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Northern Ireland makes an interesting case study for an analysis of freedom, autonomy and accountability in education. On the one hand, the education system is subject to a series of highly-regulated quality controls on matters such as the content of the statutory curriculum, the recognition of teachers, the publication of information and school governance. On the other hand, there is considerable autonomy in relation to school admissions, the appointment of teachers and school finance. Schools are also given considerable freedom to pursue a distinctive educational, religious and/or linguistic ethos. This balance between state control of educational quality, local autonomy and active facilitation of schools which wish to pursue a distinctive ethos is a product of two inter-related factors. The first of these is that Northern Ireland is part of the United Kingdom (which is constituted by Great Britain and Northern Ireland) and has been influenced to a significant extent by educational policy developments emanating from the Westminster Parliament in London.¹ The second is Northern Ireland's unique social and political context and in particular the fact that it is in the process of emerging from over forty years of violent conflict between its Protestant and Catholic communities.

The conflict in Northern Ireland has long historical roots, but can be traced to the plantation of Ulster in the seventeenth century.² After Ireland was conquered by Britain, new settlers (who were usually English or Scottish Presbyterians) were

given lands confiscated from local people. Many of these people settled in the geographical north of the country. The rest of Ireland remained inhabited mainly by the indigenous Catholic population. In the late 19th century, the majority Catholic community on the island sought independence from Britain. The Protestant minority, concentrated in the north-east of the island, wanted to maintain the link with Britain. In 1921, the island was partitioned, with six of the northern counties forming Northern Ireland. Although the partition boundary had been drawn to reflect religious demography on the island as a whole, about a third of the population of Northern Ireland was Catholic and retained a desire to join the rest of Ireland (the Republic of Ireland) in a separate state. After Partition, politics in Northern Ireland became fixed around religion, with the Protestant majority supporting Unionist (pro-British) political parties while most Catholics supported Nationalist/Republican (pro-Irish unity) parties. Throughout the history of Northern Ireland, Republican terrorist organisations waged a campaign against the British State generating a counter offensive by loyalist (Pro-British) terrorist organisations. Between 1968 and 1994 almost 3,500 people died and many thousands more were injured. The main paramilitary organisations declared cease-fires in 1994 and an agreement on shared governance (‘the Belfast Agreement’) was signed in 1998.³ Since then, there has been an uneasy but increasingly established move towards peace and democratic engagement. The worst forms of violence (indiscriminate bombings and ‘tit for tat’ murders) are mainly over although there are still unacceptably high levels of violence within certain communities⁴ as well as a resurgence in violent attacks by dissident Republican groups.

Northern Ireland’s school system reflects the wider divisions in Northern Irish society in a number of respects. First, its schools are almost completely religiously segregated in terms of their pupil profile. Protestant children generally attend controlled (state) schools (managed by local education authorities) and Catholic pupils generally attend voluntary schools which are in the ownership of the Catholic Church. Approximately 6% of children attend “integrated” (mixed religion) schools. Secondly, with few exceptions, Boards of Governors in Northern Ireland have a significant proportion of their membership drawn from the local clergy or from those whom they have chosen to represent them. These positions are set down in legislation, affording the churches a significant statutory role in school governance.⁵

The influence of the churches can also be traced to the partition of the island of Ireland in 1921. In Northern Ireland, the new Unionist (Protestant) administration sought to overhaul the organisation of schools. Existing schools were offered the opportunity to transfer their assets to the state in return for positions on the school’s management committee. The Protestant Churches initially refused to support the Minister’s plans and held out, successfully, for measures which gave them a formal role in the new ‘state’ schools and which maintained their traditional Protestant

character.⁶ In contrast, the Catholic Church was suspicious of the new Northern Ireland state, viewing the process of transfer as a threat to Catholic education. Catholic schools chose to retain their voluntary status, and secured their autonomy by accepting a lower level of state funding (initially 65%) towards the capital costs of the school. What emerged, however, were two forms of publicly funded schools – controlled (state) schools for Protestants and voluntary schools for Catholics. This remained the case until the late 1970s when some parents who were unhappy with the segregated system began to establish ‘integrated’ (religiously mixed schools) and to seek state recognition and public funding. In 1978 legislation was introduced which enabled existing schools to transform to integrated schools. This had limited success.⁷ However, in 1989, in response to increased demand from parents, the government created a new category of school, the Grant-Maintained Integrated school.⁸ The numbers of pupils attending integrated schools has risen steadily since.

The structure of schooling

For nearly forty years, Northern Ireland was governed by “direct rule” from the Westminster Parliament in London. In 1974, in response to the growing social conflict and in the context of allegations of widespread discrimination against the minority Catholic community, the Northern Ireland Parliament was abolished and legislative authority was transferred to the United Kingdom government at Westminster. The 1998 Belfast Agreement provided for the devolution of executive and legislative responsibility to a new Northern Ireland Assembly, operating on a basis of power-sharing and cross-community consensus on controversial issues. This was established in 1999 but was suspended twice before being dissolved in October 2002 as a result of ongoing concerns in the Unionist community about the failure of paramilitary organisations to decommission their weapons. Elections to the Assembly in November 2003 resulted in a swing towards Unionist politicians who were Anti-Agreement (i.e. did not support the political arrangements negotiated as part of the Belfast Agreement). However, as a result of the St Andrew’s Agreement, signed in 2006, the main Ulster Unionist Party (the Democratic Unionist Party) agreed to take part in the Assembly with Ian Paisley as the First Minister and Martin McGuinness of Sinn Fein as the Deputy First Minister. Dr Paisley has since stepped down and been replaced by Peter Robinson.

