"There is nothing of substance which would entitle the Department or Minister to conclude that the requirement of reasonable numbers set out in Article 92(6) could be satisfied in either instance."

At para 56, Mr Justice McAlinden put this matter beyond any doubt (my emphasis in bold),

"The Minister cannot be faulted for concentrating on the key issue in this case and addressing the matter which in essence operates as a knockout blow to any proposal. The Minister cannot in law approve a proposal unless he considers it likely that reasonable numbers presently exist or will be achieved. The Minister determined that he could not be so satisfied and even if a heavy-handed review was permitted, it would be hard to find fault with the Minister's reasoning, let alone conclude that it was irrational or Wednesbury unreasonable."

Secondly, it was suggested I misunderstood the legislation and focussed on one aspect of the legislation to the exclusion of other aspects.

For example, Kellie Armstrong MLA who brought forward the Integrated Education Act as a private member's bill said she was 'disappointed' at my 'misreading' of the Act.

Chair of the Education Committee Nick Mathison, speaking on BBC Radio Ulster said it was, "frankly a baffling decision." He continued, *"The Minister seems to have got hung up on one particular criterion. This idea of reasonable numbers of Catholic pupils. He seems to have ignored all the other elements that go into what makes an integrated school and applied a very arbitrary interpretation of what reasonable numbers might look like."*

At the time I repeatedly made it clear that I was required to apply the 'reasonable numbers' test.

At para 24, Mr Justice McAlinden stated,

"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."

Though in light of the judgment it need hardly be restated but it is clear that far from being, 'narrow and selective', I correctly identified and applied the relevant statutory test. It was the Chair of the Education Committee and remarkably the author of the Integrated Education Act 2022 that did not properly understand the relevant statutory provisions.

Thirdly, it was suggested that because a majority of parents who voted supported the transformation of the schools to integrated status I should have approved the proposals.

At the time, SDLP MLA Cara Hunter said my decision, *"flies in the face of the wishes of the overwhelming majority of the parents at Bangor Academy ... ultimately, no Education Minister should be able to veto the views of schools and parents of the children and young people who attend without proper justification."*

At para 14 Mr Justice McAlinden makes clear that the ballot is prerequisite to a decision being taken on 'reasonable numbers,' it does not replace that test which must be satisfied.

"Subsequent provisions of the 1989 Order as amended set out the procedure for the transformation of a school to integrated status. Firstly, there is a ballot of the persons eligible to vote (parents of children registered at the school). If there is a simple majority of votes cast in favour of transformation, then it is the Education Authority's duty to submit a DP to the Department with its views thereon. The crucial provision that must not be lost sight of is Article 92(6) of the 1989 Order as amended. I set this out in full."

“(6) 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.””

It need hardly be stated but had Alliance (or SDLP or Sinn Féin) MLAs wished to remove the requirement for reasonable numbers of Protestant and Catholic children, the 2022 Act would have been the obvious and appropriate vehicle to do so. Instead, they reinforced this foundational principle of integrated education by explicitly restating this essential characteristic of integrated education in Section 1 of the 2022 Act and strengthening the prohibition on approval where this requirement is not met.

Though this judgment provided a clear analysis of the relevant law and facts in this area, I continue to read comments from Members who appear to have failed to understand the impact of the law the Alliance Party introduced in 2022. That is particularly disappointing.

Fourthly, it was suggested I took a decision based not on the future potential for integrated education at the schools but on the present numbers.

Kellie Armstrong commented, *“the Minister is now saying that Bangor Academy and Rathmore cannot be integrated schools or have the transformation to an integrated school because they don’t already have that mix in place.”*

The paucity of this argument would have been revealed by reference to the reasoning I offered for the decision at the time. This is confirmed at para 54 of the judgment where Mr Justice McAlinden stated, (my emphasis in bold)

“He [the Minister] then went on to state that he did not consider that the present or historic percentage of between 2% and 3% of Catholic pupils could under any analysis be said to constitute reasonable numbers, even considering the local demography of Bangor itself (9%) and Ards and North Down LGD (11%). He then went on to consider whether at some point in the future there are likely to be reasonable numbers of Catholic children at the school.”

