

Appendix 3

Issues of Gender and Ethnicity in Commonwealth Teacher Recruitment and Migration — The Case of Twelve Teachers

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Abstract

The study is based on a series of interviews and focus groups which explored the experiences of 12 Commonwealth teachers—six male and six female — 11 of whom were recruited to work in the United Kingdom between 2000 to 2004, the period which preceded the adoption of the Commonwealth Teacher Recruitment Protocol (CTRP). The evidence from the interviews suggested that the recruiters of the teachers had changed the terms and conditions of their contractual agreement unilaterally, reneged on salary and pay arrangements, discouraged teachers from joining unions and used intimidatory measures to obtain their compliance. The need for stronger regulation of recruiters and their clients — schools and local education authorities — is stressed as is the importance of implementation of the CTRP by all Commonwealth member governments.

Introduction

There is now abundant evidence that in the United Kingdom during the 5-year period from 1999 to 2003 there was targeted recruitment resulting in large scale migration of teachers from a number of Commonwealth countries in Africa, Asia and the Caribbean. The recruitment campaigns were principally undertaken to address a shortfall in teachers which has arisen in the United Kingdom in general, but in England in particular. Studies by Ochs²⁶ (2003) reveal that over the three-year period of 2000-2003, a high volume of work permits were provided by the United Kingdom Home Office to teachers from

countries such as Zimbabwe (898), Ghana (457), India (457), Canada (898), South Africa (4,702) and even small states such as Jamaica (974) in the Caribbean.

Design and conduct of the study

This study on Commonwealth teacher mobility and migration specifically concerns the experiences of 12 teachers, 11 of whom were recruited to the United Kingdom during the period 2000—2004 which immediately preceded the adoption of the Commonwealth Teacher Recruitment Protocol by Ministers of Education at Stoke Rochford in Lincolnshire in 2004.

The purpose of this investigation was to determine the kinds of experiences that Commonwealth teachers recruited to the United Kingdom were exposed to by recruitment agencies, businesses and schools. As the researcher, I sought to learn from Commonwealth teachers themselves—a primary source—about their experiences through a combination of interviews and focus groups. The research methodology was principally qualitative, developing cases from the personal experiences of subjects from a distinct population group, that of teachers from countries which are members of the Commonwealth and who were recruited to the UK during the period 2001—2003.

Interviews

The interviews were designed with the purpose of obtaining the responses of the teachers to the terms and conditions under

26 Ochs, K (2003). *A Summary of Teaching at Risk — Teacher Mobility and Loss in Commonwealth Member States*. London: Commonwealth Secretariat.

which they were recruited in their home country, the conditions of employment which they found on arrival, any contractual changes which they experienced and the reasons whereby they were moved to contact a union to represent them. Whilst the interview schedule used was intended as a preliminary guide to the direction of questioning, it was not rigidly adhered to and if required questions which probed for more information were asked that are not those specifically on the schedule.

Focus groups

The focus group method was proposed in concert with the interviews which though often providing excellent primary information from a subject, with sensitive issues many individuals may have been reticent to be interviewed alone. It was intended that through focus groups with ‘safety in numbers’, subjects may have been more confident if they realised that they were part of a group, all of whom were sharing their stories.

Risks and limitations

The sensitivity of recruited teachers who have been subjected to detriment or exploitation may have caused some subjects not to wish to share their experiences for fear of victimisation had the information they provided been made public. Hence it was anticipated that the information sought may not have been easy to obtain. Also, the study did not undertake to seek or verify with recruiting agencies or businesses, that the information obtained from the Commonwealth teachers was valid, unless such information was found to be easily available. It was not expected that those agencies involved in unethical — and of late, illegal - practices would be willing to be interviewed about them, as this information could be highly embarrassing. Rather, the researcher sought information about recruitment practices and experiences from those most affected — the recruited teachers - directly or through the organisations which represented them. However, the fact that the

Table 1: Commonwealth Teachers recruited by agencies/businesses/L interviewed: January—March 2005 (N=12)

Case	Pseudonym	Gender	Country of Origin	Age range (years)
1.	Mutwa	Male	Kenya	28-32
2.	Larry	Male	Zimbabwe ²⁷	33-37
3.	Julius	Male	Uganda	43-47
4.	Sylvester	Male	Kenya	33-37
5.	Alfred	Male	Zimbabwe	43-47
6.	David	Male	India	38-42
7.	Ntombi	Female	South Africa	38-42
8.	Aurora	Female	United Kingdom	53-57
9.	Sarah	Female	Botswana	28-32
10.	Penelope	Female	Kenya	28-32
11.	Slakisha	Female	Jamaica	33-37
12.	Sonia	Female	Jamaica	38-42

Note: The names of the Commonwealth teachers are pseudonyms used to protect their anonymity.