The Department of Education (currently led by a Sinn Fein Minister for Education – see above) has primary responsibility for securing elementary and secondary education. The Department’s general legal obligation is to promote the education of the people of Northern Ireland.⁹ It has the key responsibility for drafting legislation and formulating educational policy. The major educational decisions (such as

funding formulae, school recognition and the statutory curriculum) are within its remit. It is also asked with ensuring that other bodies and persons comply with law and policy in education. Northern Ireland also has five Education and Library Boards (ELBs) responsible for the administration and delivery of educational services within a specific region of Northern Ireland. An ELB is required to ensure that there is efficient education available to meet the needs of its area. They administer school funding, establish controlled schools, provide assistance with transport and school meals, employ peripatetic teachers, enforce school attendance, manage the Education Welfare Service and administer the education appeals system.

Northern Ireland has three main legal categories of publicly funded school: controlled, voluntary, and integrated. Since 1989 schools in Northern Ireland have had significant responsibility for their own management. All schools have devolved budgets and can choose how to deploy their resources. They all set their own admission criteria and many schools will be directly responsible for the appointment of their own staff. Responsibility for these decisions is vested by law in the Board of Governors of the school. The membership of Boards of Governors is set out in legislation and varies depending on the category of school and the source and level of funding afforded to it.

Controlled schools

Controlled schools are wholly owned and run by the ELBs and therefore comprise the 'state' sector of schools. Many of the schools previously owned by the Protestant churches in Northern Ireland were transferred to the local authorities from the 1930s onwards in return for positions on the schools' management structures.¹⁰ In 1968, this right was extended to include any new (that is, not transferred) controlled schools that were opened by the Education and Library Boards ('ELBs'). Controlled schools are attended by mainly Protestant pupils. Controlled schools receive full funding for their capital and recurrent expenditure and are under the direct control of local ELBs. The Boards of Governors of these schools include representatives of the original Protestant transferors (i.e Church of Ireland, Presbyterian and Methodist churches).¹¹

Voluntary schools

Voluntary schools are publicly-funded schools which are not in the ownership of the state. The majority of these schools are in the ownership and management of the Catholic Church and are attended by mainly Catholic pupils.¹² There is also a small

number of schools in which children are taught through the medium of Irish.¹³ The Board of Governors of a voluntary school contains members nominated by the trustees of the school (usually the Catholic clergy), together with representatives of parents, teachers and ELBs.¹⁴ Full running costs are met in the same way as with controlled schools. Since 1993, voluntary schools have been able opt for 100% capital funding in which case the Department of Education has the right to nominate members on the Board of Governors.¹⁵ If schools do not opt for this they can still receive 85 per cent of their capital costs.

There are two types of voluntary schools: voluntary grammar schools and voluntary maintained schools. Voluntary grammar schools are secondary schools which are allowed to select (or rather cannot be prevented from selecting) pupils on the basis of academic ability.¹⁶ Voluntary maintained schools comprise both primary and secondary schools which do not select on ability. The majority of the voluntary maintained schools are under the management of the Catholic Church. In 1989, the Council for Catholic Maintained Schools ('the CCMS'), a body which promotes the effective management and provision of all Catholic primary and secondary schools, was given statutory recognition and funding by the Department of Education.¹⁷

Integrated schools

Integrated schools are schools which aim to provide a mixed religious environment. They are required by law to achieve a reasonable balance of Catholic and Protestant pupils in the student body.¹⁸ There are two types of integrated schools: controlled integrated schools and grant-maintained integrated schools. In controlled integrated schools the Board of Governors is comprised of representatives of both the Catholic and Protestant churches and the local ELB. The Board of Governors of a grant-maintained integrated school is composed of foundation governors, Department of Education nominees, parents and teachers.¹⁹ Existing controlled and voluntary schools can apply for grant-maintained integrated status and it is also possible to establish either type of school from scratch.

Legal framework

Northern Ireland does not have a traditional written constitution. The key piece of constitutional legislation, the Northern Ireland Act 1998, does not provide specifically for education, other than to say that it is a transferred matter (i.e. one which is devolved to the Northern Ireland Assembly). The key education provisions are contained in eight Education Orders. All of these have been made by way of Order

in Council at Westminster under Direct Rule. One consequence of this is that they are often modelled on previous legislative initiatives in England and Wales.²⁰ For instance, Northern Ireland has inherited a series of quality- control provisions which were designed for England and Wales in an effort to raise educational standards and increase accountability mechanisms. However, there are also a number of areas in which the law is distinctively different. These areas - school funding, elements of the statutory curriculum, the membership of boards of governors - often reflect Northern Ireland's distinct social and educational context and can, in many instances, be attributed to the influence of the local churches on the education system.

The Education and Libraries (NI) Order 1986

This is referred to as the principal order as it consolidated legislation dating back to 1972. It has been repeatedly amended but contains the key provisions on the obligations of the Department of Education, ELBs, the management of individual schools, changes to school status and the rights and duties of parents.

Education (Reform) (NI) Order 1989

The key policy objective underpinning this legislation was to raise educational standards, to give parents as greater say in the education of their children and to devolve power to a local school level. It introduced the following changes: the introduction of a common curriculum; the implementation of an admission policy based on open enrolment; financial delegation to schools and an enhanced role for Boards of Governors in the management of schools.

Education (NI) Order 1993

The key change introduced by this legislation was to allow for the provision of 100% capital grants voluntary schools. It also introduced an appeals system for pupils expelled from school.

Education (NI) Order 1996

The 1996 Order introduced a series of provisions which increased the rights of parents of pupils with special educational needs. It also established an Independent

Schools Tribunal and gave ELBs a power to direct a grant-aided school to admit a pupil who has been expelled from another school.

