

Employment Mobility of Teachers and the FETO Exception

01. The Purpose

This purpose of this paper is to present up-to-date research information on the division of teachers according to their community identity and outline the extent to which this distribution is affected by the exception of teachers from fair employment legislation in NI (i.e. Fair Employment and Treatment Order, 1998).

02. Background

2.1 Teacher Separation

The distribution of teachers between the various sectors of education in Northern Ireland demonstrates notable levels of consistency in respect of community identity.

In 2018, over 1,000 teachers completed an on-line survey conducted through the UNESCO centre at Ulster University. It was shown that 2% of those teachers employed in Catholic Maintained (CCMS) primaries had attended a Controlled primary school in NI and that 7% of those teachers employed in Controlled primary schools had been educated in a CCMS primary.

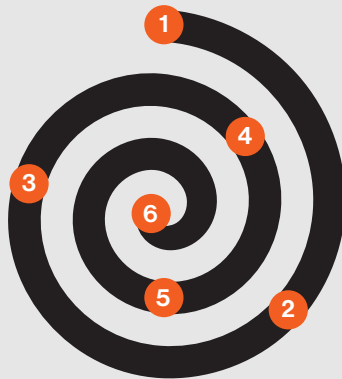
Similarly, 8% of those teaching in CCMS post primaries and 17% of teachers in Catholic voluntary grammar schools had attended non-Catholic primaries in NI, whilst 17% of those employed in Controlled post primary schools and 23% of teachers in non-Catholic grammars had attended CCMS primaries.

The 7% of pupils who attend integrated schools¹ are taught by a cohort of teachers that, on the whole reflects the target composition of the pupil body i.e. 40% Catholic, 40% Non-Catholic, 20% 'other'.

The Ulster University research also highlighted that many teachers follow a community consistent career path; working within those sectors associated with their community of origin. A proportion of teachers are culturally encapsulated having taken the community consistent path at all stages of their career (primary, post primary, Initial Teacher Education, teaching practice and every teaching post they have taken).

¹ Figure from DE School Census 2018

Figure 01.



1. Born into a **Protestant** family
2. Attends **Controlled Primary**
3. Attends **Controlled Post Primary**
4. Attends **Stranmillis University College**
5. **Teaching Practice in Controlled Schools**
6. **Teaches in Controlled Sector**

Cultural Encapsulation in de facto Protestant Schools

- 22% teachers in mainstream Controlled schools and non-Catholic grammar schools had no experience of having ever worked within any sector of Catholic education
- This cultural encapsulation was particularly prevalent amongst those teaching in Controlled primary schools – 38%

Figure 02.

1. Born into a **Catholic** family
2. Attends **Maintained Primary**
3. Attends **Maintained Post Primary**
4. Attends **St. Mary's University College**
5. **Teaching Practice in Maintained Schools**
6. **Teaches in Maintained Sector**



Cultural Encapsulation in Catholic Schools

- 33% of teachers in Catholic schools had no experience of education or teaching in an institution outside of those associated with their community of origin
- 48% of teachers in Catholic primary schools were seen to be 'culturally encapsulated'.

Schools have been assigned a unique role in the building of bridges between the divided communities. A series of policy initiatives have been introduced over many years to support the development of cross-sectoral contact between pupils. The most recent of these, Shared Education, is underpinned by legislation (Shared Education Act, 2016) and has attracted a targeted package of £300M funding² at a time when the total budget for education has reportedly fallen by more than £230M³.

² UK Government Press Release 23rd November 2018
<https://www.gov.uk/government/news/66-million-for-shared-and-integrated-education-in-northern-ireland>

³ <https://www.belfasttelegraph.co.uk/news/northern-ireland/northern-ireland-schools-spending-power-down-230m-in-eight-years-mps-told-37406049.html>

An inspection report into the delivery of the Shared Education signature project observed that “when partnerships explored sensitive and controversial issues, such as aspects of history, the learning was deeper than in other situations” but noted that a number of teachers “did not have the confidence and skills needed to handle sensitive and controversial issues”⁴. This is consistent with the findings of previous research which has identified that the dominant cultural grammar of Northern Ireland is to avoid discussion of potentially controversial issues (particularly when in ‘mixed company’), and thereby to allow ignorance of the views of the “other” to remain unaddressed.