²⁷ While it was still a Commonwealth member in 2002 when ‘Larry’ was recruited, Zimbabwe withdrew its membership from the Commonwealth in 2003 following the Commonwealth Heads of Government Meeting in Abuja, Nigeria.

information received from teachers was not verified or validated, through a triangulation process, for example, also means that there was the risk of embellishment of the information by those teachers who may have wished their cases to appear “extreme”.

The investigation

The investigation comprised interviews with 12 Commonwealth teachers, 11 of whom were recruited by agencies and businesses to the United Kingdom. The names of the Commonwealth teachers are pseudonyms used to protect their anonymity. The names of the recruitment agencies and businesses have also been changed to pseudonyms. However, the unions which provided assistance in various forms to some of them are named. All other information provided is based on the exact information provided to the interviewer.

In January 2005, this researcher observed and gathered information in two Focus Group sessions with a group of Commonwealth teachers who had been recruited to the United Kingdom during the period 2001—2003. This researcher also used the opportunity to speak with many of them individually, to share the interview schedule and to invite their participation in telephone interviews which would be conducted following the conclusion of the sessions.

No reticence or unwillingness to participate was demonstrated by any of the subjects invited for interview. As each interview would take approximately 45 minutes, it was considered preferable to determine a time when the subjects could, in the comfort of their homes, respond to the questions asked and share their experiences with the researcher. The researcher found all subjects who were invited for interview, highly cooperative and quite eager to share their stories. Information far in excess of what is provided in the cases was also shared, but was left out so as to keep the length of the cases trim.

Adjustment of sampling procedure

Recognising that based on the initial interviews, the majority of the subjects were from Southern African countries, apart from one Asian Indian subject, the researcher also went beyond the limits of the Focus Group and sought interviews with teachers who were not part of the initial Focus Groups, including a supply teacher from the United Kingdom. These additional subjects were usually arrived at by what is accepted in qualitative research and known as the ‘snowball’ or ‘cascade’ method, that is, obtaining a sample of subjects by asking one subject to identify others in situations similar to their own. The method is most frequently used when the information being sought is of a confidential or personal nature and not readily and easily available.

The cases are representative of teachers from a span of Commonwealth countries and of the experiences recounted by all twelve subjects, despite the fact that each case has its unique features. However, the one case of a United Kingdom supply teacher, Aurora, presents an interesting ‘comparator’ to those of the other eleven teachers interviewed.²⁸ The term “Comparator” in employment law is the position of a worker which, in cases of alleged detriment or discrimination, is proposed as apt for comparison to the position of the disadvantaged worker usually because they have received preferential treatment. The term is usually found in cases of discrimination in employment. Its use is employed in this context in order to compare the experiences of a British teacher employed part-time to a local education authority with that of her Commonwealth counterparts recruited to work in the same country.

Biographical data and professional background of the teachers

Table 4 presents the profile of the Commonwealth teachers interviewed, from the standpoint of their qualifications and years of experience. Of the 12, 1 was from the United Kingdom (UK), 8 from countries in Southern Africa, 1 from India and 2 from the Caribbean.

The profile presented is of teachers with first and second degree university qualifications—a number in Science and Mathematics—whose work experience ranges from as little as 2, to as many as 19 years of teaching. In a recent presentation about the re-launch of the ‘Quality Mark’ in 2005, a representative of the UK Department for Education and Skills proposed that the dominant profile of an overseas teacher in the UK is a young person from South Africa or Australia with no intention of staying beyond 12—18 months. The profile of teachers interviewed for this study is clearly in stark contrast to this DfES

profile, and it is of interest that the one South African teacher interviewed, ‘Ntombi’, brought 15 years teaching experience with her to this country. Indeed the average teaching experience of the sample was 10.5 years. Given that on the basis of Table 2 presented in Chapter 1 in which the total number of work permits approved for teachers by the UK Home Office between 2001—2003 was 12, 844, of which the combined total for South Africa and Australia was 7,381, it may be assumed that a rather different profile may apply for the remaining 5, 463 from the 36 other Commonwealth countries listed.

