

EQUALITY COMMISSION FOR NORTHERN IRELAND

RESEARCH REPORT: The Teacher Exception Provision and Equality in Employment in Northern Ireland

By Seamus Dunn and Tony Gallagher

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**Equality Commission for Northern Ireland
Equality House
7- 9 Shaftesbury Square
BELFAST BT2 7DP
Tel: 028 90 500600
Textphone: 028 90 500589**



EQUALITY COMMISSION FOR NORTHERN IRELAND FOREWORD TO RESEARCH ON:

**“The Exception of Teachers from the Fair Employment
and Treatment (Northern Ireland) Order 1998”**

Legislative History

1. Under Article 71 of the Fair Employment and Treatment (NI) Order 1998 (“FETO”), school teachers in Northern Ireland, namely those employed in primary, secondary and grammar schools, are exempt from the provisions of the Order. In relation to employment as a teacher, this means that those persons who believe they may have been the subject of religious discrimination cannot bring a complaint under the legislation. It also means there is no requirement on employers to monitor the community composition of applicants, appointees, employees or promotees. Similarly, education providers are not required to implement affirmative action procedures which would encourage applications from the under-represented community. The “teachers exception”, as it commonly known, has been in place since the original Fair Employment Act of 1976.
2. The concerns expressed by various interest groups at the time of the drafting of the original legislation in 1976 were as follows:

Roman Catholic educational interests were concerned that, without an exception for teachers, the 1976 Act could eventually lead to a system of non-denominational education, with a resulting loss of Catholic ethos. On the other hand, Protestant educational interests had a very different concern. They were concerned that, without an exception, Protestant teachers would be placed in an unduly unfavourable position. They believed that the state education system would come within the scope of the legislation, while the maintained schools, which are in the main Catholic, would not come within the scope of the legislation, as they could conceivably claim that religion was a bona fide occupational qualification. In other words, Roman Catholics would have a right to equality of opportunity in state schools but Protestants would not have the right to equality of opportunity in Catholic schools.

3. The Government at the time decided to exempt teachers in schools from the provisions of the fair employment legislation, and also gave responsibility for keeping the exception under review to the Fair Employment Agency. This duty (to keep the exception under review) has continued right up to the present under FETO.

Recent Legislative Developments

4. On 17 October 2000 the European Union adopted a Framework Directive for Equal Treatment in employment and occupations arising from the Treaty of Amsterdam. Article 18(2) of the Directive specifically exempts from the religion and political belief provisions the employment of teachers in schools in Northern Ireland. The text of Article 18(2) is as follows:

“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 there, the provisions on religion or belief in this directive shall not apply to the recruitment of teachers in schools in Northern Ireland in so far as this is expressly authorised by national legislation.”

5. It should be noted that the exception in FETO applies solely to employment as a teacher in a school. This contrasts with the Framework Directive which only exempts from non-discrimination provisions the recruitment of teachers in schools in Northern Ireland. The initial consultation by the Office of the First Minister and Deputy First Minister on a Single Equality Bill for Northern Ireland notes that the exception will need to be amended to reflect the Framework Directive. The narrowing of the present exception to recruitment and selection would bring such areas as promotion within the scope of the fair employment legislation.

Keeping the Exception of Teachers Under Review

6. In fulfilment of its duty to keep under review the schoolteachers exception in FETO, and in preparation for the Single Equality legislation, the Equality Commission decided to begin enquiries into the present structure of education, the arrangements for the employment of teachers, and the options for the narrowing of the exception.

7. As part of these enquiries Professor Seamus Dunn and Professor Tony Gallagher were commissioned to examine views on
 - the abolition of the teacher exception
 - the retention of the teacher exception for some, but not all, educational levels and
 - the retention of the teacher exception for specific types of teaching posts.

8. The Report of the research by Dunn and Gallagher (2002) is provided here, and the key themes which emerged from the study are as follows:

Within the educational sector, the exception of teachers from the religious discrimination provisions is widely accepted, and the support for change is a minority view. Indeed, it is widely recognised that the exception is a consequence of separate religion schools in Northern Ireland, and in twin there is widespread acceptance of a “chill factor” for teachers.

9. The Commission gave detailed consideration to the results of the research. It is particularly aware that its review duty has the express purpose of furthering equality of opportunity in the employment of teachers. However, in contrast to the findings of the research, the Commission does not consider that the continuation of the exception will so further equality of opportunity.

10. The implementation of the EU Framework Directive will require a least some modification to the Teachers Exception. The Commission has formally recommended to the Office of the First Minister and Deputy First Minister that teachers in schools should come within the ambit of the religious discrimination provisions of the Single Equality Act.

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EXECUTIVE SUMMARY

Fair employment legislation in Northern Ireland makes discrimination in employment on the basis of religion or political opinion illegal. Since the first legislation was introduced in 1976 there have been a number of exceptions identified, including an exception for the employment of teachers in primary, secondary and grammar schools. The teacher exception was introduced in recognition of the de facto denominational divide that operates in schools and, more particularly, the explicit recognition of the denominational character of schools under Catholic management arrangements.

The 1976 Act required the Fair Employment Agency (later Commission) to review the teacher exception. When all the equality agencies in Northern Ireland were combined in the Equality Commission work began on a draft Single Equality Bill. As part of the preparation for this Bill, the present study of views on the teacher exception was established. The purpose of the study was to examine views on:

- the abolition of the teacher exception;
- the retention of the teacher exception for some, but not all, educational levels; and
- the retention of the teacher exception for specific types of teaching posts.

Furthermore, these issues were to be addressed in the new context provided by the Good Friday Agreement and the recommendations arising from the Post Primary Review Body (Burns Report). Data were collected through interviews with individuals and organisations directly involved in education or with a specific educational interest. This included groups of student teachers. A number of themes emerged from these interviews:

- First, there was little evidence that the teacher exception, or more particularly its practical consequences, were much discussed by most educational bodies; rather it appeared to be accepted generally as one of the characteristics of the school system in Northern Ireland. This also appeared to be the predominant view among teachers and student teachers.
- Second, while there was some support for change, this was mainly confined to teacher trade unions and was a minority perspective. Most of the Churches were in favour of retaining the teacher exception, particularly the Catholic Church, and others who were prepared to consider possibilities for change were, in the main, resigned to retention. Most seemed to conclude that, if separate denominational schools were permitted on the basis of parental choice, then the school authorities should be able to recruit same-religion teachers to work in the schools in order to maintain denominational ethos. Furthermore, it was argued that if this condition was to be permitted for Catholic schools then the same conditions should apply to state, or de facto Protestant, schools. On this respect, it was noteworthy that while many of the respondents did not have particularly strong views on the recommendations of the Post Primary Review Body, some did express a degree of concern at

the possible dilution of schools' ethos if they became involved in collaborative arrangements with other schools.

- Third, views on the possibility of a partial change (through limiting the exception to primary teachers or to religious education teachers only) were closely linked to views on the overall merits of the issue. Thus, while there was a general view that an argument for the maintenance of the teacher exception might be particularly strong in relation to primary school teachers (since they are involved in significant level of preparation for religious rituals), opponents of change tended to favour no change of any kind, while the strongest advocates of change also preferred that any change be universal.
- Fourth, there was widespread acceptance of a 'chill factor' in applications for teaching posts, that is, a reluctance for Catholics to apply for posts in non-Catholic schools, and a reluctance for Protestants to apply for posts in Catholic schools. However, views differed on its significance: speakers for the Catholic system tended to see this as an inevitable, even appropriate, consequence of separate schools. By contrast, others tended to see the 'chill' as having the greatest affect on Protestants and thereby creating an imbalance in employment opportunities.
- Fifth, in relation to the 'chill factor', it is important to note that none of the employing authorities indicated that they applied religious tests directly in recruitment decisions for post-primary schools. Representatives of the Catholic and Protestant authorities did indicate that they used indirect factors as part of their recruitment decisions and that these were normally related to such issues as asking candidates how they could contribute to the ethos of a school, or through giving weight to particular references on character. Thus, while there are constraints on the employment of teachers of a different religious denomination, including 'chill factors', there is no bar on employment. In addition, it is likely that these constraints from employers and potential candidates operate across most schools, although probably to a slightly higher extent in Catholic schools.
- Sixth, it was widely accepted across the interests interviewed for this study that any change to the teacher exception would have consequences for all schools and not just Catholic schools.

