Neutral Citation No: [2021] NIQB 86 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **SCO11633** *ICOS No:* **21/076610/01** *Delivered:* **11/10/2021**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY SEAN NAPIER FOR JUDICIAL REVIEW

AND IN THE MATTER OF DECISIONS OF THE FIRST MINISTER OF NORTHERN IRELAND; JUNIOR MINISTER MIDDLETON OF THE EXECUTIVE OFFICE; THE MINISTER FOR THE ECONOMY; THE MINISTER FOR EDUCATION; AND THE MINISTER FOR THE ENVIRONMENT, AGRICULTURE AND RURAL AFFAIRS

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Ronan Lavery QC and Colm Fegan (instructed by McIvor Farrell, solicitors) for the applicant
Tony McGleenan QC and Philip McAteer (instructed by the Departmental Solicitor's Office) for the respondents

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SCOFFIELD J

Introduction

[1] This is an application in which the applicant seeks to challenge decisions or actions on the part of a number of Ministers of the Northern Ireland Executive – acting in conformity with a policy outlined by their party leader, Sir Jeffrey Donaldson MP – by which the respondents either have not attended, or propose not to attend, meetings of the North-South Ministerial Council ("NSMC").

[2] The application was commenced – by way of application for leave to apply for judicial review – on 1 October 2021. The applicant sought an expedited hearing, particularly in light of the expectation that the respondents would not attend forthcoming NSMC meetings, and that they would fail to nominate another Minister to attend in their place; or that, particularly in the case of the first respondent, they would otherwise seek to ensure that such meetings do not proceed. The resultant

inability of scheduled NSMC meetings to proceed, the applicant contends, may have serious consequences.

[3] The application was listed for case management review on Thursday 7 October 2021 and, it having become clear that the proposed respondents were not seeking to argue that leave should be refused on the merits, and were in addition not pursuing the limited objection to the proposed proceedings raised in their response to pre-action correspondence, leave to apply for judicial review was granted later that day. Leave was granted on most, although not all, of the applicant's pleaded grounds.

[4] The parties were invited to seek to agree a litigation timetable in light of the acknowledged imminence of a number of further NSMC meetings which may be affected by the approach of the respondents which is under challenge in these proceedings. A further case management review was fixed for Friday 8 October 2021 in order to consider onward timetabling of the case.

[5] At the review hearing on 8 October however, senior counsel for the respondents informed the court that he would not be making any contrary submission in relation to the applicant's first ground of challenge – except insofar as section 52C of the Northern Ireland Act 1998 was relied upon. That ground of challenge is expressed in the following terms:

> "The Respondents' decision to withdraw from the NSMC was and is unlawful because… it frustrates, is contrary to, and in breach of the legal duties and responsibilities contained within Part V of the Northern Ireland Act 1998 (NIA) and specifically Sections 52A, 52B and 52C."

[6] Mr McGleenan QC also indicated that, in light of that position, his clients did not intend to file evidence; and later indicated that his clients' position on this issue could be characterised as a concession. In response, Mr Lavery QC for the applicant accepted that it was unnecessary for him to press any of the remaining grounds of challenge on which leave had been granted. Both parties effectively urged me to move straight to consideration of the appropriate remedy to be granted in this case. I discuss the court's approach to the issue of remedy below.

[7] Before granting any remedy, however, as a court of public law, the court must be satisfied that there is a sound legal basis for the grant of any relief. The Judicial Review Court will not simply grant a remedy when exercising its supervisory jurisdiction in the public interest merely because the parties consent. For that reason, I have set out below in brief compass the reasons why I am satisfied that Mr McGleenan was correct to make the concession which he has in this case; and why I am further satisfied that the grant of relief is appropriate.

Factual Background

[8] The focus of the applicant's challenge has its genesis in a speech made by Sir Jeffrey Donaldson MP, the leader of the Democratic Unionist Party ("DUP"), on 9 September 2021. A full copy of the speech has been placed before the court. Amongst other matters, Sir Jeffrey set out a number of steps to be taken by the DUP in response to its opposition to the Ireland/Northern Ireland Protocol to the agreement concluded between the United Kingdom and the European Union in relation to the UK's withdrawal from the EU ("the Northern Ireland Protocol").