Reasons for being recruited to teach in the UK

Eleven of the 12 teachers interviewed—all excepting for Aurora from the UK - came to the UK in the hope and expectation of better than that which they had known before. This fact was stated repeatedly despite several of the subjects having had international exposure to teaching in other countries (Julius), having held positions such as head master and head

Table 2: Profile of Qualifications and Teaching Experience of a sample of Commonwealth Teachers recruited by UK recruitment agencies/businesses between 2001—2003 (N=12)

Case	Pseudonym	Gender	Years of teaching	Academic qualifications
1.	Alfred	Male	14	Bachelor’s degree and post-graduate diploma
2.	Aurora	Female	10	Master’s degree
3	David	Male	17	Master’s degree
4.	Julius	Male	19	Bachelor’s degree and post-graduate diploma
5.	Larry	Male	10	Master’s degree
6.	Mutwa	Male	4	Bachelor’s degree
7.	Ntombi	Female	15	Bachelor’s degree and post-graduate diploma
8.	Penelope	Female	3	Bachelor’s degree
9.	Sarah	Female	2	Bachelor’s degree and post-graduate diploma
10.	Slakisha	Female	10	Bachelor’s degree and post-graduate diploma
11.	Sonia	Female	18	Bachelor’s degree and post-graduate diploma
12	Sylvester	Male	4	Bachelor’s degree

Note: The names of the Commonwealth teachers are pseudonyms used to protect their anonymity.

of department (Alfred; Ntombi) and had worked for international agencies such as UNESCO (Sonia). In all cases, the reasons for seeking to teach in the United Kingdom were the desire for an improved quality and standard of living for themselves and for their families through (i) seeking higher earnings (ii) further education and (iii) exposure to a developed country. Even in the case of Aurora, who is a UK resident and applied directly to her local education authority - by-passing recruitment agencies - part-time/supply teaching was undertaken so as to provide more time for her family and because the higher unit earnings, she felt, would compensate for the loss of job security.

Terms and conditions offered to teachers by agencies, businesses and schools

The 11 teachers recruited from overseas were offered contractual agreements by recruitment agencies/businesses, for periods of between one and two years. In some cases fees were charged for ‘services’ (Mutwa), ‘accommodation deposits’ (Alfred and Ntombi), ‘travel’ (David). In many instances work permits issued by the UK Home Office based on applications by their ‘employer’ — the recruiter — were for periods of one year only, but their understanding was that once here and in a permanent position, the work permit would be extended by the school to which they would be permanently employed. Many teachers came in the expectation of starting out in temporary positions — which is what they understood ‘supply teaching’ to mean — but in being appointed to permanent positions within a year of their arrival. This was what their recruiters promised them (Mutwa; Larry; Julius; David; Ntombi). The salaries offered and initially received varied from £17,000 to 19,000 per annum, including bonus arrangements. Only Sonia was offered a salary of the level of £25,700.

Changes in terms and conditions of employment

Changes in the terms and conditions of their employment — unilaterally and without consultation — were experienced by 11 of the 12 teachers interviewed. Salary and pay arrangements in their contractual agreements were experienced by two-thirds of those interviewed. Teachers from Southern Africa and India came to the UK on the understanding that Agency ABC would be paying them on a ‘guaranteed pay’ basis, so that they could be assured of a salary—regular pay—even when a school did not require them for supply teaching. This agreement was changed, at times within weeks of their arrival and the commencement of work, to an arrangement whereby they would be paid only for the actual days worked. Despite offering a higher overall daily wage, by so doing Agency ABC not only reduced their earnings from the annual salary they had offered, but also changed their employment status from that of salaried worker employed to Agency ABC to temporary worker, paid only for days worked. The teachers treated in this manner were offered no choices or options by ABC, who in fact coerced many of the teachers into signing up to a new contract which would increase their vulnerability by providing less secure tenure as well as a reduction in income.

The recruiters—Agencies ABC, DEF, HIJ, and KLM — all reneged on the commitment to find permanent employment for the recruited teachers. Whereas lack of clarification and a clear understanding by some of the recruited teachers as to the meaning of ‘supply’ may have been partly to blame for them being misled, Agency KLM and the principals of the Grimsby and Beckfield High Schools certainly knew that Slakisha and Sonia, for example, would only migrate to take up a teaching positions in situations in which they would be permanently employed, and still encouraged them to proceed to take up positions, for which the principals later told them, they would have to re-apply.

It cannot go unnoticed that the period in which the highest incidence of contract change was experienced was just prior to the Easter and Summer vacation periods in 2002. This meant that as the schools would be closed during these vacation periods and not requiring supply teachers, Agency ABC intended to suffer no financial loss. Instead they appear to have protected themselves from such loss by cutting teachers loose, forcing a new arrangement on them, which would not only make the teachers suffer a significant loss of income, but would change their employment relationship to one of being 'self-employed' as against an 'employee' of the recruiter.

The principal of Slakisha's school was similarly cavalier in changing a verbal agreement, however. Having told her that he had a permanent position to offer her for September 2002, he then advised her in early 2003 that he would have to pay 5,000 sterling to move her from 'temporary-to-permanent', which he said the school could not afford. Could it be that in order to escape from his commitment this "fee" was jointly contrived by the principal and Agency HIJ? Impossible!