Overall, this study has found that there is little evidence of widespread support for change in the teacher exception arrangements, either partially or in full. This reluctance to support change is held in varying degrees by different groups: the authorities of Catholic schools see the teacher exception as fundamental to the maintenance of separate schools, while many others seem more resigned to it as an inevitable consequence of separate schooling. While a number of different interests accepted that the changed circumstances following the Good Friday Agreement raised some questions on the teacher exception, in the main they were reluctant to embrace significant change at this time. Interestingly, most interviewees agreed that schools should reflect the diversity of Northern Ireland, but understood this to mean different things.

1 BACKGROUND TO THE STUDY

This exploratory study, commissioned by the Equality Commission for Northern Ireland, examines current views concerning the 'teacher exception' provision within existing Fair Employment legislation in Northern Ireland. This provision was introduced in the original 1976 Fair Employment Act on the grounds that the education system was *de facto* divided into parallel Catholic and Protestant systems.

The legislation provides a number of such exceptions for specified occupational groups, including teachers. In addition, a European Directive accepted by the UK prohibits discrimination in employment and promotion, but allows for an exception in the case of the recruitment of teachers. This directive will be taken into UK (and NI) legislation, and this will make it illegal to discriminate in regard to the promotion of teachers once they are working in schools, but would allow for the retention of the teacher exception in recruitment.

Although there was some dispute over the nomenclature involved during discussions on the Bill – one argument being that there were Catholic schools and State schools – data produced by the Department of Education in the 1990s on the religious composition of pupil enrolments at schools show that the notion of parallel religious school systems reflects a reality on the ground (see Table 1). In addition, the table highlights the existence of a religious mixed sector of integrated schools that had its origins in the 1980s but underwent notable expansion in the 1990s as a consequence of the 1989 Education Reform Order.

Table 1: Percentage of pupils in primary and post- primary schools in Northern Ireland in 1999/2000 by religion and school type (source: calculated from Department of Education Statistical Press Release, April 2001)

Religion of pupils	Protestant schools	Catholic schools	Integrated schools	All schools
Catholic	4	92	3	100
Protestant & Other	94	1	5	100
Not recorded	89	2	9	100
Total	49	47	4	100

The Fair Employment legislation included a requirement on the FEC to keep the teacher exception under review. In the past this usually involved a survey of the views of representatives of the main interest groups in education. Throughout most of the period the predominant view has been in favour of retaining the teacher exception, but in recent years some of the teacher unions have moved towards support for abolition. At the present time, with consultation on the contents of the Single Equality Bill underway, the Equality Commission decided to undertake a more extensive review of the teacher exception and this study is designed to contribute to these discussions.

The work was prompted in part by the changed political and social situation in Northern Ireland, and the impact of this on many aspects of the educational world (as exemplified, for example, by the Burns Report). In the past the question of teacher exception was felt to be of particular relevance for the Catholic Church, but it appears in recent years to have become a more nuanced matter. The Transferors' Representative Committee has for some time been making an argument about the need to maintain the Protestant traditions and legacy in public education in Northern Ireland. To a degree this expressions has been a consequence of the establishment of CCMS and NICIE, which appeared to provide Catholic and Integrated schools respectively with a central coherence denied to the Protestant sector.

In addition, the emergence of the integrated schools has introduced a new element into the picture, since any removal of the teacher exception is likely to cause some difficulties for their desire to maintain a religious balance in their teacher workforce. It might, however, be argued that an approach designed to maintain a balance could still be legal under existing or likely provisions, if the intention is thought to be markedly different from one which seeks to exclude a particular category of person.

It is also possible that the rationale for the teacher exception may be stronger in some sectors of the education system than in others. In particular, there might be more support for maintaining the teacher exception in primary schools, but less concern for secondary or grammar schools. In the same vein, it might be considered appropriate to maintain the exception for some or all teachers of Religious Education in some post-primary schools. This might be related to the greater extent of preparation for religious rites of passage that occurs for primary-age children.

Finally, any consideration of these issues ought to be set within the context provided by the recommendations of the Burns Report, in particular the recommendation for the establishment of collaborating networks of schools in a new collegiate arrangement.

2. METHODOLOGY

The study was therefore concerned with the teacher exception provision, and the methods used to collect relevant data included the following:

- Desk research, involving a study of existing relevant documents, and a survey of criteria used in the advertising and selection of teachers in schools.
- In-depth face-to-face interviews with representatives and members of the various key contact organisations.
- Four focus groups with students in QUB, UUC, Stranmillis University College and St Mary's University College, to identify (for example) if there is any widespread interest in a removal of the teacher exception so as to permit first-time teachers to seek employment in all sectors.

The range of questions and issues considered during the study, included the following:

- the future of the teacher exception;

- the possible implications of the Burns Report on teacher exception;
- a number of possible alternatives to the current arrangements, including a teacher exception which is restricted to particular parts or levels of the education system;
- the possible need to examine the criteria used in teacher recruitment exercises (that is, in advertising and selection) in order to gauge the extent to which religious tests are currently used, and the rationale offered to justify their use.

A wide range of educational interests was identified, and interviews were carried out with leaders, key players and others, to seek to identify views on the way forward. Those consulted included the following:

- representatives of the various denominational interests in education, including the Council for the Catholic Maintained Schools (CCMS) and the Transferors' Representative Council (TRC);
- representatives of other employing authorities, including the Northern Catholic Bishops as trustees, trustees in other voluntary grammar schools, grant maintained integrated schools and the Education and Library Boards;
- members of other key representative groups, including the Northern Ireland Council for Integrated Education (NICIE), the Governing Bodies Association (GBA), and the various teacher trade unions;
- various individuals in key positions.

In addition it was decided to interview officials from the Department as to their views on this matter and on the implications of a change in the teacher exception provision for the education system as a whole.

The data collected from student teachers was considered particularly appropriate for a number of reasons. The students are members of the first generation to complete their higher education in the era of the Good Friday Agreement and the enhanced equality agenda of that era; they have, as yet, no direct experience of being employed in schools; and, they can indicate the extent to which they are aware of any 'chill factor' at work that discourages employment aspirations across sectors.

3. PRESENTATION OF THE DATA

The evidence collected in the interviews is presented first, using as a structure the eight headings (sections 4 to 11 below) from the schedule used in the interviews (see Appendix A). Evidence from student groups is presented in Section 12, and the views of the Department of Education in Section 13. The full set of sections is therefore shown below.

Section 4. The future of the teacher exception.

Section 5. The possible effects of the Burns Report.

Section 6. Is the case for the teacher exception facility equally strong for all sectors of the education system?

- Section 7. To what extent are religious tests currently used in the process of recruiting teachers?
- Section 8. Integrated schools and quota arrangements.
- Section 9. The views of student teachers and newly qualified teachers.
- Section 10. Evidence of a 'chill factor' operating.
- Section 11. Is there evidence that the support for the teacher exception is diminishing?
- Section 12 Student Focus Groups.
- Section 13 The Department of Education.

4. VIEWS ON THE FUTURE OF THE TEACHER EXCEPTION

4.1 Summary

The first set of issues explored in the interviews concerned the future of the teacher exception provision, and there were four parts to the questions used. These can be summarised as:

- Is there still support for the teacher exception provision?
- Are there implications for this arising from the Good Friday Agreement?
- Are there also likely to be human rights or equality issues arising?
- There are now integrated schools, Irish language schools, and Independent Christian schools. Does this complicate the issues?

A simplified general summary of the data received and analysed in this study would indicate that there is little evidence of any strong current of support for change in relation to the teacher exception provision.

A more detailed analysis suggests that these responses can be divided into three parts. This triangular division is, of course, a little artificial and there exists both considerable overlap, and at times a degree of contradiction, between them. They are also unequal in terms of the degree of support that they attracted. However the use of this division allows for a more detailed discussion of the variations within the overall set of responses.

There were also two strong cross-cutting components within all three parts: the first arose out of the well-known arguments relating to the role of religion in education and the concept of school ethos; the second component related to the Good Friday Agreement, and to various understandings of its assumptions and intentions, and its implications for social and political change in Northern Ireland. The three parts might be summed up as consisting of those who were:

- ... *opponents of change*: Those who were fairly implacably opposed to any change in the provision at any level, with arguments that emphasised fundamental positions.
- ... *willing to consider change*: Those who thought it important to begin to look for compromise and dialogue about the issues, without taking up uncompromising positions at the beginning. It was felt that to do so would

drive people further back into their camps, and would therefore be likely to make the divisions worse.

- ... *advocates of change*: Those who were strongly opposed to the teacher exception on a range of grounds, including that it was discriminatory, often unfair, and socially divisive.