[9] I emphasise that, in these proceedings, the court is not concerned with the political merits or demerits of the Northern Ireland Protocol, nor with the merits or otherwise of the DUP's opposition to it. These proceedings are concerned solely with whether one of the steps outlined by Sir Jeffrey, which has since been put into action, has resulted in (or will result in) unlawful actions on the part of Ministers of the Northern Ireland Executive. That step was to "immediately withdraw from the structures of Strand Two of the Belfast Agreement relating to north south arrangements…"; also described by Sir Jeffrey simply as "our withdrawal from Strand Two." Strand Two of the Belfast Agreement provides for the establishment and operation of the North-South Ministerial Council and related all-island implementation bodies.

[10] Statements made in the Northern Ireland Assembly by the fifth respondent on 14 September 2021 confirmed the position as set out in Sir Jeffrey's speech. Minister Poots, when asked about the DUP's proposed withdrawal from the NSMC, indicated that Ministers (plainly the DUP Ministers, when read in context) would stand over the statement made by their party leader; and that they understood that this "will cause problems." More directly, further to the grant of leave in these proceedings, when indicating that his clients did not intend to file any evidence in the proceedings, Mr McGleenan confirmed that all of the respondents adhered to the approach and rationale set out in Sir Jeffrey Donaldson's speech.

[11] The applicant has also drawn attention to media reports, or comments or correspondence from other Executive Ministers, indicating that a number of recent NSMC meetings have been unable to proceed because of non-attendance by DUP Ministers. In particular, it seems that a meeting scheduled for 29 September 2021 was not able to proceed because of the non-attendance of the fifth respondent; and that a meeting scheduled for 30 September 2021 was not able to proceed because of the non-attendance of the second respondent. The Minister for Communities issued a statement complaining about the latter of these meetings (which she attended) not being able to go ahead. In a statement in response from Sir Jeffrey, he referred to the fact that, "Our Ministers have put a stop to the North-South structures because we need to bring the Irish Sea Border to a head."

[12] I am satisfied on the basis of the above, and the approach adopted by the respondents in these proceedings, that there is a policy of DUP Ministers not

attending at NSMC meetings and that this is calculated to thwart the operation of that Council.

[13] In terms of the asserted urgency of these proceedings and potential consequences if the present position continues, the applicant has also relied upon statements by the Minister for Finance, reported in the media, expressing concern that very significant amounts of European funding (up to £1bn) available to Northern Ireland through the Peace Plus programme may be put in jeopardy or reduced if a NSMC meeting scheduled for October (likely to be that scheduled for 22 October: see paragraph [14] below) does not proceed. This has been denied and described as "scare-mongering" by at least one DUP representative; but the Finance Minister maintains that there is a legal requirement for the funding to be signed off by the NSMC. Full details about this issue have not been provided to the court but there is a suggestion that a programme document requires to be approved by the Executive, the Irish Government, the NSMC and then the EU Commission, in order to permit the new programme to commence in early 2022. I have been told that there is not yet Executive approval for the programme (although it is unclear whether the absence of such approval is a further consequence of the DUP Ministers' present opposition to the operation of the North-South structures or arises independently). In the absence of such agreement, Mr McGleenan submits, the requirement for the NSMC to also approve the programme does not arise. It is not possible for me to reach any clear view on the level of risk to funding which may arise in these circumstances; and I simply record that there does appear to be at least some risk of the loss of some funding to Northern Ireland, even if only for one of the seven years of the intended programme, should the meeting scheduled for 22 October be prevented from going ahead.