Education (NI) Order 1997

The primary focus of the 1997 Order was to clarify the legal provisions on open enrolment as a result of a series of cases initiated by parents dissatisfied with their child's failure to be admitted to the school of their choice. The 1997 Order also contained changes to the school transport provisions, limiting financial assistance to children attending 'the nearest suitable school'.

Education (NI) Order 1998

The major focus of the 1998 Order was school discipline. It introduced new responsibilities for Boards of Governors in relation to disciplinary policies and clarified the law in relation to detention and restraint of pupils. It also established a General Teaching Council for Northern Ireland.

Education and Libraries (NI) Order 2003

This introduced a new common funding formula for all grant-aided schools. It also placed Boards of Governors under a statutory obligation to safeguard and promote the welfare of pupils and to take measures to protect children and prevent bullying.

Education (NI) Order 2006

This provides the framework for the revised curriculum and amended the law on admissions to prevent grammar schools from selecting children for admissions on the basis of ability. The latter has not been implemented due to a clause negotiated as part of the St Andrew's Agreement (see discussion below)

Freedom to establish independent schools

There is considerable freedom to establish independent schools. Provided these schools meet the requirements of state inspections, anybody or organisation can establish a school which will meet public attendance requirements. However, in practice there are very few schools in Northern Ireland which are not publicly-

funded. Leaving aside the preparatory departments attached to a number of the publicly-funded grammar schools (which charge fees) and one or two exceptions, independent schools in Northern Ireland fall into one of two categories - schools organised by the Christian churches (e.g. the Free Presbyterian Church); and integrated and Irish-medium schools which are established by parents independently and then, when they can show viability in terms of pupil enrolment, seek formal recognition and funding from the Department of Education. For the most part, independent schools do not charge fees. They rely instead on fund-raising and endowments. In 2010/11 there were only 631 pupils attending independent secondary schools, a fact which might be taken to be an indication of the high level of public satisfaction with Northern Ireland's publicly-funded schools.

Education at home

Parents are under an obligation to secure their child's education by 'regular school attendance or otherwise.'²¹ The inclusion of the phrase 'or otherwise' leaves open the possibility that a parent might educate his or her child either at home or in a school setting which does not have official recognition. If parents opt to educate a child at home, they must still satisfy the ELB that the child is receiving 'efficient full-time education suitable to his age ability and aptitude and to any special educational needs he may have'.²² Parents do not have to prove that the education their child is receiving is equivalent to or as good as that which they would receive at school.²³ The onus is simply to show that it is 'suitable'. The legislation does not specify the procedure which must be followed in determining whether the child is receiving a suitable education. However, an ELB cannot assume that a failure to register at school is in itself a failure to provide a suitable education. If the ELB has doubts about the suitability of the child's education, it must investigate the education being provided fairly.²⁴ In particular, the ELB should let the parent know of the particular issues causing concern so that the parent has an opportunity of both making representations and of taking measures to deal with the areas of concern. If a parent is successful in satisfying the ELB that the child is receiving a satisfactory education, then the parent is required to continue to satisfy the ELB of the suitability of the education at intervals of not less than 12 months.²⁵

School choice not limited by family income

School choice in Northern Ireland is not limited by family income directly. As stated above, there are very few private (independent) schools and no significant demand to attend the private schools which do exist. Admissions to state schools are determined

through a policy of open enrolment (see below). The law allows parents to express a preference for any school. This is not confined to any particular geographical location. However, if the school is over-subscribed, governors are required to apply admissions criteria which they draw up to determine which children will be offered places at the school. At secondary level, the major restriction is the result of the 11-plus tests. This will determine which children will be admitted to grammar schools, i.e. schools with an explicit academic focus. Research into the effects of the selective system of secondary education has shown that the separation of children at this stage of their schooling exacerbates Northern Ireland's existing social divisions.²⁶ The reality of the tests is that – while they are on the face of it merit-based – children from affluent middle class backgrounds are more likely to be successful and to reap the educational benefits of attendance at grammar school. Moreover, the admissions criteria employed by individual grammar schools to determine which children will be admitted often reinforce these social divisions (e.g. by prioritising children whose parents have attended the school).²⁷ In summary, while on the face of it state schools are open to all, the current system of academic selection has been shown to favour those from more affluent backgrounds in terms of gaining access to the more prestigious academically-focused publicly funded schools.

School distinctiveness protected by law and policy

Northern Ireland has a wide range of distinctive types of publicly-funded school. In addition to controlled (state) schools, full funding for capital and recurrent costs is provided to Catholic schools, Irish-medium schools and Integrated schools. This was not always the case. Prior to 1989, schools which were not controlled by the state could only receive a maximum of 85% of their capital costs. The decision to provide 100% funding to integrated schools was taken in 1989 as part of series of measures designed to increase parental choice. In 1993, legislation was enacted which allowed voluntary (mainly Catholic) schools to opt for full funding of capital costs.²⁸ This major change in policy was initiated in response to a body of academic research which indicated that lower levels of attainment in Catholic schools could be linked to the reduced capital funding.²⁹ The key change for the Irish medium sector came about as a result of the Belfast Agreement. Not only did the United Kingdom agree to ratify the European Charter for Regional and Minority Languages but domestic legislation was introduced which required the Department of Education to support and facilitate the development of Irish language education.³⁰ This ultimately led to a review of the viability criteria for the establishment of new Irish medium schools.