The cultural encapsulation of a significant number of teachers noted above, inevitably means that these teachers will have had limited professional experience of engaging with those from outside of their community. This may impact directly on their capacity to discuss contentious issues in mixed settings and consequently their capacity to effectively engage across the community divide.

The separation of teachers is maintained through three areas of policy:

- 1. Teacher Education**
- 2. Religious Education in Schools**
- 3. The teacher exception from FETO 1998**

No other profession has the same potential for daily engagement with young minds – but no other profession separates its exponents so rigorously and effectively along community/religious/ethnic lines. It is unlikely that any other profession will have as many exponents with as limited exposure to ‘the other side’. Yet no other profession carries the same burden of expectation around the building of the community bridges necessary to ensure a shared, peaceful future.

2.2 The Teacher Exception from FETO 1998

The need for effective fair employment and anti-discrimination laws was highlighted by the NI Civil Rights movement of the 1960s (amongst others) – by way of response, Part 3 of the Northern Ireland Constitution Act (NICA) 1973 prohibited religious and political discrimination by the state.

In 1976, the Fair Employment (Northern Ireland) Act (FENIA) gave this law horizontal (i.e. person to person) effect and created the Fair Employment Agency (FEA). Section 37 of this Act excepted: clergymen; private households; “employment as a teacher in a school”; and “where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief... [or] a particular political opinion.” This act also required the FEA to keep this exception under review, “with a view to considering whether, in the [FEA]’s opinion, it is appropriate that any steps should be taken to further equality of opportunity in the employment of such teachers”. It also empowered the Secretary of State to repeal the exception, in whole or in part, without going back to parliament.

In 1989 this act was superseded by a revised Fair Employment Act under which compulsory workforce monitoring was introduced for those organisations employing more than ten employees; the FEA became the Fair Employment Commission (FEC) - the teachers’ exception was left in place. The Fair Employment and Treatment (Northern Ireland) Order (FETO) 1998, was brought into being following the Belfast Agreement and consolidated NI’s fair employment law. Part 8: Article 71: Paragraph (1) stated categorically that “this Order does not apply to or in relation to employment as a teacher in a school”. In 1998 the Equality Commission replaced the FEC.

The teacher exception is protected by European Law – although the Treaty of Amsterdam (1999), empowers the European Council to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” it also allows for difference of treatment in those “very limited circumstances” where the discriminatory ground constitutes a “genuine and determining occupational requirement”. Article 15(2) specifically states that, “in order to maintain equality of opportunity in employment for teachers in Northern Ireland and reconcile the historical divisions between the two main religious communities, the provisions on religion and convictions in this Directive shall not apply to the recruitment of teachers in any school in Northern Ireland in so far as this is expressly authorised by national legislation.”

⁴ Education and Training Inspectorate (2018) The Shared Education Signature Project Evaluation Report
<https://www.etini.gov.uk/sites/etini.gov.uk/files/publications/shared-education-signature-project-evaluation-report.pdf>

The teacher exception allows schools to use religious belief as a ground on which to discriminate between candidates for teaching posts and for those seeking promotion within a school – this has rarely been tested in law but was upheld in a ruling from an employment tribunal in 2007⁵. The exception also means that schools are not legally required to monitor the community background of their teaching staff nor are they required to carry out reviews of their teaching workforces, or of the employment policies and practices affecting teaching staff or consider whether they are providing fair participation to members of the Protestant and Roman Catholic communities, in relation to the employment of teachers.

Between 2002 and 2004, in line with their statutory duty, the Equality Commission conducted a review into the continued existence of the teacher exception. They recommended the removal of the exception in relation to the recruitment of teachers in secondary level schools and proposed that early consideration should be given “as to whether the exception should also be removed for primary level schools”. The Commission also concluded, however, that the removal of the exception might “not further equality of opportunity for teachers”.

In February 2016 Sandra Overend, MLA, proposed an amendment to the Employment Bill to repeal Article 71 (i.e. the teacher exception) – the amendment was blocked by a joint SDLP/Sinn Fein Petition of Concern.

The April 2019 Lucid Talk, “NI Life” poll revealed that 98% of those surveyed felt that the organisations that employ teachers should aim to select the best person for the job, whilst 82% stated that these organisations should be subject to the same Equal Opportunities monitoring as other employers - 71% believed that the teacher exception to FETO should be repealed.