Contact with a teachers' union

Despite Agency ABC's efforts to dissuade their teachers from joining a union, 10 of the 12 teachers interviewed recounted helpful, and in some cases considerable assistance from Members of Parliament (Julius), teachers unions and the NUT in particular. Aurora did not see the need to join a union and Sonia had not found the NUT very helpful when she was seeking their assistance. However, the initiatives of the NUT on behalf of the Southern African teachers recruited by Agency ABC can only be termed admirable.

Based on the various accounts of the Southern African teachers (Larry, Julius and others), followed by confirmation from the union itself, the NUT in September 2002, invited Agency ABC to attend a meeting in which representatives of the UK Home Office were also present. As an outcome of the meeting, Agency ABC agreed to pay the sum of £25,000

to the Teacher Support Network operated by the NUT for teachers in need of assistance.

This was how many of the Southern African teachers were able to benefit from financial assistance and legal guidance about their immigration situation. Through the instrumentality of the NUT, the Home Office also provided extensions of stay, giving the teachers additional time to seek other jobs.

It was during this period that a new ruling emerged in which the Home Office refused to provide recruitment agencies with work permits for teachers they were recruiting. The stipulation was that the work permits had to be with the schools to which they were employed.

One can only ask what would have happened to these teachers were it not for the NUT and the Home Office's initiatives. One must ask how many other Commonwealth teachers have floundered through being entangled in the web of deception that these recruitment agencies — and some school principals - spun on them?

The teachers today

During the interviews, many of the subjects could tell of other recruited teachers who had in frustration and pain, returned to their countries of origin, mortified at the way they had been treated in the United Kingdom.

Of the teachers interviewed from countries other than the UK, some of whom were former principals and heads of departments, none has been able to find a position of equivalence or similar seniority in the UK. Whilst this is frequently the status of new migrants initially, given the demand for teachers, what has evolved is a situation of deskilling, avoidance in providing vocational training and career development, under-employment and for a majority, other employment for which they have little experience or expertise. The majority of the recruited teachers interviewed were obliged to turn to residential child care and care of the

elderly. The Caribbean teachers have managed to remain in teaching, despite the difficulties of those situations. The Southern African teachers stayed in their residential child and elderly care positions as a work permit was provided them and they were resolute about not returning to their own countries until they achieve the objectives for which they came, of study and improved compensation.

Analysis and discussion of the research findings

‘The industrialised countries have the means, but have planned poorly [and] are now buying human resources from overseas ... at the end of the line, it is always the lowest income country that pays the education bill.’ (Van der Schaaf, Education International, 2005)²⁸

In an effort to ‘recall the need to protect workers against abuses’²⁹ whilst ‘recognising the role which private employment agencies may play in a well-functioning labour market’,³⁰ the International Labour Organization (ILO) at its 85th session in June 1997 adopted the Private Employment Agencies Convention C181, 1997, in the same year that there was a change from Conservative to Labour government in the UK.

In Article 4 of the Convention³¹, which was a revision of the ILO Fee-Charging Employment Agencies Convention (revised) 1949, the right of workers recruited by private employment agencies to freedom of association and to collective bargaining is stressed as is Article 5, the right of the employment agency worker not to suffer discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, age or disability. Articles 8.2 and 10 of the Convention state that:

‘Where workers are recruited in one country for work in another, the members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment’ (Article 8.2)

and that

‘adequate machinery and procedures involving ... the most representative employers and workers organisations (shall) exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.’ (Article 10)

It is not surprising that to date, whilst Spain, Finland, Italy and the Netherlands have ratified this Convention, the aim of which is to protect temporary workers, the United Kingdom has not.

Of the four UK recruitment agencies or businesses involved, Agency ABC stands out for the volume of fraudulent and abusive practices in particular to which their recruits were subjected. Agency ABC breached contractual obligations by:

- ◆ Offering an annual salary and bonus to teachers to which the agency did not adhere (Mutwa: Larry; Julius; Sylvester; Alfred; David; Ntombi; Sarah; Penelope)
- ◆ Coercing recruits into a change of contract mid-year without their prior knowledge or agreement, rescinding one year contractual agreements,. (Mutwa: Larry; Julius; Sylvester; David; Ntombi; Sarah; Penelope)
- ◆ Changing the emoluments by agreeing to pay a fixed salary, whether they worked or not, thereby treating them as employees of

28 Wouter Van der Schaaf, Education International, in a Commonwealth Secretariat consultation on the ‘Recruitment and Migration of the Highly Skilled’, January 2005, London.

29 Preamble to Private Employment Agencies Convention C181, 1997, Bureau for Workers Activities. International Labour Organization, Geneva.