4.2 *Those who were opponents of change*. The first of these positions, and probably the most strongly expressed, was taken up almost without exception by those associated with, or representative of, religious denominations, and the Catholic Church in particular. The arguments used are familiar, and reflect fairly closely the more general arguments in favour of the continuation of the Catholic Schools sector.¹ However, the arguments marshaled by the Catholic representatives also included references to the parallel interest in this question of the Northern Ireland Commission for Human Rights (NICHR), the Schools Standards and Framework Act 1998 for England and Wales, recent statements by the UK Government on faith-based schools, the Good Friday Agreement, and the notion of 'integrationism'. Further reference to these is given below.

Interviews began by postulating a distinction between general support from churches for schools that maintain their separate traditions and legacy in public life in Northern Ireland, on the one hand, and support for the teacher exception provision, on the other. However, Catholic Church representatives insisted that general support for the existence of Catholic Schools is inextricably linked with particular support for teacher exception. Without the teacher exception provision, then the existence of Catholic education is itself endangered. The argument about teacher exception was, therefore, always referred back to the more general argument about the existence of the schools, and the postulated distinction could not – in their view - be maintained.

This interpretation was not supported by everyone, and representatives of some teacher unions along with some Area Boards, while not prepared to oppose the wider rights of churches in relation to education, argued that the teacher exception provision was a separate matter, that it was not necessarily a condition for these wider rights, and that it had wider implications for both equality matters and human rights. The churches in Northern Ireland, it was argued, want to maintain their separateness, and while this was a legitimate aspiration, the law ought not to place this aspiration at the top of its priorities. One interviewee from an Area Board argued that the European Framework Directive gave an important lead about future procedures in that it had laid down the general direction to be taken with regard to recruitment and promotion, and that therefore the Northern Ireland Single Equality Bill must take account of this.

Catholic representatives also pointed out that the Northern Ireland Commission for Human Rights (NICHR) had also included a question on the teacher exception

¹ For recent expressions of these views see in particular: (a) The Catholic Bishops of Northern Ireland (2001) *Proclaiming the Mission: the Distinctive Philosophy and Values of Catholic Education*, Armagh; and (b) The Catholic Bishops of Northern Ireland (2001) *Building Peace, Shaping the Future*, Armagh.

provision in its Consultative Document 'Making a Bill of Rights for Northern Ireland'.² It was suggested that this double focus on the same question by two different agencies was a source of some confusion, for example as to possible differences between the Single Equality Bill and the Bill of Rights. In particular the Catholic Bishops of Northern Ireland have written a response to the NICHR on this matter, and the content of this makes clear their continuing, firm opposition to any change in the teacher exception provision:

“We hold that Denominational schools and the FETO exemptions which apply to schools in Northern Ireland exist to support the exercise of this right ... ” (the right of all parents to send their children to schools of their choice).

The Bishops' paper also refers (for support) to Section 60 of the Schools Standards and Framework Act 1998 for England and Wales, where it states that schools with a religious character can give preference in the employment, recruitment and promotion of teachers to those “whose religious beliefs are in accordance with the tenets of that religion.”

Recent developments in the UK in relation to 'faith-based' schools were also mentioned. The Government's White Paper on education of September 2001 contains a commitment to supporting more faith-based schools, with the suggestion that Independent schools be encouraged to join the state sector. Although this policy was supported by the opposition Conservative Party, it has led to a strong debate in Britain about the place of faith-based schools in Britain's multicultural society, with some groups – especially some teacher unions – expressing their opposition. It was suggested however that, in the context of Northern Ireland, this sort of Government thinking provided implicit support for Church schools (and therefore for the teacher exception).

Discussions in interviews on the relevance of the Good Friday Agreement produced the most significant differences of views. For Catholic representatives, the Good Friday Agreement was about the rights of all groups to retain their differences and cultures: the Catholic schools, by maintaining their separate traditions and legacy in public education in Northern Ireland, represented a profound exemplification of this principle. The notion of what was called “integrationism” was attacked as flawed, philosophically, politically and in relation to religion. Integrationism was construed as a desire that the Northern Ireland community should converge upon a single, united (or integrated) society with common views, common institutions and a common political liberality. The real problem, it was argued by church representatives, was not the absence of commonalities or the presence of differences, but the absence of tolerance for differences. The continuing existence of differences was crucial, valuable and inevitable, and the educational system should show respect and tolerance for the consequential wide range of views and procedures.

² Question 30: Should the Bill of Rights remove the specific exemption of teachers from the laws on religious and political discrimination in Northern Ireland, leaving the matter to be regulated in the same way as in other employment fields?

Opposing arguments that these were oversimplified understandings of complex ideas, and that differences and tolerance/intolerance were interrelated in a more intricate and undeciphered way, were not accepted. Also, since both sides claimed the notion of inclusiveness, an argument that too much emphasis on differences might lead to exclusion was also dismissed as the exact opposite of the truth. Only when there was respect for difference, it was argued, was it possible to be inclusive.

The central point, therefore, was that Catholic children should have the right to be educated within the Catholic faith in an institution that reflected that ethos. One Catholic interviewee said emphatically that “Education was about handing on the faith”. This implied that it was a basic human right to have denominational schools, and that the state should not move to oppose that right. It was also a matter of principle that individuals ought to be able to act according to their conscience. None of this, they thought, was at odds with the spirit of the Good Friday Agreement.

An additional point was raised by a senior Catholic representative in relation to the European Directive (accepted by the UK) which prohibits discrimination in employment and *promotion*, but allows for an exception in the case of the recruitment of teachers. The intention to prohibit “discrimination in promotion” surprised him, and he argued that this would be bound to have a strong negative effect on the current practice of appointing numbers of non-Catholics to teaching positions in Catholic Grammar schools. There would be occasions, he believed, when such a school would wish to promote a teacher to a senior position to take responsibility for some aspect of the religious character of the school. In these proposed new circumstances a non-Catholic teacher could use the law to make this impossible.

The position of the Protestant Churches was generally thought to be less clear and singular, and there was some disagreement as to whether or not the Protestant Churches had in fact expressed a view on the subject. A range of both Protestant and Catholic interviewees agreed that there was not, and could not be, a single, coherent position from the Protestant Churches because of their diversity, and that no such view had been formally expressed.

Nevertheless, arguments in relation to the controlled schools were used both to support the need to maintain the teacher exception provision, and also to oppose it. For example, one interviewee (who supported the teacher exception provision) argued that the historical background was of great significance, and that the transfer of ‘Protestant’ schools had disadvantaged this sector to the point where the teacher exception was even more important for them than for Catholics. The Protestant Churches had transferred their schools to the state (a long time ago), and so their only direct form of influence on education today was through their representation (as transferors) on Boards of Governors of controlled schools. For one interviewee the controlled schools are - to all intents and purposes - state schools, even though the great majority of their pupils and teachers are from the Protestant population: he thought that this was disastrous for the Protestant Churches and was therefore a supporter of teacher exception.

Another interviewee thought that, despite some rhetoric, there was relatively little mention of religion in controlled schools, even though Religious Education is

compulsory. He went on to argue that, while many controlled schools might say that they had a *Christian* ethos, he was not sure that many would say they were *Protestant* schools. He also believed that some Protestant Church leaders now regretted that the schools had been transferred, and would like to re-acquire some of their influence. They feel that, in terms of the Protestant tradition and its values, they have lost out.

These concerns, within the reformed churches, have been added to by the growing incidence of controlled schools transforming to the status of controlled-integrated, and it was argued that this process was having considerable impact on the Protestant Churches and the Protestant community, with further loss of influence in management and in job opportunities. This loss of influence was caused by the requirement within the integrated schools to produce a teaching staff that is balanced in its composition of Protestants and Roman Catholics. When this requirement in the integrated sector is combined with the requirement that those appointed to teaching posts in Catholic schools must have a confessional qualification, the inevitable result is that there are fewer jobs and less promotion opportunities for Protestants in the teaching profession as a whole. The disappearance of the teacher exception would reinforce that tendency.

The existence of a “Protestant view” on teacher exception was strongly supported by those representing the Transferors’ Representative Council.³ They argued that that Protestant Churches would wish to retain the teacher exception provision in legislation, because of the need to maintain the ethos and values of their schools, which they characterised as including “respect for truth, justice, fairness”. They accepted that the appointment of teachers should be carried out in a fair manner, but with the intention that the teachers appointed would “exemplify the ethos of their schools”. Excepting sacramental issues, they were doing the same as the Catholic Church when it said it wished to maintain its ethos in maintained schools. They felt that there was a danger that the ethos of controlled schools was being weakened, caused in part by the reduction of the number of transferors on governing boards.