03. Discussion

3.1 How is the Exception Justified?

All grant-aided schools in NI are required by statute to provide a daily act of collective worship and to provide religious education in line with a specified (Christian) core syllabus⁶. Those teachers who are employed to teach religion in schools under Catholic management (i.e. CCMS or the Boards of Governors of Catholic voluntary grammar schools) must be able to demonstrate that they have the capacity to do so in line with the ethos of the school i.e. that they have completed a Certificate in Catholic Education (CCE) – or, in a very limited number of specific cases, have committed to completing it within three years of appointment.

Unlike those subject-specific teachers employed in post-primary schools, primary school teachers are ‘generalists’ who are required to teach across the full curriculum – it follows that all primary school teachers will be required to teach RE⁷. The possession of a CCE has been accepted as a legitimate occupational requirement for those employed to teach RE in schools with a Catholic ethos (DE, 2013).

CCE is provided as a matter of course at Ulster University and St Mary's but only as an optional correspondence course at Stranmillis (i.e. the three institutions in NI that prepare teachers for working in primary schools). Whilst Ulster is non-denominational and has a mixed student intake, St Mary's has a Catholic ethos and is attended almost exclusively by Catholic students. Stranmillis is ‘religiously influenced’ and has a predominantly (but by no means exclusively) Protestant student population.

The deployment patterns of teachers are affected therefore not only by the Teacher Exception, they are also inextricably linked to policies around the place of religion in schools and the profiles of the teaching colleges. The 2004 ECNI report saw support for the retention of the exception on both sides:

“Roman Catholic educational interests were concerned that, without an exception for teachers, the Act could eventually lead to a system of non-denominational education, with a resulting loss of Catholic ethos.”

“Protestant educational interests were concerned that 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... 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.”

The exception may also be presented as being in the benefit of integrated schools which actively seek to ensure a balance in appointments – they may call on the exception to justify the selection of one candidate over another in order to keep within a pre-defined cross-community staffing ratio.

⁵ Debast and Flynn v Dr Malcolmson, Laurelhill Community College and SEELB

⁶ Education Reform (Northern Ireland) Order 1989

⁷ Whilst all teachers have a right to freedom of conscience under Article 9 of the ECHR it is generally accepted that all primary school teachers are expected to have a RE certificate.

3.2 Teachers' Perspectives on the Exception

There is evidence⁸ that some student teachers may have been made aware of the teacher exception to FETO during their initial teacher education – knowledge of its existence was enough to dissuade potential applicants from applying 'across the divide':

In teacher training you were told that schools had the right to employ their staff to reflect their student body. So, you were told that, if it's a 100% Catholic school they have the right to – or they can fight to – have 100% Catholic teachers... well you don't have much hope of getting in there.

Other teachers are unaware of the teacher exception – they mistakenly consider that they are working within a profession that is subject to the requirements of Fair Employment legislation:

With equal opportunities you can't be discriminating at all. It would just seem to be that most schools are tailored in terms of their staff make-up to the student body. But it's up to the individual teacher – if you want to work in a particular school you apply to it... those barriers no longer exist – as far as I can see. With legislation about fair employment... I think it's on merit and then how you conduct yourself.

Religious tests are not directly utilised in the recruitment process, but candidates may be asked indirect questions relating to faith e.g. "How would you contribute to the ethos of the school?" One teacher with significant experience of working in industry was taken aback when she observed the recruitment practices in NI schools:

I've had 20 years - or more than 20 years - working in engineering and companies where you have an Equal Opportunities policy that's applied. Now, I'm not saying they are sectarian-free or discrimination-free but there's procedures when somebody does something to you.

It seems possible that many teachers assume that they will be unable to find work in a school of the other tradition or that crossing over would leave them uncomfortably exposed; consequently, few teachers choose to apply to schools outside their community of origin. In practice it seems that the FETO exception may not be explicitly called upon to justify an appointment. Indeed, there was some evidence that some schools consider a candidate's community identity to be irrelevant for many posts (as in the case below of a Protestant teacher employed in a Catholic grammar school):

I think the great thing about the Principal is she picks best person for the job you know... I think on the day she [hired me] she just went with the risk, "Let's go for it, it's a new thing!"