30 Ibid.

31 Ibid.

the agency, only to change this after a matter of months, to payment for days worked only.

- ◆ Using the threat of withdrawal of work permits provided by the UK Home Office to coerce teachers into accepting new terms. (Mutwa; Larry; Julius; Sylvester; David; Ntombi; Sarah; Penelope)
- ◆ Misleading recruits by giving the impressions that ‘supply teaching’ was a temporary arrangement which would lead to permanent jobs, when there is some evidence that they sought to prevent teachers obtaining permanent appointments at schools (Alfred).
- ◆ Charging a fee for ‘accommodation finding’ services which were grossly sub-standard in some instances (Ntombi)

However, Agency ABC was not alone in committing practices which contradict the spirit and intent of the statutory environment that has been developed to protect the rights of temporary and part-time workers. Opportunities to move from temporary to permanent positions appear to have been thwarted and prevented by agencies and schools in a number of instances (David; Slakisha; Alfred; Sonia.)

Are you an employment business or agency?

Regulation 9 (i) and (ii) of the UK Conduct of Employment Agencies and Employment Businesses Regulations 2003³² stipulates that an employment agency or business may **not** claim, when introducing or supplying a work-seeker or hirer, to be acting as an employment agency to the work seeker and at the same time acting as an employment business to the hirer or vice-versa. Agencies DEF and HIJ conveyed the strong impression to their teachers—and may have colluded with school principals in stating—that they were being employed to permanent positions in schools, a

recruitment agency function, when they were in fact being employed to the recruitment businesses (Slakisha; Sonia).

All recruitment businesses in this study, used the temporary nature of the employment relationship to the detriment of the recruited teacher through lack of clarity in the information provided in terms of whether they were recruiting teachers for permanent positions in schools or whether they were recruiting temporary workers for their own agencies. This fact applied to 11 of the 12 teachers. In the cases of Slakisha and Sonia, they were encouraged by the principal’s of the schools interviewing them, to immigrate on the offer of permanent positions in their schools, only to change this offer as the school year drew to a close and, in the case of Slakisha, to require her to re-apply for her own position.

Fees for ‘work-finding’, ‘additional services’ and ‘restrictions on charges to hirers’

The matter of fees in general occupies a significant portion of the Conduct of Employment Agencies and Employment Businesses Regulations 2003. The regulations stipulate that it is unlawful for an employment agency or business to charge fees for providing ‘work-finding’ services and that the job-seeker must be informed of any charges that the recruiter may make for ‘additional services’ and goods that they provide. Regulations 26.1 and 26.2 state that the agency cannot charge a fee to a particular work-seeker where it, or any person with whom it is connected, also makes a charge to the hirer who is engaging that work seeker.

In all instances where subjects interviewed were required to pay a fee for ‘services’, the ‘middle-man’ in their country of origin appears to have been the recipient, and not

32 Conduct of Employment Agencies and Employment Businesses Regulations 2003, Statutory Instrument No. 3319, HMSO, UK.

the Agency recruiting them to the UK (Mutwa; Sylvester; David; Penelope). This middleman was also willing to let the payment await the establishment of the recruit in the UK, at least in the cases of Mutwa, Sylvester and Penelope. This may suggest that Agency ABC wished to keep its hands untainted by the stain of accepting a fee for finding work, with the full knowledge that they would receive other fees from the school to which they supplied the teacher through the percentage of the teachers wage which they would ‘cream off’.³³ On the other hand, it may well be that the ‘middleman’ took it upon himself to charge these fees, unknown to Agency ABC. However, the same was not true for accommodation deposits and services which would fall under the ‘additional services’ provision of the regulations.

Several subjects paid amounts in excess of £250 to sources within, if not connected to Agency ABC, to have accommodation awaiting their arrival in the UK. The standard and quality of this ‘accommodation-finding’ service is very much open to question, when Ntombi, for example, found that having paid £250 for her accommodation, she was placed in a house which she had to share with a family and their absent son, whose clothes filled the cupboard in her room. Ntombi was made by her ‘hosts’ to leave the premises at 7 am each morning and not to return until 7 pm. in the evening, all this in the coldest time of the British winter, February—March. Upon requesting a refund of her money, she was advised that she was obliged to remain in these conditions for eight weeks.

The 2003 Regulations³⁴ also address the issue of transfer fees when a temporary workers moves to undertake permanent employment in the place where they have been employed on a temporary basis. Regulation 10 is to ensure that employment businesses do not use transfer

fees unreasonably as a means of discouraging or deterring hirers from offering permanent work to temporary workers. Whilst there is a suggestion of this in the cases of Alfred and Penelope, it is writ large in the case of Slakisha, who was told by the principal of her school that the school could not afford to pay the 5,000 sterling which they would be charged by Agency HIJ, if they wished to move her from temporary to permanent employment.