[14] In light of the applicant's concerns, I asked for a clear written indication on behalf of the respondents of the forthcoming meetings of the NSMC and these have been confirmed in correspondence from the Departmental Solicitor's Office. For each meeting, this identifies the appropriate Minister (whose area of Ministerial responsibility will be addressed), as well as an accompanying Minister, in order to ensure cross-community participation. The relevant attendees have been identified as follows:

(i) A meeting is scheduled for 14 October dealing with health and food safety promotion, in respect of which the Minister for Health (Minister Swann) is the appropriate minister, to be accompanied by Junior Minister Kearney of the Executive Office;

(ii) A meeting is scheduled for 15 October dealing with the environment, in respect of which the Minister for Agriculture, the Environment and Rural Affairs (Minister Poots) is the appropriate minister, to be accompanied by Junior Minister Kearney of the Executive Office;

(iii) A further meeting (or separate section of the above meeting) is also scheduled for 15 October dealing with acquaculture and marine matters, in respect of which the Minister for Agriculture, the Environment and Rural Affairs (Minister Poots) is again the appropriate minister, to be accompanied by the Minister for Infrastructure (Minister Mallon); and

(iv) A meeting is then scheduled for 22 October dealing with the Special EU Programmes Body, in respect of which the Minister of Finance (Minister Murphy) is the appropriate minister, to be accompanied by the Minister for Education (Minister McIlveen).

[15] Arising from Mr McGleenan's response to enquiries from the court as to the position in respect of these meetings, my understanding is as follows:

(i) Ministers Swann and Kearney intend to attend the meeting scheduled for 14 October but, for the moment, no agenda has been agreed by the First Minister and deputy First Minister (acting jointly) for that meeting, which has thrown into doubt whether it can proceed. As a matter of the Council's practice and procedure, political agreement of the agenda in advance of the meeting is required.

(ii) Minister Poots, the appropriate Minister, has failed to provide any notification pursuant to section 52A(4) for the meeting or meetings scheduled for 15 October.

(iii) Minister McIlveen, the accompanying Minister, has not provided a notification of whether she intends to attend the meeting scheduled for 22 October (although there does not appear to be any clear obligation on an accompanying Minister, as opposed to the appropriate Minister, to do so).

[16] In summary, up to the point of the intervention of the court today, the expectation has been that, consistent with the approach set out by Sir Jeffrey and referred to above, the imminent meetings of the NSMC would not be able to proceed.

Relevant provisions of the Northern Ireland Act 1998

[17] There is no need, for present purposes, to consider in detail the provisions of the Belfast Agreement which gave rise to the establishment of the North-South Ministerial Council. The Northern Ireland Act 1998 ("NIA") went on to make provision for NSMC meetings and arrangements. It is clear from paragraph 2 of Strand Two of the Belfast Agreement that participation in its meetings was to be "one of the essential responsibilities" attaching to a ministerial post; and that alternative arrangements were to be made in the event of a relevant minister not participating.

[18] Section 52A(1) of the NIA provides that:

> "The First Minister and the deputy First Minister acting jointly shall, as far in advance of each meeting of the North-South Ministerial Council or the British-Irish Council as is reasonably practicable, give to the Executive Committee and to the Assembly the following information in relation to the meeting—
>
> (a) the date;
>
> (b) the agenda; and
>
> (c) (once determined under this section) the names of the Ministers or junior Ministers who are to attend the meeting."

[19] The First Minister and deputy First Minister therefore have an important function in relation to the transparency of the arrangements for meetings of the NSMC. The Executive Committee and the Assembly (and, through the Assembly, the public) ought to know when NSMC meetings are due to occur, what is on the agenda, and which Ministers are going to attend from the Northern Ireland Administration. The reference to the date, agenda and attendees being determined, and information about these matters being provided, "as far in advance of each meeting… as is reasonably practicable" reflects a statutory aim, consistent with the principle of good administration, of ensuring that these matters are both known and made known well in advance of any NSMC meetings. This information ought to be provided once the Ministers who are attending the meeting have been determined under the remaining provisions of section 52A. Section 52A(1) does not contain an express reference to the First Minister and deputy First Minister agreeing and approving the agenda; but it seems that this has been the Council's practice and procedure.

