



# JR - Lessons Learnt and Implications for the Future

APTIS Conference - Tuesday, 18<sup>th</sup> November 2014



# Presentation Aims

- To outline the lessons arising from the JR
- To discuss potential implications for the integrated movement
- To discuss potential implications for DE



# How the law fits in

- Law – Legislation and case law
- Policies
- Procedures
- Practice



# The Legislation

- Chapter VI of Education Reform (NI) Order 1989

- Article 64 (1)

It shall be the duty of the Department to encourage and facilitate the development of integrated education, that is to say the education together at school of Protestant and Roman Catholic pupils.

- Article 64(2) – payment of grants to a body

- Article 64(3) – provision of information



# The Legislation

- Chapter VI of Education Reform (NI) Order 1989
- Article 66(2)

The scheme of management for a grant-maintained integrated school shall require the Board of Governors to use its best endeavours, in exercising its functions under the Education Orders, to ensure that the management, control and ethos of the school are such as are likely to attract to the school reasonable numbers of both Protestant and Roman Catholic pupils.



# Article 64 – What does it mean and to whom does the law apply?



# DE's Concessions – The Law

- Accepted Article 64 has practical consequences and legislative significance
- Includes taking positive steps or removing obstacles
- Referred to the Minister's guidance of 19/12/2013
  - ...[N]o policy which will be applied by the Respondent in considering development proposals from integrated schools is inconsistent with its Article 64 duty [para 44]



# The Judgment

- **To whom is the Art. 64 duty owed?**
- *‘Integrated Education is a standalone concept’*
- *‘Integrated Education must be the service of imparting knowledge to young people from all backgrounds as equals’ [para. 51]*





# The Judgment

- *A school which has a predominantly catholic or predominantly protestant ethos ... cannot be said to be delivering integrated education (i.e. serving members of different religious groups equally)*



# The Judgment

- *‘This is because, as part of its constitution as an institution it is fundamentally oriented to one religious cannon over another. Therefore, the minority faith in any denominational school is not receiving ‘equal’ exposure to its faith as the majority faith’. [Both para. 52]*
- *‘As against this, an integrated school strives to achieve an equal balance in relation to worship, celebration and exposure to both faiths’. [para. 53]*



# The Judgment

- *‘This is reflected in its constitution and the board must strive in its ethos to achieve this’*
- *‘For these reasons it must be the case that the integrated education referred to in the article is education that is integrated throughout and not education that is delivered by a partisan board’  
[both para. 53]*



# Where and when does the law apply?



# The Legal Challenge

The Judicial Review related to:

- **Development Proposals**
- **Area Planning**
- **Needs Model**

And the interaction between them all



## DE's Concessions

- When considering proposals in the future it is recognised that consent of other sectors is not a prerequisite
- It is up to the relevant ELB and management authorities to manage impact of approval of a DP as part of the area planning process
- Lack of an agreement in area plan does not preclude proposals being brought forward in any sector
- All taken from para. 40



# The Judgment

- **The Needs Model**
- Paras. 56 and 57 – summary of the needs model
- *‘The needs model assumes no growth in the integrated sector’. [para. 58]*



# The Judgment

- *‘The needs model itself is just an analytical tool, but the results of the analysis will feed into a plan which will underscore all strategic decisions in relation to the provision of education in a given area’. [para. 59]*
- *‘It is intended that all dynamic, day to day decisions about educational provision in the area will be assessed against this **comparatively static** long range plan’. [para. 59]*



# The Judgment

- *‘It will be easier for dynamic decisions which are in line with the long range plan (i.e. where sectoral take up remains proportionately the same) to be approved than dynamic decisions which are out of line with the long range plan (i.e. growth of one sector has not been projected).’ [para. 59]*



# The Judgment

- *‘It is by no means the case that these kinds of decisions will be impossible, but there will be an additional friction impeding their progress as compared to decisions in line with the long term plan.’*
- **‘The creation of an additional difficulty is the opposite of encouraging and facilitating [both from para. 59]**



# The Judgment

- *‘Using an analytical tool to plan for an area is of course acceptable and necessary, however the inflexibility of the projections used will have the effect of making it difficult to accommodate the A64 duty in future day to day decisions.’*
- **‘The department need to be alive to the A64 duty at all levels, including the strategic level.’ [both from para. 60]**



# Lessons

- Article 64(1) – applies to Chapter VI schools only
- Integrated education – a standalone concept
- Needs Model assumes no growth in the integrated sector
- DE to be alive to the duty at all levels – including the strategic level



# Implications for the Integrated Movement

## Internally:

- Taking on board the JR
- Use some of the definitions in judgment?
- Spread the learning
- Create materials – for different audiences
- Judgment Implementation Group – JIG



# Implications for the Integrated Movement

## Externally:

- DE must be alive to Art. 64 – *the law* – at all levels, the law must be used at all levels
- Meetings with DE
- DPs – at *all* stages – **DE guidance 26/09/14?**
- Submissions – including needs model/area plans



# Potential Implications for DE

- Must give effect to the law – Art. 64 and JR
- **The Department needs to be alive to the A64 duty at all levels, including the strategic level**
- Policies, procedures, practices
- Day to day decisions to future planning and delivery



# Potential Implications for DE

## More specifically

- Education Authority
- Reviews on integrated education
- Area plans and needs model *must* give effect to the law
- Guidance – EA/ALBs/ DE itself?





# Questions and Issues

- Is there scope to use the JR and Article 64 to develop integrated education?
- How do you get the word out?
- How do you ensure practices reflect accurately the law?
- What changes do you want to see?

# Thank you!



Public Interest Litigation Support

David Hawkins

Project Manager & Solicitor

Community House,  
City Link Business Park  
6A Albert Street,  
Belfast  
BT12 4HQ

Tel: 028 9040 8724

Email: [david@pilsni.org](mailto:david@pilsni.org)