The advances which have been made in terms of state recognition for a diverse range of schools have been secured through long-standing campaigns in each of these

sectors which relied heavily on arguments about equality and minority rights. What is perhaps surprising is that the current financial arrangements for Northern Ireland's schools go considerably beyond what is required by international human rights covenants. For instance, the European Convention on Human Rights (the ECHR) offers individual states a wide discretion as to how to regulate their education systems and in particular how they should be funded. A previous attempt to argue that lower levels of capital funding for integrated schools had been deemed inadmissible by the European Commission who considered that the reduced funding was an appropriate offset for the increased autonomy in the school's management structures.³¹ Moreover, it is also clear that the ECHR does not give parents a right to have children educated in accordance with a linguistic preference.³² The reason why these advances have been acceded to by government can, of course, be traced to Northern Ireland's conflict and the government's desire to ensure that there is no differential treatment between Northern Ireland's two main religious traditions. The willingness to provide funding which goes beyond that available to similar schools in other parts of the United Kingdom is inextricably linked to Northern Ireland's unique social and political context.

Although schools may have a distinctive religious, philosophical or linguistic character, all are bound by the statutory requirements of the Northern Ireland Curriculum. When the introduction of a statutory curriculum was first proposed in 1988 many educationalists objected to it, arguing that Northern Ireland did not need centralised control over the content of the curriculum as educational standards were high. In fact, there was an argument that Northern Ireland had a particular need for an initiative such as this because of the disparate educational structures and ongoing concerns about under-achievement in the Catholic community. There was a body of research which indicated that there were key differences in the curricula employed in state (*de facto* Protestant) schools and Catholic schools. Put simply, Protestant schools had more students studying science and technology while Catholic schools placed more emphasis on humanities.³³ There was also evidence that Catholic school leavers had lower attainment levels than their Protestant peers, a fact which had knock-on effects in relation to levels of employment in the Catholic community.³⁴ The introduction of a common curriculum represented a step towards a closer alignment of the provision made in the different categories of school, thus bridging some of the gaps engendered by Northern Ireland's highly segregated education system. Ensuring that all children are taught the same things at the same level is one strategy for ensuring that separate systems maintain a degree of equality. In 2006, a Revised Curriculum for Northern Ireland was introduced which is much less prescriptive than its predecessor and which emphasises cross-curricular learning and skills. Even so, each area has statements of statutory minimum entitlement which should ensure a level of uniformity across Northern Ireland's school sector.

In practice, the factor which perhaps has most impact on school distinctiveness is the approach to religious education. Legislation requires all publicly funded schools to do

two things: (a) to provide religious education to pupils; and (b) to have a daily period of collective worship. There is no provision allowing individual schools to be granted exception from the religious education or collective worship provisions. The curriculum of all grant-aided schools (other than nursery schools) must include provision for the religious education for all registered pupils.³⁵ All publicly funded schools are required to follow the core syllabus for religion which was prepared by the four main Christian churches (Catholic, Presbyterian, Anglican and Methodist)³⁶ This is of a Christian nature but is not distinctive of any particular denomination. Schools are not tied exclusively to this but can include additional matters, skills or processes in that teaching. Subject to the statutory requirements on the Northern Ireland Curriculum and the provisions on religious education, schools in Northern Ireland tend to have quite distinct ethos which might be summarised as follows:

Controlled schools: These are effectively the state schools in Northern Ireland. They are, however, attended by mainly Protestant pupils and will often have a de facto Protestant ethos. In a controlled school, the religious education provided must always be non-denominational Christian.³⁷ It must be based on the 'Holy Scriptures according to some authoritative version or versions thereof' but must not include instruction 'as to any tenet distinctive of any particular religious denomination.'³⁸

Voluntary schools (mainly Catholic schools): Voluntary schools are free to provide religious instruction which reflects the beliefs of a particular religious denomination. In practice, the majority of voluntary schools are Catholic and provide religious education in the Catholic ethos. Religious symbols and other religious elements are a common feature of school life in Northern Ireland. In Catholic schools, in particular, not only are religious pictures and statues on display throughout the school but all classes (not just religious education classes) will normally commence with a prayer.

Integrated schools (mixed religion schools): The philosophy of an integrated school will be guided by the Northern Ireland Council for Integrated Education's Statement of Principles. Integrated schools have a choice. Some choose to provide non-denominational religious education. Other will provide a range of denominational religious instruction in order to attract pupils of both religions.

Irish Medium schools. Irish medium schools derive their distinctive character from the fact that the majority of lessons are conducted through the medium of the Irish language. In spite of the association of the language with the Catholic community in Northern Ireland and the fact that the majority of pupils will be from a Catholic background, the schools are inter-denominational.

In summary, parents in Northern Ireland are often able to have their children educated in accordance with their religious, philosophical or linguistic preferences.

The high degree of respect for parental wishes, delivered through a series of equally funded school options is, on one interpretation, a model of multi-culturalism. The difficulty is that the highly separatist approach to schooling creates new demands in terms of the need to secure respect for diversity and tolerance between the Catholic and Protestant communities. There have, however, been systematic attempts to address this, primarily through curriculum initiatives which are considered further below.