[20] Section 52A(2) provides that each Minister or junior Minister who has responsibility (whether or not with another Minister or junior Minister) in relation to any matter included in the agenda for a meeting of either Council – referred to as the "appropriate Minister" – shall be entitled to attend the meeting and to participate in the meeting so far as it relates to that matter. This is a sensible provision ensuring that decisions may not be taken in the absence of an appropriate Minister, with responsibility for the area under consideration, if they wish to attend. However, section 52A(2) deals with Ministerial *entitlement* to attend a NSMC meeting. It does not impose a duty upon an appropriate Minister to attend. That is provided for in section 52B of the NIA.

[21] Section 52B is particularly important for present purposes. It is entitled, "Section 52A: duty to attend Council meetings etc." In particular, section 52B(1)(a)

provides that, "It shall be a Ministerial responsibility of… each appropriate Minister… to participate in the meeting so far as it relates to matters for which the appropriate Minister has responsibility." It is not mere attendance which is mandated but, rather, participation. That is a concept which is defined for this purpose in section 52C(5) in the following terms: "In sections 52A and 52B and this section "participate" shall be construed… in relation to the North-South Ministerial Council, in accordance with paragraphs 5 and 6 of Strand Two of the Belfast Agreement."

[22] In turn, paragraph 5 of Strand Two of the Belfast Agreement sets out the function of the NSMC in the following terms:

> "(i) to exchange information, discuss and consult with a view to cooperating on matters of mutual interest within the competence of both Administrations, North and South;
>
> (ii) to use best endeavours to reach agreement on the adoption of common policies, in areas where there is a mutual cross-border and all-island benefit, and which are within the competence of both Administrations, North and South, making determined efforts to overcome any disagreements;
>
> (iii) to take decisions by agreement on policies for implementation separately in each jurisdiction, in relevant meaningful areas within the competence of both Administrations, North and South;
>
> (iv) to take decisions by agreement on policies and action at an all-island and cross-border level to be implemented by the bodies to be established as set out in paragraphs 8 and 9 below."

[23] Paragraph 6 of Strand Two makes clear that "each side" participating in the NSMC is "to be in a position to take decisions in the Council within the defined authority of those attending, through the arrangements in place for co-ordination of executive functions within each jurisdiction." Each side is also to remain accountable to the Assembly and Oireachtas respectively, whose approval, through the arrangements in place on either side, would be required for decisions beyond the defined authority of those attending.

[24] In light of the above, there is a Ministerial responsibility to participate in a NSMC meeting on the part of the appropriate Minister. Although phrased in the deferential language of a 'responsibility', I am satisfied that this is a legal duty. That conclusion flows from a natural reading of the text used, in context; and is also

supported by (i) paragraph 2 of Strand Two to the Belfast Agreement, which may be used an interpretative guide to the meaning the provision; (ii) the section heading of section 52B, which refers to the "duty to attend Council meetings"; and (iii) from other relevant provisions of the NIA, as amended (particularly the statutory references to the Ministerial Pledge of Office, contained in Schedule 4 to the NIA, which now includes reference to a pledge to participate fully in the NMSC).

[25] An appropriate Minister may nominate another Minister to attend in their stead (with that second Minister's consent): see section 52A(3). It is unclear precisely how the duty of participation in section 52B(1) fits together with the right to nominate another Minister to attend in one's place under section 52A and, in particular, under what conditions the nomination facility may be used to relieve the appropriate Minister of their obligation of participation. What is clear in my view, however, is that the appropriate Minister is under a duty to attend personally in the absence of having nominated another Minister to attend in his or her place.