This position was qualified in a further argument about the need for parity as between maintained and controlled schools. A removal of the exception provision might be possible if it applied equally to both. However, the requirement for teachers in (primary) maintained school to have an RE certificate, meant that Protestants were excluded, and so it was not a “level playing field”. A form of discrimination already existed, it was argued, in that “Catholics could apply to controlled schools, but Protestants could not apply to Catholic schools”. As it stands, therefore, the teacher exception clause did at least give controlled schools some protection.

In this context, there was mention of a paper published by the Transferors’ Representative Council – supported by Archbishop Eames – arguing for a body,

³ The main involvement of the Protestant Churches (mainly Anglican, Presbyterian and Methodist) in the management of education is as ‘Transferor Representatives’ on the Boards of Governors of ‘controlled’ schools. They represent those Churches that ‘transferred’ their schools between the 1930s and the 1950s into partnership with the local education authorities.

parallel to the Commission for Catholic Maintained Schools⁴, that would better represent the views and needs of Transferors (or Protestants). Perhaps surprisingly, senior Catholic representatives expressed total support for the creation of such a new body and argued that such a development was completely justified. One pointed out that the CCMS represented maintained schools, NICIE represented integrated schools, and that – in fairness – there ought to be a parallel body, that is a Commission for Protestant Controlled Schools (CPCS).

There was also a discussion about the reasons why the teacher exemption clause was included in the legislation⁵ in the first instance. Mr Orme, when presenting the Bill in Parliament in 1975, referred to teacher exception as follows:

Part V of the Bill specifies a number of exceptions ... Honourable members will recognise ... that because of the basis on which education is organised in Northern Ireland it is desirable that teachers in schools should be excepted from the Bill for the time being.⁶

The view was expressed by an interviewee that there appeared to be an assumption that the legislation was intended to protect Catholic schools and Catholic teachers from discrimination: however, it could be argued that it was actually intended to protect the controlled schools since they – unlike the Catholic schools – had no available pedagogical obstacle to appointing teachers from “the other side”.

4.3 Those who were willing to consider change. The second of the three forms of response was taken up by a wider range of interviewees including some of those associated with the Area Boards, and - to a degree- the trade unions. Their stance involved taking, what one interviewee described as, “a wider view of the complexities of the world of education across Northern Ireland.” This implied the need to acknowledge that change was inevitable and continuous, and that therefore positions on teacher exception that were formerly immovable needed to be, at the least, qualified according to context and circumstances.

Many interviewees, when pressed, were prepared - at the least - to accept the teacher exception provision; but some of them claimed that, in the context of the Good Friday Agreement, they felt uneasy about it, and that it was therefore important to continue to talk about it and to consider alternatives.

It was argued that the views and actions of the people were often in some contrast with those of church representatives, and that the Churches tended to ignore the widespread social changes that had taken place in recent times. The growth of secularism, the reduction in church attendance, the disposition among a sizeable section of the young to ignore church views, all meant that the power and influence of the churches was reduced. In relation to education, while it was clear that the church leaders found it difficult - formally or publicly - to support some proposed changes, they were well aware that on the ground more and more teachers were not

⁴ CCMS's role is to promote and support education with a Catholic ethos, and to co-ordinate the planning of school provision in the Catholic maintained sector.

⁵ Great Britain. Parliament. *The Fair Employment Act*, 1 December 1976.

⁶ HOC Parliamentary Debates 1975-76, Vol. 905, Col. 998.

using the background ethos of the school as a decisive variable in their search for employment. However, the arguments in this area were used both for and against change. For Catholic Church representatives, evidence of religious changes - such as declining attendance at mass - made the need for Catholic schools all the more important and made it imperative for Catholic schools to continue to “try to build the faith” in children. For others such changes were a signal that the population was ready to accept new ways of dealing with things.

The representative of one teacher union argued that both the Catholic Church (through CCMS) and the Protestant Churches (through the Transferors’ Representative Council) were, in effect, in support of maintaining separate traditions and therefore support for teacher exception. This interviewee thought that the proportion of teachers working in “schools from the other tradition” was, in some places, at about 10-12%. More generally he suggested that the movement towards school integration was clearly evident in that many teachers and pupils and parents were voting with their feet. However, he acknowledged that this was geographically variable and that it was certainly not happening in many areas where community tensions were high. Indeed he was prepared to argue that it would be unwise for teachers from other religions to work in schools in some areas.

All interviewees from the trade unions agreed that there was a need to do as much as possible to ensure that the best person got the job, but some thought that taking religion into account made this less likely. The view was also expressed that, because of the provision for exception, it was impossible to know who was sincere in their professions of religious fidelity, and that the system encouraged deception. However, in the end few were in favour of positive legislation that would force change, but would like to see a situation emerge where there was the potential for change and movement.

An Area Board person thought that, as the Good Friday Agreement rolled out and peace became perceived as the norm, there would be more demand for shared schooling. The effect of the Agreement was already evident in that there were more and more teachers moving across the sectors. He also claimed that the vast majority of integrated schools are transformed schools, that is, they are former controlled schools that have transformed into integrated schools. This willingness of many controlled schools to become integrated was bound to have an effect on the whole educational system, although it was difficult to predict what it would be. Certainly it seemed possible that it would lead to the exception clause being less of an issue. However he emphasised that there had been no debate on the issue and that it had not been raised at Board level.

Representatives of the Governing Bodies Association (which is comprised of voluntary grammar schools) could not remember any discussion about, or any opposition to, the teacher exception provision among school trustees and representatives on any side. One representative expressed the view that it would be difficult not to have an exception because of the attitudes of the churches. There was, however, no harm in reviewing exception, especially in light of the current emphasis on human rights and equality.

A number of respondents wanted to consider the question, what would be lost or changed if the exception was abolished? It was argued that the reality on the ground was that most teachers would wish to teach in schools within their own religious and cultural traditions, and that schools could find ways of ensuring that they appointed the sort of teachers that they wanted – through carefully phrased job descriptions, for example. One interviewee pointed out that if the particular exemption for teachers was not retained, it could be replaced by a general exemption allowing for discrimination in those situations where there was a genuine occupational requirement for the job in question.

Catholic Church representatives were convinced that using the job description in this way would not be legal under the Fair Employment legislation, and that they had been so advised by legal counsel: therefore they believed that the legal protection of the teacher exception was necessary. However, others argued that they could see nothing illegal about writing a job description that carefully described the detailed needs of the job. The Church representatives also argued that the more general issue of maintaining the ethos and religious culture would not be assured in this situation.

A representative of an Area Board thought that the continuation of the teacher exception would be bound to raise equality issues in relation to school appointments. He argued that, if someone is selected for a teaching job because of his or her religion, and if this profession of a religion is not relevant to the job to be done, then clearly there appears to be a discriminatory dimension. When one candidate is discriminated from another on the basis of religion, then human rights issues become involved. When a job is advertised, because there is a particular set of tasks to be done, it is important to be clear about the relevant criteria to be used. An employer must be aware of employment law and good practice.

However, Catholic representatives thought that this sort of view contained a fundamental misunderstanding of the Catholic Church's position on education: for the Church all teachers in a Catholic school are involved in generating within the school a Catholic ethos and spirit that is not simply about the sacraments, or pastoral matters, or the teaching of religion, although it was also about all of these and much more.

The new smaller school sectors were not perceived as having any very dramatic impact on the overall system. The Christian schools, it was argued, are not grant aided and so they are outside the system, so in a sense they can do as they please. The Irish medium schools, while likely to be mainly Catholic in numbers, are nevertheless different in their aspirations and their central focus: there is therefore no reason why their teaching staffs could not be mixed. However, another interviewee said that the Irish medium schools are perceived as nationalist/republican (whether they like it or not), but they would not necessarily be seen as Catholic.

It was however argued by some that there were aspects of the integrated schools structures that could be affected by any change in the teacher exception rules. Interviews with those associated with the schools indicated a split in their views on this. On one side, some thought that without the exception provision their need for a

mix of teachers from the two religious communities might be difficult to manage. One argued that removal of the clause could lead to a very complex situation with different sectors trying to make different cases, and this could lead to extensive litigation.