Decisions about admitting pupils

The Education Reform (NI) Order 1989 was responsible for the implementation of a system of open enrolment. This has since been revised by the Education (NI) Order 2006. Under this system, ELBs are required to make arrangements for parents resident in its area to express a preference as to the school at which they wish their children to be educated and to give reasons for that preference.³⁹ Whether or not a child gains admission to a school depends on a large extent on the school's physical capacity as indicated by its enrolment and admissions numbers. The enrolment number refers to the overall number of pupils registered at the school. The admissions number is the number of pupils which the school can admit into its first year. Both are determined by the Department of Education ('the Department') according to criteria which focus primarily on the school's physical accommodation. The admission and enrolment numbers are crucial to each admissions decision. If a school is under-subscribed, it must normally admit all children who apply. If a school is oversubscribed (i.e. applications exceed the admissions number), it must use published admissions criteria to determine which children will be granted admission. Boards of Governors of a grant-aided school are required to draw up the criteria to be applied in selecting pupils for admission to the school in the event of over-subscription.⁴⁰

The major policy objective underlying the system of open enrolment which underpins the admissions system was the extension of parental choice. However, schools were given control over the admissions process as a means of exercising some influence over the profile of their pupil body. In theory, the setting of admissions criteria should enable Boards of Governors to control their intake and therefore to influence or retain the particular ethos of the school. This does occur to some extent. For instance, integrated schools use admissions criteria which aim to ensure that their pupil body is balanced in terms of its Catholic and Protestant intake. The admissions criteria which Irish medium schools use will often give priority to children who have attended immersion courses in the Irish language or to those who come from homes where Irish is spoken. However, in spite of the fact that it is not

prohibited by law, Catholic schools do not employ criteria which directly select pupils on the basis of religion i.e. give priority to practising Catholics. The reality is that they do not need to do this. Applications for admission tend to reflect the religious divide, making criteria which select on the basis of religion unnecessary. In practice most Catholic parents send their children to Catholic schools and most Protestant parents will choose to send their children to controlled schools or schools with a de facto Protestant ethos. Apart from this, the major determinant in the admissions process is the result of the transfer procedure tests at secondary level discussed below.

The major issue in relation to school admissions is the ongoing controversy about selection on ability for secondary school. Northern Ireland continues to operate an academically selective system of education at secondary level. At the age of 11 pupils can undertake tests which are used to determine which children will attend academically-focused grammar schools and which children will attend non-selective secondary schools. Approximately 40% of children will secure places in grammar schools. The selective system has been the subject of criticism for many years and was subject to a major review.⁴¹ A review group which was established to make recommendations as to the way forward recommended ending the current system of selection on ability and this was ultimately translated into legislation.⁴² However, public views on selection are polarised and the differences of opinion are reflected in the positions of the political parties. Although the advantages and disadvantages of the selective system impact on both of the religious communities, the Unionist political parties support the retention of grammar schools while the Nationalist/Republican parties support its abolition. When legislation was introduced to remove selection in 2005, the issue was so controversial that it became one of the key elements of negotiation for Ulster Unionists during talks aimed at reinstating the Northern Ireland Assembly in 2006. The result of this was that the St Andrew's Agreement contained a clause prohibiting the Department of Education from ending selection without the support of the Assembly.⁴³

When the Assembly was reinstated in 2006, the new Sinn Fein Minister for Education refused to issue new regulations on school admissions or to hold a centrally organised 11-plus test. Grammar schools responded by organising their own private tests and there are now two 11-plus tests in operation: one used by Protestant Grammar schools and one used by Catholic Grammar schools. The Minister issued strongly worded guidance urging schools to desist from the tests and warning about the legal consequences of legal challenges by parents. However, the effect of the St Andrew's Agreement is that she is unable to specifically prohibit schools from using aptitude as a basis for admissions. Moreover, in the wake of the first admissions process, there were only a small number of legal challenges and all of these were unsuccessful. The Minister for Education continues to refuse to issue

new admissions regulations for schools and there appears to a complete political stalemate on the issue. The Minister will not reinstate a centrally organised test. Nor can she get the support of the Assembly to introduce regulations prohibiting schools from using tests as a basis for selection. In spite of public outcry, the position remains the same for a second year of the admissions process. It is expected that the Department's position might change after the Assembly elections in May 2011 since it is likely that a different (probably Unionist) political party will opt for the Ministry of Education in which case it is likely that they will reintroduce a central transfer test.

Academic selection aside, research published by the Northern Ireland Human Rights Commission has highlighted a number of criteria used by schools which give cause for concern from a human rights or equality perspective. For instance, one criterion which is commonly used by secondary schools is a criterion which prioritises children on the basis of their levels of attendance at primary school. Such criteria are arguably unlawful under the Education (NI) Order 1997 since secondary schools are not allowed to use criteria which select on aptitude. Nor are they allowed to use the comments of primary school principals. Moreover, from an equality perspective, the criteria might be applied in such a way as to discriminate against children with disabilities or on the basis of race - in particular Irish Traveller children. There is also concrete evidence linking poor attendance at school with socio-economic status which might be sufficient to sustain an argument under Article 14 of the ECHR.⁴⁴ In response to the Northern Ireland Human Rights Commission's report, the Department set up a Working Party which provided revised guidance to schools on admissions criteria. However, the guidance does not have legal force and some over-subscribed schools are continuing to use criteria which operate in way which might disadvantage children from less affluent backgrounds.

Decisions about staff

In order to work as a teacher in Northern Ireland, a person must have recognised qualifications which are set out in legislation. Primary responsibility for ensuring that teachers meet these requirements is vested in a statutory body, the General Teaching Council for Northern Ireland. The Council's responsibilities as set out in the Education (Northern Ireland) Order 1998. These include: the registration of teachers; the development of a Code of Professional Values and Practice for the profession; and disciplinary functions relating to professional misconduct. The actual responsibility for appointing teachers to a particular school depends on the category of school in question. The ELBs are the employing authorities for teachers in controlled schools. The Board of Governors is the employing authority for teachers in voluntary grammar

schools and in grant-maintained integrated schools. The CCMS is the employing authority for all teachers in Catholic maintained schools. In practice, the responsibility for making appointments is normally delegated to the Board of Governors in all schools.