[26] In any event, pursuant to section 52A(4), each appropriate Minister must notify the First Minister and the deputy First Minister, as soon as reasonably practicable and in any event no later than ten working days before the date of the meeting, of what they intend to do. There are three choices, set out in sub-paragraphs (a)-(c) of that subsection. Either the appropriate Minister intends to attend the meeting; or they do not intend to attend the meeting but have nominated another Minister to attend in their place; or they do not intend to attend the meeting but also do not intend, or have not been able, to make such a nomination. Again, the reference to providing this information as soon as reasonably practicable and no later than ten days before the meeting emphasises that these issues should be resolved in good time and not the subject of last-minute manoeuvring. That the ten days are ten working days is clear from section 52A(10). The result is that, at least two weeks in advance of any meeting, the First Minister and deputy First Minister should be clear as to whether the appropriate Minister intends to attend or not and, if not, whether they have made arrangements for the meeting to proceed in their absence.

[27] Significantly, where the third scenario arises – that is to say, where the appropriate Minister does not intend to attend and does not intend to nominate (or has not nominated) an alternative attendee in their place – or where the appropriate Minister simply fails to provide the notification required under subsection (4), section 52A(5) imposes a duty upon the First Minister and deputy First Minister to nominate someone to attend in place of the appropriate Minister. It is in these terms:

> "If the appropriate Minister gives a notification under subsection (4)(c) (or if the First Minister and the deputy First Minister receive no notification from him under subsection (4)), the First Minister and the deputy First Minister acting jointly shall nominate a Minister or junior Minister—

(a) to attend the meeting in place of the appropriate Minister; and

(b) to participate in the meeting so far as it relates to matters for which the appropriate Minister has responsibility."

[28] By this means, an appropriate Minister cannot impede the transaction of business in the NSMC in the area of his or her Ministerial responsibility. If the appropriate Minister is not complying with their duty, the statutory scheme provides a backstop. The First Minister and deputy First Minister must step in to fill the void. However, as usual, they must act jointly. The practical result of this is that one or other may effectively stymie the nomination of a replacement Minister to participate in the NSMC meeting in the place of the appropriate Minister who is not intending to participate. It is this function which gives rise to concern about the ability of the First Minister (in the present circumstances) to thwart a meeting of the NSMC in its entirety.

[29] Section 52A(7) provides that the First Minister and deputy First Minister acting jointly "shall make such nominations (or further nominations) of Ministers and junior Ministers (including where appropriate alternative nominations) as they consider necessary to ensure such cross-community participation in either Council as is required by the Belfast Agreement." One can draw two important matters from this provision. First, the NSMC still requires cross-community participation, even where the appropriate Minister is substituted by another Minister who is nominated to participate in their place. The requirement for this in the Belfast Agreement itself is not particularly clearly expressed; but Kerr J in *Re de Brun and McGuinness' Application* [2001] NIQB 3 held (and it has not been challenged in these proceedings) that, read as a whole, the Belfast Agreement did require cross-community participation in the Council. Second, the First Minister and deputy First Minister must keep going with alternative nominations until the necessary cross-community participation is enabled. Kerr J also held in the *de Brun and McGuinness* case that the First Minister and deputy First Minister were under an implied duty to "conscientiously seek to agree on nominations for the Council."

[30] Where a Minister is nominated (with their consent) by the appropriate Minister to attend in their place, or is nominated by the First Minister and deputy First Minister to attend, it is the duty of the nominated Minister to attend: see section 52B(1)(b) and 52B(2). Where a nominee is attending in place of an appropriate Minister, the appropriate Minister is also under a duty to provide the nominee with such information as may be necessary to enable their full participation in the meeting: see section 52B(3) and (4). Again, this is a provision plainly designed to ensure that an individual appropriate Minister cannot thwart the effective transaction of business at the Council meeting. The nominated Minister then has

authority to enter into arrangements and agreements within the appropriate Minister's area of responsibility: see section 52B(5).

[31] Provision is made in section 52A(6) for matters in relation to which the First Minister and the deputy First Minister are the appropriate Ministers, in which case the notification to be made by each of them is to be made to the other and, in default, the other may act alone to nominate another Minister to act in the first's place. In addition, by virtue of section 52A(8) and (9), where a matter is included on the agenda for a NSMC meeting which by virtue of section 20(3) or (4) of the NIA is one to be considered by the Executive Committee, the First Minister and deputy First Minister acting jointly are also entitled to attend and participate at the NSMC meeting in relation to that matter. These provisions do not appear to be directly relevant to the present scenario.