It is worthy of note that at just around the same time that Slakisha was advised of this situation, she was also advised by her contact in Agency DEF, that he had moved to another agency HIJ. There is a provision in the 2003 Regulations³⁵ preventing hirers from having workers who have been providing a temporary service through one agency, and whom they wish to employ permanently, supplied to them through a different employment business, in an effort to avoid paying the “temp-to-perm’ fees. This could be the reason why the contact in Agency DEF had moved to HIJ, in an effort to circumvent this regulation.

Variation in the terms of an agreement

Whilst all subjects interviewed with the exception of for Aurora, experienced a change in the terms and conditions of their contract, the Southern African teachers and David from India experienced variations that were both harsh and extreme. Having migrated from their countries with contractual agreements that they would be paid a fixed annual salary and bonus, they were instructed within months of arriving in the UK, that there contracts were changed, and coercive means were used to get them to sign up to the changes.

Regulations 14.4 and 14.6 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 state that an

33 The term ‘cream-off’ was used by Aurora, the only UK teacher interviewed in the sample, who declared that she went directly to the LEA and avoided agencies for the reasons that they were known to keep a significant portion of the supply teachers pay for themselves.

34 Conduct of Employment Agencies and Employment Businesses Regulations 2003, Statutory Instrument No. 3319. HMSO, UK.

35 Ibid.

employment agency or business may only vary the terms it has agreed with a workers if the worker agrees to the variation. It must also not make the continued provision of any services to a work-seeker conditional on the work-seeker agreeing to any variation in the terms such as a change in the pay rate. Agency ABC had no regard whatsoever for regulations such as these, but threatened teachers with “redundancy”, work-permit withdrawal and “repatriation” if they did not sign up to the revised contract.

Qualification recognition, equivalencies and qualified teacher status

There is a European Union Directive on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years duration (89/48/EC)³⁶ as well as Directives 89/49/EC³⁷ and 92/51/EC³⁸ which provide for ‘mutual recognition’ and hence equality of treatment in education qualifications, which operates within the European Union, despite the many different languages spoken in the union. The point was made that despite these linguistic and systemic differences in education, qualified EU professionals can move freely throughout the EU, but the situation is quite different where Commonwealth professionals are concerned.

In their interviews Sonia, Slakisha and Julius spoke of the Qualified Teacher Status which they did not have, and were not told about by either their agencies or their schools, until they arrived in the UK. They were treated—and paid — by their schools as ‘unqualified’ teachers despite being university graduates with post-graduate qualifications and combined, a total of 47 years of teaching experience between them. It was only upon

attending an NUT conference that Slakisha learnt that it is the responsibility of the school principal to assess and determine the level at which the teacher should be paid, and that principals have the option of placing an experienced and qualified teacher recruited from overseas at a higher level on the pay scale than that of an unqualified teacher.

This would appear to be a form of discrimination and detriment to the Commonwealth teacher recruited from overseas, who categorised as an ‘unqualified teacher’ is subjected to a lower pay scale until they obtain the UK certification of Qualified Teacher Status. What is especially unfair and detrimental is that, they were sought after by UK recruiters, as they are English-speaking, educated in institutions founded on the British system of Education, and can provide a cultural dimension to many British schools, whose students reflect a high level of multi-cultural diversity. Yet, seduced by UK recruitment agencies and school principals to come to the UK, they are advised on arrival that their qualifications do not measure up.

The role of UK-NARIC, frequently referred to by the Southern African teachers in particular, is of particular import, as they are deemed a ‘clearing house’ for the assessment of qualification equivalencies in the UK, and approved the qualifications of all those teachers from Southern Africa recruited to this country. Yet upon arrival in their schools, the qualification status of the recruited teachers was changed so that they were not treated as other teachers of similar qualifications and experience. The Council for Racial Equality (CRE) Code of Practice for the Elimination of Racial Discrimination recommends that:

‘overseas degrees, diplomas and other qualifications which are comparable with UK qualifications should be accepted as

36 Council Directive on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years duration (89/48/EC) in Blackstone’s EC Legislation 2003—2004, Nigel Fosters (ed.). OUP, UK.

37 Ibid.

38 Ibid.

39 Para. 1.13 (c) of the CRE Code of Practice for the Elimination of Racial Discrimination, p. 467

equivalents, and not simply be assumed to be of an inferior quality'.³⁹

Such treatment of temporary workers would seem to rule out the intention of much recent European social policy designed for improvement in the living and working conditions of — not citizens of Europe but — 'workers in the European Community', be they fixed term, part-time, temporary or seasonal workers. Such treatment renders pointless EU Directive 91/383/EEC 1991⁴⁰ to improve the quality of temporary work by ensuring that the principle of non-discrimination is applied to temporary workers, also stating that temporary workers should not be less favourably treated than a 'comparable worker', taking into account seniority, qualifications and skills. Several teachers had difficulty in getting any information about how to pursue studies for the Qualified Teacher Status certification.