The Boards of Governors of schools have a duty to ensure that pupils receive the statutory curriculum. The specific criteria for teacher appointments will normally be determined with regard to subject specialism or expertise. Teachers applying to work in Catholic primary schools are normally required to hold a certificate in Catholic Education. Religious education teachers in post-primary Catholic schools are required to hold a similar qualification, although this is not normally a requirement for other teachers. Religious tests are not otherwise applied directly in the recruitment process. However, it appears that they may be applied indirectly through questions asking how the applicant could contribute to the 'ethos' of the school.⁴⁵

The religious profile of the teaching staff in Northern Ireland's schools reflects the wider religious divisions within the school system, although there are no precise statistics available as teachers are exempted from the religious monitoring provisions of Northern Ireland's religious discrimination legislation.⁴⁶ In practice it is likely that almost all the teachers in Catholic schools will be from the Catholic community and the majority of teachers in controlled schools will be from the Protestant community. Students leaving university after teacher training usually seek employment in either the controlled or Catholic voluntary sector. Nonetheless, even though the pattern of job applications falls naturally into religious categories, the employment equality legislation explicitly endorses schools which wish to pursue a denominationally focused pattern of recruitment. Schools can use a person's religion as a determining factor in their appointments since the employment of teachers is not subject to the stringent requirements of the Fair Employment and Treatment (NI) Order 1998 in respect of religious discrimination. Moreover, although the European Union's Framework Directive on Equal Treatment in Employment and Occupation prohibits discrimination in schools on the basis of religion or belief other than where it is a genuine occupational requirement,⁴⁷ the Framework Directive includes an explicit exemption for Northern Ireland in relation to the recruitment not promotion) of teachers. This unusual exemption is stated to be 'in order to maintain a balance of opportunity in employment for teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities'.⁴⁸ These two arguments - maintaining a balance of opportunity in employment and furthering the reconciliation of historical divisions - seem somewhat at odds with the realities of the Northern Ireland school system. Instead, the key justification is

probably that advanced by the Catholic Church regarding the need to maintain a Catholic ethos in its schools.

The issue of the teachers' exemption from the religious discrimination legislation is required by law to be kept under review by the Equality Commission.⁴⁹ It has been part of a recent consultation on a proposed Single Equality Bill for Northern Ireland.⁵⁰ The Equality Commission has published research which indicates that there is little support for a change in the teacher exemption, either partially or in full.⁵¹ Moreover, if the legal position were to be changed and the exemption confined to situations where religion or belief is a genuine occupational requirement, the impact within the education system might be more symbolic than real as Protestant teachers are unlikely to seek employment in droves in Catholic schools.

Accountability for school quality

Accountability for school quality is ensured through a number of different mechanisms. Some of these, such as the legal requirements in relation to teacher recognition and the obligation on schools to follow a common curriculum, have been outlined earlier in the chapter. Northern Ireland has also adopted a series of legal provisions which had been designed originally to raise standards and secure increased accountability in schools in England and Wales. The key focus of these was on the membership and functions of the school Board of Governors. There were a series of initiatives aimed at decentralising control away from local education authorities and vesting it in schools themselves. In particular, schools were given increased autonomy in a range of areas which included the responsibility for finance through delegated funding, for the appointment of staff and for the determination of individual admissions policies. At the same time, there were systematic attempts to ensure increased accountability for decisions taken within the local frameworks. For instance, all governing bodies are required to have both teacher and parent representatives. Moreover, there are requirements on Boards of Governors to produce an annual report, to hold an annual parents' meeting and to prepare a school development plan.

An additional means of ensuring accountability for school quality is the statutory inspection system. Schools in Northern Ireland have always been subject to inspection. The current power of inspection is contained in article 102 of the 1986 Order which gives the Department of Education the power to inspect all schools (including independent schools). The power of inspection was extended in 1989 to

include a general duty to promote educational standards.⁵² All schools are required to be open to inspection at all reasonable times.⁵³ Inspections are carried out by officers appointed by the Department. The inspectors' duty is to "promote the highest standards of education and of professional practice among teachers."⁵⁴ This is done through monitoring, inspecting and reporting on the standard of education being provided and the standards of professional practice among teachers. Inspectors may advise the Department of Education on any aspect of the curriculum which the Department may refer them to or on which they think advice is appropriate.⁵⁵ The Department may give directions under article 101 of the 1986 Order for the purpose of remedying any matter referred to in the report of an inspector.⁵⁶ The Department also has the power to make an order appointing a person or persons to discharge any or all of the functions of a Board of Governors if the Board has failed to discharge those functions itself.⁵⁷

Teaching of values

One of the major challenges posed by the Northern Ireland education system is the fact that the vast majority of pupils receive their education in schools which are, for all practical purposes, homogeneously Protestant or Catholic. The connection between the high levels of religious segregation in schools and the conflict itself is highly contested. For some, the mere fact of separation inevitably embeds a sense of difference and therefore fuels the conflict.⁵⁸ Others argue that separate schools are largely irrelevant to a political conflict which is rooted in inequality and injustice, rather than ignorance.⁵⁹ Various initiatives in education have been pursued over the past 30 years all of which are at addressing the impacts of institutional segregation. For example, two of the cross-cutting themes in the first statutory curriculum were 'Education for Mutual Understanding' (EMU) and 'Cultural Heritage'. Both were designed 'improve the relationships between people of different cultural traditions.'⁶⁰ However, despite the fact they were part of the curriculum for fifteen years, research suggested that their impact has been limited.⁶¹