Discussion

[32] As ought to be clear from the discussion above, the statutory scheme – consistent with the Belfast Agreement – is set up to ensure that an appropriate Minister must participate in the NSMC in relation to their area of responsibility or, at least, nominate some other Minister to participate in their place. If they do neither, the First Minister and deputy First Minister are required to nominate (and further nominate, as necessary) another Minister or Ministers to participate in order to ensure that the meeting proceeds and business is transacted in the public interest. The recognition within the Act that an appropriate Minister may give notification of an intention neither to attend nor to nominate a replacement is not, when the scheme is read as a whole, a warrant for taking such a course. Rather, it is designed to ensure that timely remedial action may be taken by the First Minister and deputy First Minister in those circumstances.

[33] The evidence clearly suggests that individual DUP Ministers have neither been attending NSMC meetings, nor nominating another designated unionist Minister to attend in their place. Of equal (if not more) concern is that it further appears that the 'backstop' facility of nomination by the First Minister and deputy First Minister of a Minister to participate in place of the appropriate Minister has also not been used. No evidence has been provided in relation to this but it seems highly likely that this is as a result of the First Minister's failure to act jointly with the deputy First Minister in this regard. The evidence further suggests, as does the respondents' response to these proceedings, that the position which has been adopted is a calculated and collective one, participated in by each of the respondent Ministers.

[34] The present situation where NSMC meetings are unable to proceed because of the circumstances described above is, in my view, plainly a result of an unlawful failure to comply with obligations set out in the Northern Ireland Act 1998. Its provisions are designed to avert just such a situation. There is a legal obligation on an appropriate Minister to participate in a meeting of the Council in relation to a

matter on the agenda for which they have responsibility; or, at the very least, to seek to nominate another Minister to take their place. Where they do not do so, the First Minister and deputy First Minister should be informed in a timely manner and should make an appropriate nomination, or nominations, to allow the meeting to go ahead. All of these powers and duties should be exercised consistently with the purpose and intention of the governing statutory regime, pursuant to the well-known *Padfield* principle.

[35] In light of the above, it is unsurprising that the respondents in these proceedings have not sought to defend the legality of their approach when judged against the legal framework of Part V of the Northern Ireland Act.

[36] But what should the court now do about that? In judicial review proceedings, where one is dealing with the legality of the actions of a public authority, courts generally prefer to grant appropriate declaratory relief rather than a coercive remedy such as a mandatory order, relying on the public authority concerned to comply with its duty once it is clearly established: see Lewis, *Judicial Remedies in Public Law* (6th edition, 2021, Sweet & Maxwell) at paragraph 6-051. In my judgment, that is plainly the appropriate course in this case, at least in the first instance. Indeed, Mr Lavery correctly recognised that the grant of a declaration only at this stage would be the orthodox approach. As set out below, the parties have even agreed the terms of a declaration which they are content for the court to make.

[37] Mr Lavery goes further, however, and wants the court to actively superintend the further actions of the respondents once a declaration has been made. The applicant's Order 53 statement, as amended, includes a claim for an order of *mandamus* requiring the respondents, and each of them, to comply with their respective legal duties. The applicant is not pressing for the grant of such an order at this time but considers that it may be necessary in due course. Mr McGleenan submits that these proceedings should simply come to an end with the grant of an appropriate declaration and that any further requirement for intervention on the part of the courts can be dealt with by way of the issue of further proceedings. It seems to me that the best course in the circumstances, to minimise any potential further costs and delay, would be to adopt the middle path of simply granting the applicant liberty to apply to permit the matter to be brought back to the court under the auspices of these proceedings at some future point, if necessary, if and when there is an appropriate evidential basis to do so. Again, this is a course with well-established precedent: see, for example, the authorities cited in Fordham, *Judicial Review Handbook* (7th edition, 2020, Hart) at paragraph 24.4.27.