The four largest teacher unions are unanimous in their support for the removal of the teacher exception – for some that meant that they had revised their position over recent years. A representative speaking on behalf of ATL/NEU commented:

We've always been against [it]... having schools of ethos is one thing but does it require 100% of the teachers to be signed up to that? We say 'no'.

An NASUWT spokesman echoed that viewpoint:

We are opposed to it... get rid of it.

In March 2019, at their annual NI conference, NASUWT passed a motion calling for the repeal of the exception and committing the union to lobby to achieve that outcome.

For INTO the FETO exception was something of a non-issue:

The days of the exemption are numbered... we would welcome it disappearing.

UTU acknowledged that they had, in the past, been supportive of the retention of the exception, but they had not debated it for many years. The UTU official was confident that, were it to be tabled at conference now, the union would seek its removal.

Notes

⁸Milliken, M. (2018) Teaching Across the Divide: The experiences, identity and agency of teachers who teach across the traditional sectors in Northern Ireland PhD Thesis, Ulster University

3.3 A Changing Profile

The teacher exception means that official statistics detailing teacher deployment by religious identity are simply not available. Only three pieces of research have been conducted that have attempted to quantify the proportion of teachers who cross the community divide to teach in a school associated with the other community – 1977 Centre for the Study of Conflict (UU), 2004 Equality Commission and 2018 UNESCO Centre (UU). Although different approaches were adopted for each investigation, a changing pattern can be seen.

Table 1:
Protestant Teachers employed in Catholic ethos Schools

	Primary	Post Primary (Non Grammar)	Grammar
1977	< 1%	2%	1%
2004	2%	2%	1%
2018	2%	8%	17%

Table 2:
Catholic Teachers employed in de facto Protestant Schools

	Primary	Post Primary (Non Grammar)	Grammar
1977	< 1%	2%	1%
2004 ⁹	5%	5%	1%
2018	7%	17%	23%

The composition of the cohort of teachers employed in grammar schools (on either side) has changed most dramatically in recent years. It would appear that these schools may be focused on employing the best teacher rather than the best teacher of a particular religious faith and that, in a difficult employment climate – where there are many more teachers than jobs – teachers may be more willing to cross the sectoral divide to work in a school with a good reputation. The statistics gathered show an increase in the proportion of cross-over teachers employed in every sector – with one very clear exception. The percentage of Protestants teaching in CCMS primaries has remained effectively unchanged in 40 years. It is likely that it is the presence of the CCE as an occupational requirement rather than the teacher exception that has the greatest impact on employment patterns in this sector.

⁹ Equality Commission research did not provide a breakdown by primary and post primary – only three categories were identified: Controlled, Maintained and Voluntary Grammar

04. Summary & Considerations

Almost all workers can rely on legislation to protect them from discrimination on grounds of their faith. That protection is denied to teachers.

This exception (in combination with a number of other policies and practices) contributes to a situation where the overwhelming majority of pupils are very unlikely to be taught by a teacher from outside their own ethnic community – particularly in primary school.

A high proportion of teachers remain community consistent throughout their entire education and career. Exploring controversial issues in Shared Education settings is recognised as being important for reconciliation, but many teachers lack the confidence and skills to engage in community relations programmes that deal with issues relating to the enduring community separation.

The retention of the teacher exception to FETO has been argued to be necessary to protect Protestant teachers' opportunities by counterbalancing the Catholic education authorities' occupational requirement for all primary school teachers (and some in post primary positions) to have completed an additional qualification.

The aspiration of ensuring equality is not well served by off-setting one restrictive policy against another – by justifying enduring discrimination on the basis of mutual disadvantage.

There is some evidence that, in recent years, an increased number of teachers – particularly in the post primary sectors – have made a pragmatic choice to seek employment outside of their own community and that some schools (particularly in the grammar sector) may be less concerned with a teacher's community identity than may previously have been the case.

In a post-conflict, increasingly multi-cultural society the FETO exception appears to be something of an anachronism. However, it does not work in isolation. Teacher mobility between the traditional sectors is also inextricably connected with both the separation of teacher education institutions and policy concerning the place of religion in schools in Northern Ireland. In order to ensure equality of opportunity for all teachers these connected issues will also require attention. However, repealing the teacher exception to FETO would be a hugely symbolic first step in tackling the continuing de facto segregation in the NI education system.

Notes



transforming education

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