Fifthly, it was suggested I was hostile to integrated education.

For example, leader of the opposition Matthew O’Toole MLA said, *“Everything that you have said today makes it fairly clear that you are taking the decision for clearly political reasons. You have outlined what appears to be a vendetta against integrated education.”*

Alliance MLA David Honeyford posted on social media platform X saying that “earlier in the week the DUP worked to stop our kids sitting in the same classroom”.

Mr Justice McAlinden at para 100 stated, in respect of my ‘Reasonable Numbers’ paper of 4 September, (my emphasis in bold)

“What this demonstrates is the clear determination by the present Education Minister to assert the importance of the Article 92(6) requirement of ‘reasonable numbers’ and to explain the rationale behind that requirement. Through the mechanism of this Written Statement, the Minister is trying to ensure that schools that are permitted to transform have a realistic chance of achieving reasonable numbers.”

At para 100, Mr Justice McAlinden stated,

“This judicial review, when carefully examined, is an attempt by some proponents of integrated education to effect a reversal of the realistic stance taken by the Minister by arguing that the introduction of the word ‘support’ in the legislative framework in 2022 somehow means that a very lax attitude to the requirement of ‘reasonable numbers’ should be adopted.”

I am not hostile to integrated education and have approved a number of transformations since I became Minister in 2024. I cannot be criticised for faithfully implementing the legislation that was passed by those who were most critical of my decision.

And sixthly, it was suggested I should have followed the advice of my officials.

For example, Kellie Armstrong MLA accused me of ‘going on a solo run’ against the recommendation of my departmental officials.

Eoin Tennyson MLA said,

“Minister, given that you have now failed to replace Fresh Start funding, have prioritised meeting an umbrella body for paramilitary organisations and have ignored the advice of your officials by blocking two schools from transforming to integrated status, do you accept that your credibility on sharing and inclusion is shot, and will you apologise to the parents and pupils of the schools affected for letting them down and prioritising ideology over their wish to be educated together?”

Dr Matt Milliken - if it were possible - was even more bombastic, *“The recommendation from senior DE officials to the minister was to approve both applications – he opted to reject both. It is no doubt*

troubling for the whole of the civil service that the minister has seemingly no faith in the considered, informed, professional decisions made by those appointed to inform and advise him."

As I made clear at the time, I did not accept the recommendation of my officials because I felt that they did not properly apply the relevant statutory test.

At para 48, Mr Justice McAlinden agreed,
"Para [189] of the report, to my mind demonstrates that the Department in advising the Minister has really taken its eye off the requirement of Article 92(6) and has invested the word "support" with a meaning which cannot be sustained in the overall statutory context."

At para 52, Mr Justice McAlinden stated,
*"Despite these clear statements of opinion, **and largely inexplicably in my view**, the report goes on to assert that the school, if it were to become an integrated school, would be likely to provide integrated education and that it is likely to meet the transformation criteria assessment (see paras [207] and [208] of the report). I say largely inexplicably because the only possible explanation for such a conclusion that I can think of is that the departmental officials in making this recommendation to the Minister were of the view that the newly inserted word "support" in the legislation meant supporting a proposal irrespective of how flimsy it was and irrespective of the lack of concrete proposals, plans and strategies to achieve reasonable numbers of Protestant and Catholic pupils over time. That is not what "support" means in this context and rather than being critical of the Minister for not agreeing with his officials, **I would have genuine concerns about the strong possibility of a misinterpretation of the meaning of the word "support" by departmental officials leading to an inappropriate recommendation to the Minister for transformation in this case.**"*

At para 70, he continued,
"Ministers are entitled to disagree with officials. That is part and parcel of the democratic process. In any event, as I have demonstrated above, the recommendations of the departmental officials in these cases is only explicable on the basis of a misinterpretation of the word support."

It is a fundamental principle of democratic governance that officials advise, but Ministers decide. This goes to the heart of accountable local decision making. While civil servants provide expertise, analysis, and recommendations, it is ultimately the responsibility of elected Ministers, answerable to the public and the Assembly, to exercise judgment and make decisions in the public interest.