Conclusion and terms of declaration

[38] I will make a declaration in the following terms, to be included in a formal order of the court which I expect to be sealed and filed later today:

> "The respondents' decision to withdraw from the North-South Ministerial Council was and is unlawful because it frustrates, is contrary to, and is in breach of the legal duties and responsibilities contained within Part V of the Northern Ireland Act 1998 and, specifically, sections 52A and 52B."

[39] The wording of this declaration has been agreed between the applicant and the third to fifth respondents. Mr McGleenan appears for the first and second respondents but does not appear for the Executive Office or the deputy First Minister; and I am told by him that the first and second respondents are unable to give instructions on the proposed declaration in their ministerial capacity, since any such instructions can only be given on a joint basis with their Sinn Féin counterpart ministers. In any event, I am satisfied that it is appropriate that the declaration be made with reference to each of the respondents.

[40] Ministers of the Northern Ireland Executive are required to affirm the Pledge of Office. It is set out as part of the Northern Ireland Executive Ministerial Code, as well as in Schedule 4 to the Northern Ireland Act. The current Pledge of Office includes a commitment "to participate fully in the Executive Committee, the North-South Ministerial Council and the British-Irish Council." In addition, the relevant provisions of the NIA discussed above are also reflected in the Ministerial Code, to which each of the respondents is subject and with which Ministers have a duty to comply under section 28A(1) of the NIA. It is difficult for the court to reach any other conclusion but that the respondents have consciously determined to act in contravention of those provisions of the Pledge of Office and the Ministerial Code relating to participation in the NSMC.

[41] In light of the declaration which the court will make today, further obligations within the Pledge of Office and Ministerial Code also come more directly into play. Those are obligations to respect the rule of law. For instance, the Pledge of Office contains an affirmation that each relevant Minister will "uphold the rule of law based as it is on the fundamental principles of fairness, impartiality and democratic accountability, including support for… the courts…"; and will "support the rule of law unequivocally in word and deed" and "support all efforts to uphold it." The Ministerial Code of Conduct requires Ministers to follow the seven principles of public life set out by the Committee on Standards in Public Life, including that of leadership, by which holders of public office should promote and support the relevant principles by leadership and example.

[42] Although the court has not been required to consider the applicant's ground of challenge to the effect that the respondents wrongly abdicated their ministerial decision-making to a third party (their party leader), it is perhaps worth emphasising again that each Minister within the Northern Ireland Executive bears personal responsibility for compliance with their Pledge of Office, the Ministerial Code and their legal obligations.

[43] Having been urged by the respondents' counsel to do no more at this stage than grant declaratory relief, the court expects the respondents to comply with their legal obligations. I am not presently timetabling any further review or hearing in these proceedings because I proceed on the basis that this expectation will be met. Should that not occur, the applicant has liberty to apply for such further or other relief as may be appropriate. It is to be hoped that this is unnecessary. The court obviously possesses further powers, both as to the making of further orders and the enforcement of those orders; but, in my view, it would be a sorry spectacle for those powers to have to be invoked. The court would also be astute to any potential misuse of its process for the purposes of seeking political advantage, for instance by way of claims of martyrdom.

Costs

[44] The consequence of the grant of relief at this stage is inevitably that the application for judicial review is allowed. The normal course therefore would be that the applicant, who does not have the assistance of legal aid, is entitled to his costs of the proceedings from the respondents. I will hear further submissions on the issue of costs from the parties shortly. However, given the complete absence of any contrary submission on the applicant's first ground, and the immediate collapse of opposition to both the grant of leave and some form of declaratory relief (in contrast to the assertion in the respondents' response to pre-action correspondence to the effect that any proposed application for judicial review would be resisted), it is difficult to see how the legal costs associated with these proceedings can be considered to be anything other than a lamentable waste of public funds at a time of significant pressure on public finances.