The UN Special Rapporteur on the Right to Education, in the wake of her mission to Northern Ireland, stressed the importance of education in 'rupturing intergenerational transmission' of the key factors that create conflict-prone societies and emphasized the role of the curriculum in peace-building. The statutory curriculum has undergone a major review and one that has been timely in terms of its capacity to take account of Northern Ireland's new post-conflict political arrangements and the need to secure tolerance for difference.⁶² One of the key changes in the Revised Curriculum is the inclusion of a new Area of Study called

‘Learning for Life and Work’. One of the key strands of this area is ‘Local and Global Citizenship’ which is intended to develop pupils’ capacity to participate effectively and positively in society, to influence democratic processes, and to make informed and responsible decisions as local and global citizens throughout their lives.⁶³ For instance, one of the proposed aims of the new curriculum will be to ‘help young people develop a morally and ethically sound value system based on internationally recognised principles of equality and human rights.’

Conclusions

Northern Ireland’s school system is an interesting mix of freedom, autonomy and accountability. There are significant levels of state control on the quality of education yet high levels of autonomy for schools in decision-making as well as considerable leeway for schools wishing to maintain a distinctive ethos. The high profile given to accountability mechanisms is a direct legacy of direct rule from Westminster and the fact that much of Northern Ireland’s legislation is copied directly from the English statute books. The United Kingdom government’s drive to raise standards in England and Wales has been transported across the Irish Sea to Northern Ireland. However, the fact that the state has actively facilitated schools with a distinctive ethos can only be fully understood with reference to Northern Ireland’s unique social and political circumstances, the recent conflict and the divisions between its two main religious traditions.

It has been seen that parents in Northern Ireland are able to have their children educated in publicly-funded schools in accordance with particular religious, philosophical, pedagogical and linguistic preferences. This emphasis on parental choice has been a mantra of successive British governments since the late 1980s. However, in Northern Ireland it acquired enhanced significance, as it became intertwined with a package of measures aimed at securing the co-operation of both sides of Northern Ireland’s divided community during the transition from conflict to peace. On the face of it the educational result is a major success: the system provides high quality education in a range of publicly-funded schools, each with a distinctive religious, philosophical or academic ethos. However, without underestimating the significance of this achievement, particularly within Northern Ireland’s political context, a number of problematic areas remain. For a start, the effect of Northern Ireland’s complex power-sharing political arrangements is that law and policy can grind to a halt when the major political parties disagree on an issue- as they currently have in the case of academic selection on ability. Moreover, there are ongoing debates about how best to promote tolerance, understanding and equality within an educational system which is characterised by religious and social segregation.

Societies world-wide are facing similar challenges. In Northern Ireland, however, the current political imperative to secure Northern Ireland's fragile peace should have enhanced the motivation to find a solution to these problems. It will be interesting to see whether what merges reinforces, refocuses or reforms the current balance of freedom, autonomy and accountability within the school system.

Endnotes

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- ¹ L. Lundy, 'From Act to Order: The Metamorphosis of Education Legislation' (1998) Vol XX1 *Liverpool Law Review* 63.
- ² For a detailed history and analysis of the reasons underlying the conflict see, J. Bardon, *A Short Illustrated History of Ulster*, (Belfast: Blackstaff Press, 1996); J.C. Beckett, *The Making of Modern Ireland, 1603-1923*, (London: Faber and Faber, 1981); A.T.Q. Stewart, *The Narrow Ground: the Roots of the Conflict in Ulster*, (London: Faber, 1989).
- ³ see P. Bew and G. Gillespie, *The Northern Ireland Peace Process 1993-1996: A Chronicle*, (1996: London, Serif).
- ⁴ B. Rowan, *The Armed Peace: Life and Death after the Ceasefires*, (Edinburgh: Mainstream Publishing, 2003).
- ⁵ See L. Lundy, *Education Law Policy and Practice in Northern Ireland*, (Belfast: SLS, 2000).
- ⁶ See D. H. Akenson, *Education and Enmity* (Newton Abbott: David and Charles, 1973).
- ⁷ K. Mullan, 'Never the Twain Shall Meet: legal and practical difficulties in the establishment of schools in Northern Ireland' (1987) 38(4) *Northern Ireland Legal Quarterly* 342-351.
- ⁸ P. Cumper, 'Parent Power' (1991) 3(1) *Education and the Law* 27-33.
- ⁹ Education Reform (NI) Order 1989, Art. 3.
- ¹⁰ For an account of this process, see S. Dunn, 'A short history of education in Northern Ireland, 1920 – 1990', Annex B in the *Fifteenth Report of the Standing Advisory Committee on Human Rights (1989 - 1990)* (London: HMSO, 1990), 49-96.
- ¹¹ There is a voluntary body, the Transferors' Representatives' Council, which represents the interests of the three main Protestant churches (the Church of Ireland, the Presbyterian Church in Ireland and the Methodist Church) in controlled schools.