However, others argued that the actual existence of a range of school types was evidence that this was now a pluralist society, and so there was no need for 'protective' legislation. In an open market, people would gravitate naturally to their preferred sector. For example, one argued that the existence of the RE certificate meant that the Catholic Church would be able to appoint the sort of teachers that it wished to, even if the exception was removed. Another argued that there are many more mixed marriages than previously, and that nowadays it was often difficult to know what religion teachers and indeed pupils are, and that this meant that the exception provision would eventually be unnecessary.

The representatives of an Area Board claimed that their policy was to take every opportunity to give choice to parents, and so if parents supported the teacher exception, and saw it as the only way to protect the sort of schools that they desired, then it was the Board's duty to support this also. A copy of the Board's submission to the Human Rights Commission consultation document contained the following:

"The criteria for recruitment and selection of staff in any field of employment should focus clearly on the requirements of the post. This principle applies to teachers as much as any other group of employees. Elsewhere in the consultation document there is a clear intention to make provision for the religious convictions of children and their parents in choosing schools and it follows that the Bill of Rights would therefore enshrine the principle that many schools will have particular religious ethos. In view of this and the specific exemption for teachers from the recent EU Directive on employment equality the Board strongly believes that the exclusion of teachers from the fair employment legislation should remain for the foreseeable future."

4.4 Those who were advocates of change. A relatively small group, including in particular some representatives of teacher unions, took up the third position. Their view was that the Good Friday Agreement meant that Catholic and Protestant communities in Northern Ireland had to find structures and processes that would allow them to move away forever from the separations, differences and evasions that had characterised, and to a considerable degree still characterise, social life in Northern Ireland. Those who thought this way argued that the peace process contained, at least implicitly, a vision of the future that was at odds with the idea of teacher exception in anti-discrimination legislation. The current political and social context within Northern Ireland was about "defeating the past" through a set of institutions and procedures that focused on commonalities, human and civil rights, and equality. The teacher exception clause almost legislated for differences. If it was removed, teachers could then make up their own minds. To an extent this was already happening in that many teachers had made the decision for themselves and had sought and achieved teaching posts in schools from "the other side", or in integrated schools.

For some, the continuing provision of two separate school systems was in clear opposition to the spirit and indeed the intentions of the Good Friday Agreement, which was first and foremost about inclusiveness. In schools teachers can be discriminated against, and that if this happened in any other context it would be possible to take the case to a tribunal. However, because of the exception provision nothing can be done, and this was felt to be both unjust and unacceptable.

One union representative claimed that no adequate mechanisms existed to allow the exception provision to be reviewed, even though his union had raised this on many occasions. Despite the existence of the new Equality Schemes, he suggested that people are still unsure about the implications for them in particular circumstances. He had also raised the issue of exception with the Department of Education when its equality consultation was taking place, and had asked that the exception provision be reviewed, but nothing had happened.

He wished to emphasise two further points: first, in relation to teacher training, those training as primary teachers at St Mary's University College can get a qualification that allows them to teach in maintained schools. In contrast, those training at Stranmillis University College cannot get this qualification, with the result that members of this latter group are being discriminated against on religious grounds. In these situations there was no form of redress in existence, and it meant that not all teachers were being given the same opportunities. Second, he thought there was some evidence that Catholics who teach in integrated schools are finding it difficult to get jobs in Catholic maintained schools, and that this represented another subtle form of discrimination.

He thought that teaching jobs ought to be advertised in a range of newspapers and not just in those from one side, since this procedure was intended to discourage people from applying for jobs across the divide. Also that those Catholic teachers who spend some time in either controlled or integrated schools should be protected from discriminatory practices.

The current system of management of schools needed change also. In particular the special position given to the Transferors Representative Council was indefensible. This was an echo of the past that was not related to any current logic. "The schools could not be state schools and Protestant schools simultaneously." In this person's view, the establishment of CCMS had been a mistake as it had institutionalised separation, and also provided the maintained schools with a more favourable position in comparison with the controlled schools.

5. THE BURNS REPORT

Discussions on the Burns report were relatively muted, with a general impression that people were not yet able to think clearly about the implications of its main recommendations. In particular there was very little reference to the first two of the main Burns recommendations, that is Pupil Profiles and the abolition of the Eleven-Plus Transfer Tests. What discussion there was related to the proposed local collaborative networks of schools in a system of collegiates. However, even this did not generate very strong feelings, and there was a sense that it was important to give the process more time, so that a better understanding of Burns might emerge.

Essentially there were three responses to the question about the possible impact of collegiates on the teacher exception provision. First were those who thought that the major recommendations of the Report would not be implemented in any case, and that therefore it would have no impact at all on the teacher exception clause. This group was probably in the majority, and suggested a good deal of scepticism about both the perceived logistics and the feasibility of the proposals. "Don't hold your breath" was one response.

Second were those who saw very few implications for the teacher exception provision even if the Report was put into place either in whole or in part.

And third were those who accepted the possibility that the Burns proposals would have some sort of important impact. The views here were a little unfocussed, and the points made often turned out to refer back to the more general issues (discussed above) associated with the teacher exception generally.

One person from an Area Board said that he had recently had a meeting to discuss the Burns Report, and, during this, some fears were expressed that the ethos of the Catholic Church would be weakened if the collegiate systems were allowed to come into being. A collegiate structure, it was thought, would inevitably require freedom of movement by staff between schools, and this had obvious implications.

"So you could find different teachers teaching in different schools, and different children going to different schools for elements of their education, and this would bring about a cross fertilisation to some degree."

This, it was thought, would inevitably change the system and would probably mean that the clause would in the end go. All of this would constitute a danger to the Catholic Schools. In addition there was a considerable danger of extensive litigation and appeals to tribunals. Others echoed this last point, and one said, "For example, suppose it was argued that it was incumbent on the employer to show that a Protestant cannot do the job in a primary school."

One former school principal commented that the proposed collegiate system downgraded the Boards of Governors, and that school trustees were not even mentioned. She also believed that a collegiate system would make it possible to evade some of the Catholic church's needs in regard to schools ethos, and that it would be hard to maintain the ethos if lots of staff were to-ing and fro-ing. However, she did not think that this would happen overnight, and also that to a large extent it would have to happen voluntarily. She pointed out that Burns clearly states that collegiates would not affect the ethos of schools. Therefore, if the report is implemented in the spirit of Burns, then it should not affect the exemption provision.

Other possible difficulties mentioned by this interviewee were the probable emergence of troubles about promotion, and also the unforeseen effects of dramatic changes on ethos perhaps 20 years down the line.

Representatives of the Transferors' Representative Council claimed that there was much uncertainty and caution about the Burns proposals. One was described as "a concern about possible transfer of teachers within the collegiate framework": he wondered what this would actually involve, and what would be the scale – or the range of possible scales. Another person thought that he could see it working on a small scale, but that its implications for the Catholic and Protestant school systems were not at all clear.

A representative of the integrated schools agreed that this was a 'live' issue with obvious implications for the teacher exemption clause. He speculated that a collegiate structure would require freedom of movement by staff between schools, and this would in turn mean fewer restrictions generally within the educational system. During the discussion he became convinced that such changes would lead to the removal of the teacher exception provision.

Others were less anxious about the collegiates and felt that, if they came into existence, they would be arranged in such a way that the Catholic ethos was protected. In fact some were of the view that there would be in effect Catholic and Protestant collegiates.

One union representative pointed out that (in his opinion) the collegiate idea in Burns would have no impact at all on primary schools where the main emphasis on ethos was to be found, and was therefore largely irrelevant in relation to the question of teacher exception.

Another interviewee argued (in a more general way) that many things had changed and were changing in Northern Ireland, and that it was necessary to be patient and pragmatic. In 10-20 years time it would probably be less of a difficulty: however, now was a time of continuing political uncertainty and when and if everything settled down and the violence disappeared, then it is possible that there would be less suspicion and nervousness about changes designed to make Northern Ireland a more equitable and sharing society.

6. VIEWS ON ALTERNATIVES TO A UNIVERSAL TEACHER EXCEPTION

The idea of a 'qualified' or 'limited' teacher exception provision was explored in this section: that is a provision that is restricted to particular parts or levels of the education system. One possible approach to this would be to argue that there would be more support for maintaining the teacher exception in primary schools because of the need to prepare Catholic children for the sacraments: and less concern for secondary or grammar schools, where it might seem appropriate to retain the exception only for teachers of Religious Education, but not for all teachers.

The response of representatives of the Catholic Church was that, while there was an acceptance of the need to discuss this as an issue, there was a strong reluctance about abandoning the principle that all Catholic schools at all levels have a special ethos, and that this ought not to be compromised in any way. One trustee said that there was no question of the teacher exception clause being limited:

"The teacher exception clause has to operate across the Catholic

sector, at all levels and in all types of schools, because it fits the concept that our values are not only transmitted in RE classes but by staff at all levels.”