Article 5.2 of the draft Directive of the European Parliament and the Council on Working Conditions for Temporary Workers COM/2002/0149⁴¹ calls on member states to:

'improve temporary workers access to training in the temporary agencies, even in the periods between their postings, in order to enhance their career development and employability'.⁴²

Sonia is the only teacher to have been informed by her Agency about the possibility of pursuing the QTS qualification. Slakisha has been put by her current school on an accelerated QTS programme about which she heard only after the NUT advised her of its availability and she requested information about it from her school. The Southern African teachers who had to move to work in residential child care will not have an opportunity to "enhance their career development and employability" because they were not within the school system to be able to pursue the QTS programme.

The teacher's right to trade union membership

Agency ABC in discouraging recruited teachers, Mutwa and Ntombi, from becoming members of trade unions gave a clear signal that the Agency was engaging in such practices to safeguard their own business interests and to protect themselves from exposure for the abusive and unethical practices in which they were engaged. As stated earlier, the right of migrant workers to be represented by a trade union and to enjoy the benefits of collective bargaining has been enshrined in Article 20 of the United Nations Declaration on Human Rights 1948, in Article 6, C97 Migration for the Employment Convention (Revised) 1949 and in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 for the last half century. The UK Industrial Relations Act (1971), later repealed and replaced by the Trade Union and Labour Relations Act 1974, also asserts this fundamental right of the worker to join, or not to join, a union. Slakisha's agency on the other hand, referred her to a union when she turned to them for assistance following the accusation that she had 'assaulted' a student. In this case the agency — technically her employer — by-passed their responsibility of care and referred her to a union.

Credit has already been given to the role of the National Union of Teachers who acted on behalf of the Southern African teachers especially, in demanding some redress and compensation for the detriment they had suffered and the abuses to which they had been exposed by Agency ABC. The Race Relations Board in Newham, the Commission for Racial Equality and the Socialist Workers Party of the United Kingdom also played important roles in revealing the injustices to which these recruited teachers from the Commonwealth had been subjected and in seeking some compensation for the teachers.

40 EU Directive 91/383/EEC 1991 in Blackstone's Statutes on EC Legislation 2003—2004, Nigel Foster (ed.). OUP, UK.

41 Directive of the European Parliament and the Council on Working Conditions for Temporary Workers COM/2002/0149 (Draft) on Europa website — <http://europa.eu.int> of European Parliament and Council

42 Ibid.

At the Commonwealth Ministers meeting in September 2004 which approved the Teacher Recruitment Protocol, the General Secretary of the NUT who is also the Convenor of the confederation of Commonwealth Teachers Unions asked that Article 3.12 should read:

‘The recruiting agency shall inform recruited teachers of the names and contact details of all teachers unions in recruiting countries.’⁴³

Issues of gender and ethnicity

The issue of gender is also added to the mix of an already complex situation as many teachers and part-time workers are women and therefore vulnerable to discrimination on the basis of sex. Despite an improved UK statutory framework in the Equal Pay Act 1970⁴⁴ and the Sex Discrimination Act 1975, which provide for there to be no differentiation made between male and female workers on the grounds of pay and treatment except where a ‘genuine occupational qualification’ applies⁴⁵, issues of gender balance in the field of education reflect the picture world-wide. The UNESCO World Education Report for 2000 draws attention to the fact that the proportion of women who are teachers is increasing with 94 per cent in pre-school education, 58 per cent in primary and 47 per cent in secondary.⁴⁶

There are fewer male teachers at both primary and secondary school levels in the UK than there were ten years ago. There is considerable concern about the fall in the proportion of men in primary schools and with the limited numbers of male students who are taking up primary education as a career.⁴⁷ The majority of males in teaching are among the older teachers, so that the proportion of women in the teaching professions is likely to increase

simply through natural attrition at retirement. Given this situation, it is understandable that in the recruitment of teachers, a high priority will be placed on the recruitment of male teachers whether from within the UK or from overseas. This in time leads to the depletion of the male teaching resource from countries also experiencing low numbers of male teachers in their teaching force.