It would be a dereliction of duty for a Minister merely to accept the recommendations of officials and to blindly rubber stamp any advice. Ministers are not passive recipients of recommendations; they are entrusted with the authority to challenge, interrogate, and, where necessary, reject advice that does not align with the broader public good or withstand critical examination.

It is deeply regrettable that any Member of this Assembly advocated an approach that sidelines ministerial discretion and even more so in circumstances where the judge concluded that the recommendation was demonstrably flawed. Such a finding underscores the importance of robust ministerial oversight and the dangers of uncritical acceptance of official advice.

We should not confine our criticism to the Northern Ireland Assembly. The Northern Ireland Office Minister saw fit to intervene in the debate in the House of Commons and, when asked about the issue [Fleur Anderson M.P. replied](#),

"Integrated education is a devolved matter for the Executive, but this Government are unapologetically supportive of integrated education. I have spoken to the headteachers of Bangor Academy and Rathmore Primary School this week, and they, as well as parents and pupils at the schools, are shocked by the decision. I hope that the Education Minister will work with them to resolve his concerns and listen to parents, who overwhelmingly want their children to benefit from integrated education."

Had the Minister taken the time to read the legislation she may have thought better of making such an uninformed intervention.

Seven issues addressed of general application in the judgment.

The judgment provides seven very important clarifications moving forward. While some of these may be regarded as self-evident, in light of the ongoing misunderstanding of the arrangements I set them out in the words of Mr Justice McAlinden below.

1. *"In the context of the discharge of a specific statutory function where the decision-maker is fully informed of the multi-factorial elements relevant to the decision and is advised by appropriate subject specialists, the court's role is limited and supervisory. A form of light touch scrutiny is the appropriate description for the intensity of review conducted by the judicial review court."*
2. *"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."*
3. *"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."*
4. *"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."*
5. *"The assessment of what constitutes reasonable numbers in the case of any particular application is for the Department/Minister to determine, taking into account a whole raft of factors. ... It is also worthwhile highlighting that the language of Article 92(6) clearly signposts that significant deference should be given to the Minister's assessment of whether it is likely that there will be reasonable numbers of both Protestant and Catholic pupils. The phrase used is if it "appears to the" Minister and this phrase was clearly used deliberately and its meaning must be respected."*
6. *"The fact that the demand for integrated education outstrips the available provision of integrated education in the catchment area of the school wishing to transform is obviously relevant to the assessment of whether it is likely that reasonable numbers of both Protestant and Roman Catholic children will be enrolled in the school after transformation. But unmet demand in the catchment area must be demonstrated to include significant unmet demand amongst the minority religion at the school. It is a nonsense to suggest that unmet demand automatically means that reasonable numbers of both Protestants and Catholics will be achieved if it transpires that there is a very significant disparity in numbers before transformation and the unmet demand in the catchment area comes solely or overwhelmingly from the majority religion at the school."*
7. *"Ministers are entitled to disagree with officials. That is part and parcel of the democratic process."*

Finally, let me say that litigation is expensive. The applicants in this case were publicly funded, as were the department. It would be unsurprising if the total bill did not run to many tens of thousands of pounds.

The judgment states *"The courts are not here as tools to be used by one party or another in disputes or arguments on socio-economic, cultural, educational, healthcare or other policies. The courts are here to uphold the rule of law, to clarify what the law means and to assist in ensuring that private citizens, corporate or other entities and government bodies and agencies act in a lawful manner and can avail of the protections the law affords them. All too often now, matters are brought before the*

courts in the guise of a legal challenge when in fact they are blatant policy challenges. Such litigations strategies are to be deprecated."

I would be surprised if the applicants or those who were responsible for the challenges were not encouraged to seek a judicial review by what can now be confirmed to be ill informed comments and analysis including by members of this House. I conclude by quoting from my reply to the BBC's Mark Simpson in an interview on 9 January.

When asked if I was expecting to end up in court over this, I replied,

"I would hope not, but ultimately that again is part of our democratic society that we live in, people have the right to challenge and therefore if people decide to take a challenge in that respect that is entirely a matter for them to consider doing so. I have set out the process that I have followed, I have given a rationale for that, and I think that is one that will stand according to the tests that is down in legislation."

It is regrettable that so much public money was expended to confirm my initial analysis.