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- ¹² There are 433 voluntary primary schools, only 16 of which are not Catholic maintained. There are 76 voluntary secondary schools, only one of which is not a Catholic maintained school. There are 54 voluntary grammar schools: 32 of these are Catholic schools and 22 are non-Catholic.
- ¹³ There are 12 publicly funded Irish medium schools, 11 primary schools and one secondary school. These are non-denominational. However, because of the close identification of the Irish language with the Catholic population, the majority of pupils will be from the Catholic community.
- ¹⁴ Sch. 4 to the Education and Libraries (NI) Order 1986 substituted by Sch. 3 of the Education (NI) Order 1993.
- ¹⁵ *Ibid.*
- ¹⁶ Approximately 60% of these schools are owned by the Catholic church. The remaining 40% are attended by mainly Protestant children and in a small number of instances have a specific Protestant denominational ethos.
- ¹⁷ Education Reform (NI) Order 1989, Art. 141.
- ¹⁸ *Ibid.*, Art. 64.
- ¹⁹ *Ibid.*, Sched. 5
- ²⁰ Lundy 1998
- ²¹ Education and Libraries (NI) Order 1986, Art. 46
- ²² *Ibid.*
- ²³ *Bevan v Shears* [1911] 2 KB 936
- ²⁴ *R v Gwent County Council, ex parte Perry* [1985] 129 Sol. J. 737
- ²⁵ Education (Registration and Attendance) Regulations (NI) 1974, reg. 14.
- ²⁶ .M. Gallagher and A. Smith, *The Effects of the Selective System of Secondary Education in Northern Ireland – Main Report* (Bangor: Department of Education, 2000).
- ²⁷ L. Lundy, *Access to Secondary Schools in Northern Ireland*, (Northern Ireland Human

Rights Commission, 2001).

²⁸ Education (NI) Order 1993, Art. 28.

²⁹ R. Cormack, AM. Gallagher and R. Osborne, 'Religious Affiliation and Educational Attainment In Northern Ireland: The Financing of Schools in Northern Ireland', Annex E in the *Sixteenth Report of the Standing Advisory Commission on Human Rights (1990-1991)* (London: HMSO, 1991) pp.117-212.

³⁰ Education (NI) Order 1989, Art. 89.

³¹ *X v United Kingdom* [1978] DR 179

³² *The Belgian Linguistics Case* [1968] 1 EHRR 252

³³ J. D'Arcy and A. E. Sutherland, 'System Inequalities in Curriculum Provision and Educational Attainment in Northern Ireland' Annex C in the *Fifteenth Report of the Standing Advisory Commission on Human Rights (1990-1991)*, (London: HMSO, 1990), 97-130.

³⁴ R. D. Osborne and R. J. Cormack, 'Gender and Religion as issues in Education Training and Entry to Work' in J. Harbinson ed *Growing up In Northern Ireland* (Belfast: Stranmillis College, 1989), 43-65.

³⁵ Education Reform (NI) Order 1989, Art. 5(1).

³⁶ Education (NI) Order 2006, Art. 11.

³⁷ Education and Libraries (NI) Order 1986, Art. 21(2).

³⁸ *Ibid.*

³⁹ Education (NI) Order 2006, Art. 28.

⁴⁰ The Board of Governors may amend the criteria from time to time. However, when the criteria in respect of a particular school year have been published, no amendment can be made without the Department's approval.

⁴¹ The review was commissioned by the Department of Education after research indicated that children from lower socio-economic groups were disadvantaged by the system and that the tests had a distorting effect on the primary curriculum. See A. M Gallagher and A. Smith 2000.

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- ⁴² *Report of the Post-Primary Review Body for Northern Ireland* (Bangor, Department of Education, 2001).
- ⁴³ *Future Post-Primary Arrangements in Northern Ireland: Advice from the Post-Primary Review Working Group* (Bangor, DENI, 2004).
- ⁴⁴ *Persistent School Absenteeism in Northern Ireland* RD/2/95 (DENI, 1992).
- ⁴⁵ S. Dunn and A.M Gallagher, *Research Report: The Teacher Exception Provision and Equality in Employment in Northern Ireland* (Belfast: Equality Commission, 2002).
- ⁴⁶ Fair Employment and Treatment (NI) Order 1989.
- ⁴⁷ Council Directive 2000/78/EC
- ⁴⁸ *Ibid.*, Art. 15.
- ⁴⁹ Fair Employment and Treatment (NI) Order 1989.
- ⁵⁰ This was an attempt to merge Northern Ireland's four major pieces of anti-discrimination legislation into a single, coherent statute.
- ⁵¹ S. Dunn and A.M Gallagher 2002
- ⁵² Fair Employment and Treatment (NI) Order 1989, Art. 30.
- ⁵³ *Ibid.*, Art. 102(1).
- ⁵⁴ *Ibid.*, Art. 102(5).
- ⁵⁵ *Ibid.*, Art. 102B.
- ⁵⁶ *Ibid.*, Art. 102(8).
- ⁵⁷ *Ibid.*, Art. 101(4)-(5).
- ⁵⁸ See further T. Gallagher, *Education in Divided Societies*, (New York: Palgrave Mcmillan, 2005).
- ⁵⁹ J. Darby and S. Dunn, 'Segregated Schools: The Research Evidence' in R. D.Osborne, R. J. Cormack, and R. L. Miller, (ed.s) *Education and Policy in Northern Ireland*,
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(Belfast: Policy Research Institute, 1987).

⁶⁰ Council for the Curriculum, Examinations and Assessment, *Mutual Understanding and Cultural Heritage: Cross Curricular Guidance Materials*, (Belfast: CCEA, 1997), p.7.

⁶¹ A.Smith and A. Robinson, *Education for Mutual Understanding: The Initial Statutory Years*. (Coleraine: University of Ulster, 1996); R. Leitch and R. Kilpatrick, *Inside the Gates: Schools and the Troubles: A research report into how schools support children in relation to the political conflict in Northern Ireland*. (Belfast: Save the Children, 1999).

⁶² Northern Ireland Council for the Curriculum, Examinations and Assessment, *Pathways – Proposals for Curriculum and Assessment at Key Stage 3*. (Belfast: CEA, 2003)

⁶³ L.McEvoy, 'Beneath the Rhetoric: policy approximation and citizenship education in Northern Ireland' (2007) 2(2) 135-157.