The Governing Bodies Association also accepted the ‘ethos’ argument, and, on the basis of that, could see no possibility of the argument for even partial change succeeding. They accepted that the case for retaining the exception might be stronger in the primary sector, but felt that, if ethos is to be the key factor, then this is at least equally as relevant for the secondary sector.

Representatives of the Transferor Representatives' Council agreed that there was a difference between primary and secondary schools in this matter, but were still strongly of the view that they wished to protect and maintain the ethos of their schools and so were opposed to making any change in the exception clause:

“There is more of a mix at secondary level, which gives the opportunity for sharing traditions; but we would still wish to maintain the ethos of our schools.”

They also thought that any attempt at change would be likely to be “technically very messy”. It was suggested, for example, that “RE specialists are now being appointed who will also teach PSE”. Any proposed legislation would have to take account of this sort of complexity, and could not achieve an acceptable system “in a single jump”. It was agreed that there had emerged some confusion in recent years about the controlled schools. Formerly they had usually been claimed as state schools, but now some elements within the Protestant Churches were wishing to redesignate them as “Protestant schools”, with reference to their history and their ethos. Part of this argument was a support for the teacher exception provision.

A trade union representative rejected the exception argument in total and could see no need for compromise. Indeed, he argued that to provide for different arrangements as between school sectors, essentially involved accepting an intrusion on the employment rights of teachers. In his view, if the schools and religions defending the exception clause could not uphold their ethos without resorting to discrimination, then this in a sense contradicted the ethos itself.

He referred again to the condition for teachers in Catholic primary schools to have the appropriate certificate, which was only available at a recognised teacher training establishment: Protestants are therefore excluded from these posts. However, there is no reason why Catholic teachers cannot apply to controlled (Protestant) schools and take a case of religious discrimination if they didn’t get the job. So the result is that Catholic teachers have more rights, and this must be seen as unfair and discriminatory.

One Area Board representative began by arguing that if the teacher exception was going to be abolished, then it ought to be abolished for all schools: however, as the discussion progressed this interviewee seemed to have second thoughts, and argued that there was a case for retaining the exception in the primary sector.

Another Area Board person argued that the school system in Northern Ireland was very varied, with a whole range of different types of schools representing different backgrounds. It therefore made sense to look at each type of school separately and find procedures that suited its particular needs. So that, for example, there was an unanswerable case that teachers in Catholic Primary schools should be qualified to teach children in relation to the sacraments. However, the reality was that in some secondary schools, and most grammar schools, there were mixed staffs – and, indeed, mixed religious enrolments. Therefore, there was no reason why grammar schools in particular should have any kind of religious affiliation, except when they are teaching RE.

One interviewee said that his board had already considered these questions when they were responding to the consultative document on the Bill of Rights: they had agreed that the starting point was the teaching post and that (quoting from their document):

“where a teaching post requires the applicant to hold particular religious beliefs or qualifications these should be taken into account in the recruitment process.”

In general, area board representatives agreed that, while the case for primary schools was easy to sustain, there was some difficulty with the case for secondary schools, except for RE teachers. In addition, the existence of a common curriculum in secondary schools made the religious distinction less clear: in this context, it was also pointed out that there was now a common core RE curriculum supported by the four main churches. All of this had the cumulative effect of weakening the argument for the teacher exception provision at the secondary level.

7. TEACHER RECRUITMENT

This section deals with the question of teacher recruitment, and in particular the matter of using religious tests and conditions in the process of appointing new teachers.

The most important issue in relation to the notion of a religious test, suggested by any of the interviewees, was the demand for the Catholic Teacher certificate in recruiting primary teachers: this was followed closely by the practice of Catholic schools advertising posts in newspapers perceived to have a particular readership associated with one side of the community. The certificate is perceived as a validation of the teacher’s membership of the Catholic Church as a practising Catholic, and as evidence of the ability to prepare children for the sacraments.

With regard to the controlled schools, one Area Board representative said that, to his knowledge there were no religious tests used in the controlled sector, and that fair employment practices would not allow it.

It was generally accepted that appointing teachers to secondary schools of necessity demanded different approaches. A Catholic trustee described the procedures used -

in her experience - in making appointments to Catholic grammar schools. There were three parts to this that might be thought relevant in this context. First, religion is not specifically mentioned in the pamphlet about the school that is sent to candidates. Second, there is a question in the application form that asks if the candidate subscribes to the ethos of the school, and this has to be signed by the applicant. Third, at the interview candidates are asked "how do you see the ethos of the school and what contribution do you see yourself making to it?" She emphasised that no questions were asked about a candidate's religion, or about their personal practice of religion.

Otherwise teachers were recruited on a purely professional basis. She described as an example the appointment of a music teacher.

"In the first instance: we would be looking for the best musician and the best teacher, and for the person we thought would relate best to the children. The Catholic thing is not the overriding feature in this instance. We would also ask if in their music they could support the liturgical life of the school."

She pointed out that Catholic grammar schools do appoint Protestant teachers, but that they also place great emphasis on retaining a strong Catholic ethos: it was her experience that, in the right circumstances, teachers from other denominations often add considerably to the broadening of the school ethos in ecumenical terms. However she was concerned to make clear that the central issue was to retain the Catholic ethos and to appoint Catholic teachers, other things being equal.

The representative of the Transferor Representatives' Council said that, with regard to the appointment of teachers in the controlled sector, religious tests were not applied at any stage. While he understood and even had a sympathy with the rationale behind the use of the certificate by the Catholic Church, when it was used unilaterally, he thought that it could amount to discrimination.

However, given the aspiration of the TRC to maintain the Protestant ethos in the controlled schools, the question was put as to how they would try to ensure that a candidate would be 'suitable'. The answer was first to emphasise that religion would not be discussed and would not be a factor in any appointment process. However, he accepted that if a candidate had evidence, on his or her CV, of involvement with voluntary organisations or had an "active community role", this might be an added attraction. A reference from a clergyman would also often be helpful.

A representative of the integrated schools argued that the religion of candidates for teaching jobs in integrated schools was not always the central concern, and certainly there was no general or prescribed religious test. If a teacher was needed to prepare children for First Holy Communion, then it became an issue; or when a controlled school became a controlled integrated school, then Catholic teachers would have to be found. But always it had to be the best person for the job. They are not chosen on grounds of religion.

When asked about the question of balance within the staff, he argued that the interview was not the place to take this into account. He thought that there was no

need for the teacher exception clause, although he also accepted that not everyone in the integrated schools agreed with him. He also argued that, “if the teacher exception provision was removed, neither Catholic schools nor integrated would suffer, but the Controlled schools would have a reason for wishing to retain it.”

One union representative was less sanguine about the procedures used when appointing teachers. He thought that the reality was often quite different from the public descriptions. He said that he was convinced that in some circumstances the wider human rights of particular teachers were, to put it at its mildest, put under stress.

He also referred to the illegal pressure that could be put on teachers (and also principals) who were in some sense perceived to be not living as good Catholics. He gave as examples a teacher living unmarried with a partner, or not going to mass. He thought that the teacher exemption gave legitimation to appointment panels to ride roughshod over the rights and dignities of teachers on the basis of religion, and without penalty.

8. INTEGRATED SCHOOLS AND QUOTAS

It was generally accepted that, by definition, the integrated schools aspired to enroll pupils from all denominations and religions in Northern Ireland. Inevitably this meant that they enrolled both Catholic and Protestant pupils, and that, therefore they also had to appoint both Catholic and Protestant teachers. This process was referred to by some as a ‘quota’ arrangement.

The legality of the ‘quota’ approach was thought by some, including a representative of the integrated schools, to be uncertain. Others thought that it was perfectly legal. They argued that the existence of the teacher exception provision made it legal for the integrated schools to appoint teachers with regard to their religion, when they found this necessary or desirable. The converse of this seems to suggest that, like the Catholic schools, if the exception provision was gone, then they would have some difficulties. This view was expressed by a number of Area Board and other interviewees, sometimes in gloomy terms:

“If the exception were removed then the integrated schools would not be able to maintain their quota and this might mean ruin for integrated education.”

The fact that it was legal did not make it completely acceptable however. One said:

“I think there are issues around this, in terms of fairness and equity and equality of opportunity. But I can understand what they are trying to do. If the exception was withdrawn, I think that they would probably find difficulty.”