In a study of 17 Commonwealth countries conducted at the request of Ministers of Education in a report tabled at the 16th Conference of Commonwealth Education Ministers in 2006, figures on teacher turnover in the UK reflect overall more male teachers leaving the school system than joining at primary level and that female teachers were replacing departing male teachers in the main. At secondary level 71 per cent of the teachers joining were female indicating a decline in males remaining in teacher posts even at this level.⁴⁸

Case law in the European Union reflects the extent to which women have considered themselves to be at a disadvantage in comparison to their male colleagues where their employment status and condition is concerned (*Bilka-Kaufhaus GmbH v Weber von Hartz* (Case 170/84) 1980; *Defrenne v Sabena* (Case 43/75) 1976). Hence the vulnerability of the female teacher is further aggravated by the recognition that with the increasing feminisation of teaching, woman migrant teachers could be easy targets and placed at a position of some detriment, by unscrupulous recruiters.

This investigation revealed no obvious or apparent instance of direct discrimination to the male and/or female teachers on the grounds of gender. Whilst this was a surprise

43 Commonwealth Teacher Recruitment Protocol, Article 3.12. Commonwealth Secretariat, 2004.

44 Equal Pay Act 1970, Blackstone’s Statutes on Employment Law (2003—2004), p. 2. OUP, UK.

45 Sex Discrimination Act 1975, Blackstone’s Statutes on Employment Law, p. 5. OUP, UK.

46 In Status of Women Discussion Paper on ‘World-wide Teacher Shortage’. UNESCO/ Education International, 2002.

47 Hutchings M. (2002) in ‘A representative profession? Gender issues’. IPPR, UK.

48 R. Degazon-Johnson and Richard Bourne, Report on Future Actions requested by Ministers of Education in the Commonwealth Teacher Recruitment Protocol, p. 14. Commonwealth Secretariat, London.

finding and unanticipated, as related literature⁴⁹ suggests that the predominance of women in teaching may lead to those recruited being subjected to greater detriment than their male counterparts. However, no such evidence was unearthed. However, another form of discrimination was:

David, holding a Masters degree with 17 years teaching experience, when making efforts to find a permanent position, attended interviews and discovered that one job had been given to a white English teacher who was a recent graduate. Sonia, a science teacher with 18 years experience and the only black teacher in her school, discovered that the position for which she had been interviewed and made an offer in 2002, was given to a white American who had been hastily recruited by telephone in 2003.

The United Kingdom has sought to address and regulate the sensitive issue of racial discrimination in employment through the Race Relations Act 1976⁵⁰ and the CRE Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality and Opportunity in Employment⁵¹ which aim to ensure that no job applicant or employee receives less favorable treatment than another on grounds of colour, race, nationality, or ethnic or national origin. Whilst previously unanticipated by this researcher until the interviews were held, it would not be extreme to propose that given the extent of less favourable treatment, abuse, detriment, harassment and victimisation experienced particularly in comparison to 'Aurora', the only teacher who was not recruited from overseas, 11 of the 12 teachers have all been subjected to forms of racial discrimination by their agencies and schools.

Part 2, Article 4. 1 of the Race Relations Act 1976 in addressing discrimination in employment states:

'It is unlawful for a person, in relation to employment by him ... in Great Britain, to

- (i) discriminate against another in the arrangements he makes for the purpose of determining who should be offered employment
- (ii) in the terms on which he offers him that employment
- (iii) by refusing or deliberately omitting to offer him that employment.'⁵²

Although the 'evidence' is limited to the cases of Sonia and David, Sylvester's method of reporting his treatment to the Race Relations Board in Newham and getting compensation for the less favourable treatment meted out to him, may well be the route that could have been successfully pursued by others. Ntombi's view that white South African teachers recruited to the United Kingdom appear to obtain permanent teaching positions, whereas Black South African teachers do not, is also pertinent.

The study concludes by offering a list of recommendations for action by recruiting countries, source countries and Commonwealth teachers themselves. I conclude this presentation by acknowledging again the tremendous contribution to the welfare of these teachers which was made by the National Union of Teachers of the United Kingdom, who are also conveners of the Commonwealth Teachers Group. I must also acknowledge the outstanding initiative of Commonwealth Ministers of Education who brought about the development and creation of the Commonwealth Teacher Recruitment Protocol for the protection of this critical human resource. I close by recommending that ministries of education, private school employers, trade unions and international organisations all participate in the task of ensuring full implementation of the Teacher Protocol, now acknowledged as an international instrument of good practice in migration and development.

49 In Status of Women, Discussion paper on 'World-wide Teacher Shortage'. UNESCO/Education International (2002); and M. Hutchings (2002) in 'A representative profession? Gender issues'. IPPR, UK.

50 Race Relations Act 1976, c. 74.

51 CRE, Code of Practice for the Elimination of Racial Discrimination.

52 Part 2, Article 4.1 (a), (b) and (c) of the Race Relations Act 1976.