In a similar vein an Area Board interviewee accepted that there was a certain logic to the idea of a ‘quota’, given the purpose and intentions of the schools: “... there is a quota system in terms of their enrolment so it makes sense to say they should have a mixed staff ...” One interviewee also remarked (a little ironically) that “if a school

wanted they could ask for someone with a Catholic teacher's certificate, and those without would be at a disadvantage."

As in the case of the Catholic schools, it was also argued by some that the teacher exception provision was unnecessary to ensure a proper staff mix in integrated schools. One interviewee said: "Surely if it is a necessary part of the job that the candidate should be able to teach religion, then there is nothing illegal about saying so and appointing on that basis."

The question also brought some focus to bear on the question of ethos. One interviewee contrasted what he called the "total immersion" theory of education argued for by the Catholic Church, with (what he assumed was) the approach by the integrated schools, that is that only a limited number of Catholic teacher is actually needed to prepare a class for the sacraments.

9. VIEWS OF STUDENT AND NEWLY QUALIFIED TEACHERS

An attempt was also made in the interviews to ask about the views of student teachers and newly qualified teachers? The intention was to test the possibility that, since this was the first generation of young people to complete their higher education in the era of the Good Friday Agreement and the newly enhanced equality agenda, there might be evidence of changing opinions on matters to do with teacher appointments and interviews.

Many of those interviewed only met young teachers in the context of interviews, and some felt that this was not likely to be the place where radical or new thought would be spoken. Therefore none of those interviewed had very much to say about this.

One interviewee said that she had not noticed any difference in the recently qualified candidates applying for posts, but she accepted that it was a hard one for her to answer.

A representative of a teacher union however was convinced that younger teachers were different, less traditional and conservative, and that they would like to see change. He referred to the growth in fixed term contracts, the limited number of permanent jobs, and he thought that young teachers would like to see these matters discussed and opened up.

10. CHILL FACTOR

One of the obverse effects of a divided society like Northern Ireland is what, in relation to employment patterns, is termed the "chill factor". This serves to discourage candidates for jobs from applying to locations or institutions where one tradition is very strong, or where there has traditionally been a majority of one community employed.

In the interviews there was little disagreement with the view that there did indeed exist a chill factor within education. One person said that "you only have to look at the figures, there are very few Catholics in controlled schools, very few Protestants

in maintained schools, so there must be some kind of chill factor at work.”

A union representative argued that it would normally take an act of courage for a young teacher to “move across sectors” and seek employment “on the other side”: if the notion of a chill factor meant anything, then this was how it worked in practice. He therefore argued that it was unacceptable in principle to allow a specific employment sector to maintain such a built-in chill factor, and to be protected by the law while so doing. The lamentable result was that young people were not encouraged to look for jobs across the educational system – with the obvious result that they continued to misunderstand and be suspicious about each other. He had no doubt that the teacher exception clause contributed strongly to this.

A member of the Transferor Representatives' Council also agreed that there was indeed a chill factor, and said that the religious teaching certificate made such a position inevitable, in that young Protestants teachers could not even contemplate seeking employment in about half of the primary schools in the country. He also added that the two systems knew so little about each other that such crossover would constitute a culture shock for both Catholics and Protestants.

Another interviewee said that while there might well be a chill factor about the integrated sector, he was adamant that there was a “complete chill factor” for Protestants about the Catholic sector. He added that this would obviously be also true for the Irish medium schools.

For most Catholic representatives the lack of teacher crossover was inevitable and not necessarily malign. However, other constituencies believed that it worked disproportionately in one direction and that it was strongest for Protestants, especially at primary level. Secondary schools were not a great deal better, except that – as one argued – there was “less church influence”, but grammar schools were thought to present a less discouraging face.

Another union interviewee thought that while there was indeed a chill factor, it had nothing to do with teacher exception, but was “deep seated within the community”. He knew of teachers who had been appointed to jobs across the divide and it did not always work out well. Examples of problems mentioned were public disrespect within the school for the other religion, and aggressive pupil attitudes.

Finally one Area Board representative argued that “the question should be set in the context of where we came from and where we are now. People are now more comfortable mixing, but it has to be a gradual process.” He argued that if the teacher exception was reviewed again in ten years time again things would be quite different.

11. ARE VIEWS OPPOSING THE TEACHER EXCEPTION PROVISION GAINING SUPPORT?

This end-discussion tended to raise three issues. First, there were views about whether or not there was still strong support for the teacher exception provision, and whether it was growing or reducing. Second, there emerged a degree of suspicion about the views and intentions of the teacher unions. And, third there were some thoughts about the possible impact on society if the exception was removed.

With regard to the first there were opposing views, with a larger support for the view that there is still strong support for the teacher exception provision and that it is not changing very much. One interviewee argued that the subject was rarely raised and that the only arguments he had heard in favour of removing the exception were from one trade union.

Another said that, in his experience the Unions appeared to feel more strongly about it than did teachers. However, he also pointed out that the unions themselves tended to be divided in ways similar to the rest of the community.

An Area Board interviewee said that he couldn't see the Catholic Church changing its position in any circumstances, but he wondered if the support from within the Church was as unquestioning and undivided as it used to be. His own view was that, what he termed the "old rigidity" was fraying at the edges.

Another said that, as things stand now "The Protestants know they can get jobs in the controlled sector, and the Catholics know they can get jobs in the maintained sector": therefore, he argued, most are quite happy with that situation, and do not on the whole feel discriminated against.

A number of interviewees who were not speaking as members of unions, indicated a degree of disquiet with the stance of some of the unions, usually without adding very much detail. For example one said that "he had concerns as to why some of the Unions would want to see exception abolished." He then said that he supposed that it was "a natural flow from human rights issues and equality issues."

Finally some interviewees reflected on the possible impact of change in relation to this question of teacher exception. One said that the big question was, if the teacher exception is removed what would be its potential impact on one or other religious groupings. In his view it would have a greater detrimental impact on non-Catholics than on Catholics. His argument was that in making a teaching appointment it was necessary to specify the needs of the post. Obviously, with regard to religious education, the needs of the post (particularly at primary level) can be easily demonstrated in the Catholic maintained sector, but cannot be demonstrated outside of the Catholic sector. The consequence would be that Catholic teachers, particularly in primary schools, will be able to seek a job in both sectors, while Protestant teachers will be limited to the controlled sector.

He believed that this would become an issue once it was properly understood and that the result would be a growth of support for the exception provision in the Protestant community.

Another person asked the question: if the exception clause was removed then what would be needed to protect the ethos of the schools? Unfortunately he did not supply an answer.

12. FOCUS GROUPS

Four focus groups were held with students teachers in Queen's University Belfast, The University of Ulster Coleraine, Stranmillis University College and St Mary's University College. This constituency was thought to be of special interest, since it was (on the whole) made up of young people from Northern Ireland, about to seek employment as teachers. The purpose of the discussion was to find out the extent to which the conflict and violence, along with more recent political and social developments, in particular the Good Friday Agreement, had had an impact on these young people with respect to their views on educational matters.

Initially the focus groups looked at the extent to which students were aware of the structures of, and divisions within, the education system in Northern Ireland. Discussion then turned to the fair employment legislation and the teacher exception provision. Finally, an attempt was made to establish if they had ever considered seeking employment as teachers across the religious divide, if they had views on lifting or maintaining the teacher exception, and if they believed there was any groundswell of support for change.

The set of headings used in the body of the report (above) are repeated in this section, except for the Burns Report which generated little comment or discussion.

12.1 *Views on the Future of the Teacher Exception*

None of the students was aware of any widespread interest in the teacher exception provision. The views of most were, on the whole, pragmatic, based on the argument that there exists within Northern Ireland separate schooling arrangements, they were unaware of any "strong sense of a shift away" from support for these general structures, or of a demand for change, and this could only be interpreted as signifying continuing support for the teacher exception.

In particular it was felt that the churches continued to provide strong backing for the *status quo* and would fiercely oppose any attempts at change. It was also argued that the Catholic Church in particular would be unremitting in its support. Catholic students talked about the need for "a strong Catholic ethos to underpin educational provision", the strong desire to link church and school (which might be threatened if changes were introduced), and the perception that 'Catholic-trained' teachers had a clearer understanding of the aims and objectives of Catholic schools.

For some this assessment was disappointing but realistic. A number of students argued that there were nevertheless signs of some movement and change in the system, and cited the example of schools they knew of that had appointed teachers from the other side. It was however accepted that this was most likely to happen in grammar schools, and therefore reflected their own experience as recent grammar school pupils.

The growth of integrated schools was also raised by one student, as a counter to the general pragmatism, but the response was that, although this was encouraging and worthy of praise, it was still small and seemed unlikely to increase dramatically.

Human rights and equality issues were discussed in the context of social change generally in Northern Ireland, and this did produce some comment on what some perceived to be an anomalous situation: that is where apparently stringent equal opportunity and fair employment laws were qualified when it came to teachers and education. One asked the question: “how can teachers be exempt from these laws when no-one else is?”

In relation to the smaller education sectors, it was argued that all of them would face some difficulties if the exception was removed. For example, it was asked if the Independent Christian schools could continue if they were subject to fair employment legislation and not allowed to choose teachers who supported their religious convictions? One student said: “the entire staff is probably made up of Free Presbyterians, and are therefore unlikely to welcome a Catholic teacher.”

With regard to the Irish Medium schools, most accepted that the majority of teachers in Irish medium schools were likely to be Catholic and could see little likelihood of others looking for teaching jobs there. However, the integrated schools, because of their religious mix, did seem to involve a more complex sort of problem. Integrated schools, in order to maintain their particular ethos and objectives would have to consider the religious balance in their staff and therefore when particular jobs were advertised, it might be necessary to consider applicants’ religion. This was likely to be more difficult if the teacher exception rule was changed.

12.2 Views on Alternatives to a Universal Teacher Exception

Almost all students (of all religions) accepted what one called “the logic of the situation” with respect to primary schools: that is they could justify support for maintaining the teacher exception in primary schools, since RE was taught by every teacher to every class. One Protestant student said that “Protestant teachers were unlikely to be “suitably qualified” to teach primary school children about holy communion and confirmation.” Views about secondary and grammar schools were more mixed with some students “thinking out loud” about why it would be so important to retain the exception there. One argued that it was possible for non-RE teachers to come from any denomination, and that their teaching skills and ability were more important than their religious identity.

Students from both traditions were also prepared to accept that there was more emphasis within the Catholic schools on their ethos, and that it was the Catholic Church that was making the running in this area. One (mixed) group thought that, although changes to the exception might be more acceptable in post-primary schools, there would be little enthusiasm for it. However, there were no strong views expressed in favour of removing the exception at secondary level.

The views of parents were mentioned by some students, and most agreed that parents would be unhappy with any attempt to bring about radical changes in the existing (religion-based) systems, and that this would include the change in the teacher exception rule.

12.3 *Teacher Recruitment*

Most of the students professed uncertainty about the procedures for teacher recruitment. They were not familiar with teacher recruitment exercises, and were anxious about the possibility of ‘tests’ being used to establish their suitability on religious grounds. If the post in question was to teach RE, then it was acceptable that candidates should have to present evidence that they were qualified for the job “like in any other subject.”

It was agreed (especially among Catholic students) that there were stories and ‘myths’ about the sort of questions that candidates might face in interviews, questions that addressed an applicant’s religious commitment, attendance at church and so on. One said: “I would be very uncomfortable with being asked to prove that I was a good Catholic.” Another wondered if employment legislation would allow such a direct question which she described as “intimidatory”. And another argued that such a process was unlikely to be very effective as a way of discriminating, since it would be unlikely for an applicant to announce that he or she was an atheist, even if were true.

However, most agreed that any such direct attempt to establish religious commitment would be unlikely, although it was also agreed that there were less direct ways of doing the same thing. Some of the students thought that it was acceptable to ask candidates “if they was sympathetic to the religious/spiritual aims or ethos of the school.” In general it was thought that this would be more likely in the maintained sector.

The effectiveness of the religious certificate, as a means of establishing that a student was acceptably proficient in religious knowledge, was also queried by some Catholic students. One said that it was impossible to determine how genuine religious belief was, from an examination.

12.4 *Integrated Schools and Quotas*

All groups agreed that, for integrated schools, quotas were unavoidable if they wished to continue to be integrated. All appeared to accept the view that the central characteristic of an integrated school was that it had reasonably equal numbers of pupils, teachers and managers from both side of the community.

However there was some uncertainty about how this could be arranged and if the law allowed them to choose teachers in this way. However, there was no opposition to this approach, and one described it as “logical”. It was also argued that, if such an arrangement were not legal, then the law ought to be changed.

12.5 *Views of Student and Newly Qualified Teachers*

There was very little support for the view that ‘modern’ students would have more radical views than their predecessors. Most argued that the new context generated by the Good Friday Agreement did not appear to have made much direct impact on their thinking about the educational system, or the likelihood of their applying for jobs in the other sector. They felt that students were ‘in theory’ more open to the idea of

cross sector teaching, but they had considerable doubts about the likelihood of dramatic changes in the makeup of the system in the short to medium term, in terms of their teaching complements and ethos.

Some thought that this would still be true even if the teacher exception was removed, since they felt that students and qualified teachers would still apply to schools that reflected their religious tradition.

Each group was asked directly if they would consider applying for jobs across the sectors. No member of the Catholic group thought this likely; two other groups contained one or two members who thought it not impossible in certain circumstances, and in one 'mixed' group about half of the members said that they would at least consider this option.

12.6 Chill Factor

There was little disagreement about the existence of a chill factor. In the Catholic group it tended to be perceived as benign and normal with little of the negative undertones of the phrase. The word tradition was used by some, as in "traditionally most teachers will apply to schools with colleagues and pupils of 'their religion'." However, some argued that there was no real information available about the extent to which qualified teachers applied for jobs across the sectors. In other groups there was a little more willingness to consider change, and the possibility that they might one day teach in a school which was not "one of our schools", was not rejected entirely. However they did use phrases such as "fear of the unknown", "probably inaccurate perceptions" and "traditional patterns of job-hunting."

In the Catholic group students intimated that they had not really considered applying outside of the maintained sector, and if they did it would be to the integrated schools. They agreed that they were not openly discouraged (by lecturers and tutors) from considering posts in the controlled sector, but that there was no expectation that students would seek positions there. One student said: "it's just kind of something that isn't really done", and none of them was able to identify a Protestant who had taught in the maintained sector.

12.7 Are Views Opposing the Teacher Exception Provision Gaining Support?

None of the students had any sense of a growing opposition to the teacher exception provision. Most were unaware what the views of the teacher unions were and (more generally) had heard or read no arguments or discussions on the subject. Some of them agreed that they were pleased that the subject had been brought to their notice and that there was now the beginnings of a debate about it and perhaps some evidence of a willingness to consider change.

13. VIEWS OF THE DEPARTMENT OF EDUCATION

A meeting was held with an official from the Department of Education. Their view was that any change to the teacher exception would constitute a change to key aspects of the structure of the education system in Northern Ireland, and therefore

was not merely an employment issue.

There have been discussions within the Department on the subject, and they have identified four possible options for consideration: first, a total lift of the exception provision; second, a partial lift of the provision for some sectors within the education system; third, a lifting of the exception for certain types of teachers; and, fourth, no change. Their sense at the moment is that the potential disadvantages of change probably outweigh any advantages. Moreover, they do not detect that there is any groundswell of support or demand for change, which reinforces their view that it is probably not desirable at the moment. However, if there was to be a groundswell of support for change then the practicalities of change would obviously have to be considered.

They also recognised that, while this is an issue with implications for Catholic schools, there are also considerable implications for integrated and controlled schools, and these are likely to be more significant.

They recognise that the EU directive does have significant implications, and they will be very keen to discuss with education interests and the Equality Commission just what those implications are and how any new requirements might be implemented. One issue that was mentioned was whether or not some form of monitoring would be needed, if only to check that promotions decisions within schools were being carried out in accordance with the directive, and also to be aware of any possible impact of the promotions change on appointments of Protestant teachers to Catholic grammar schools.

14. CONCLUSION

This paper has reported the findings of a study of the views of a variety of educational interests into the total or partial withdrawal of the teacher exception in anti-discrimination legislation in employment. The main conclusion is that there is little evidence of any support for change at any level, apart from amongst some of the teacher trade unions. Most other interests see some form of a teacher exception as an inevitable consequence of an educational system that permits separate denominational schools, while others, most notably the Catholic authorities, support the exception as a positive endorsement of diversity in education.

There is some support for the notion that ‘chill factors’ act to discourage some individuals from applying for teaching posts in certain schools, although views vary on whether this is appropriate or not. There is general agreement that diversity in education is a good thing, but significant differences in how this is understood in practice. Finally, there is a widespread recognition that any change to the teacher exception would have consequences for all schools and not just Catholic schools.