



Racial discrimination by religiously selective faith schools: a worsening problem

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Executive summary

Indirect racial discrimination by religiously selective schools should worry those concerned about equality of opportunity and cohesion in society. The very serious negative impacts on society of the segregation of children on the grounds of their parents' faith, is well documented and evidenced by Northern Ireland in particular. But little examination has been made of the racial segregation that is an unfortunate, but sadly very real consequence of allowing religiously selective schools to discriminate on the grounds of faith.

During 2014 the Accord Coalition complained on behalf of the Fair Admissions Campaign to the Office of the Schools Adjudicator (OSA) about the admissions policy of four religiously selective schools on the grounds that their religiously selective admissions arrangements were indirectly selecting pupils on the grounds of race. Such selection is not only more pernicious for the growth of mutual understanding and community cohesion in society than selection and segregation by faith alone but, due to the increasingly exclusive nature of many religiously selective schools, it has major implications for equality of opportunity in society. Under the protections against indirect discrimination offered by the 2010 Equality Act, such selection is also potentially illegal.

We are dissatisfied with the judgements made by the OSA, which upheld the policies of all four schools and did not give sufficient weight to the barriers that disadvantaged families and children faced, nor to the freedom from indirect racial discrimination that the law provides. We remain deeply worried about this problem, which will only worsen due to demographic change and seek, through this report, to raise awareness and urge authorities to take action. Religion and discrimination make very poor bed fellows, and it is surely a given that in an open and tolerant society our education system should not be determining children's life chances on account of their racial or ethnic background.

The most effective solution to this problem would be to make schools less religiously selective, or for them to move away from religious selection altogether. However, falling short of this, we urge **the Government to extend its current cap of 50% religious selection in admissions at newly created academy faith schools, to all existing schools.**

As a stop gap measure, we urge Dioceses and other religious authorities that sponsor faith schools to take ownership of the problem and embrace reform, and to adopt the proposal put forward by the 2001 'Cantle Report'¹ of making **25% of school places at faith schools available to those from other denominations, faiths and beliefs**, to help ensure the schools have a mixed population that reflects those of other cultural backgrounds or ethnicities from the local area. **Schools in the most diverse areas should go beyond 25%.** To help schools monitor the impact of their admissions policy and the extent to which they are inclusive of local children, we ask **the Department for Education to again collect neighbourhood level data showing the ethnicity and free school meal eligibility of local children attending state funded schools.**

¹ Available at

<http://resources.cohesioninstitute.org.uk/Publications/Documents/Document/DownloadDocumentsFile.aspx?recordId=96&file=PDFversion>.

Complaints taken to the Office of the Schools Adjudicator

Grounds for a legal challenge on the basis of indirect racial discrimination

In Britain, there is a strong correlation between membership of some racial and religious groups, meaning that (depending on the local interplay between religion and race) religious selection by a school can act as a proxy for selection by race. Faith schools are able to select pupils by faith because they have an exemption from the prohibition on religious discrimination in the 2010 Equality Act. However, they are not exempt from the Act's prohibition on indirect discrimination on other protected characteristics, which includes on the grounds of race².

Indirect discrimination by race occurs when a policy or practice applies to everyone in the same way, but has a worse effect on people of one racial group than those of others. It is illegal except where, as the Department for Education's guidance³ notes:

'It is a defence against a claim of indirect discrimination if it can be shown to be "a proportionate means of achieving a legitimate aim". This means both that the reason for the rule or practice is legitimate, and that it could not reasonably be achieved in a different way which did not discriminate.'

Systemic indirect racial discrimination

Awareness of religious selection leading to ethnic division in schools was significantly boosted following the publication of the 2001 'Cantle Report', which was commissioned by the Home Office following race riots in towns in northern England that summer. The report, which popularised the term community cohesion, found some faith schools were operating religiously discriminatory policies 'where religious affiliations protect cultural and ethnic divisions' (p33).

The Fair Admissions Campaign's concern about faith schools selecting children by race became further heightened following work for its online map⁴ launched in 2013, which ranks how religiously and socioeconomically selective are all secondary schools in England. Until 2010, the Department for Education produced annual data showing the number of children attending a state funded school by local Middle Super Output Areas⁵ (MSOAs), and further broke the data down by children's ethnicity, their entitlement to free schools meals (a government measure of poverty) and whether they attended a primary or secondary school. As a by-product of the detailed work for the FAC's map - which drew upon the DfE's annual data - it became apparent where there were secondary schools with a significant mismatch between the ethnic profile of their pupils versus those children attending a state funded secondary school and living in the school's local MSOA. Very often the largest disparities concerned children of an Asian ethnicity. When the FAC looked at schools with the greatest mismatches a disproportionately large number were found to be oversubscribed, religiously

² The basis for a challenge on these grounds was discussed by Dan Rosenberg and Raj Desai in a 2013 article for the Education Law Journal entitled *The Admissions Arrangements of Faith Schools and the Equality Act 2010*. The publishers have allowed us to make a copy of it available, which can be found at http://fairadmissions.org.uk/wp-content/uploads/2013/05/2013_Ed_Law_93.pdf.

³ Department for Education, *The Equality Act 2010 and schools: Departmental advice for school leaders, school staff, governing bodies and local authorities*, May 2014: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315587/Equality_Act_Advice_Final.pdf

⁴ <http://fairadmissions.org.uk/map/>

⁵ Middle Super Output Areas (MSOAs) are geographical areas that have a minimum size of 5,000 and an average of 7,500 residents.

selective and located in an area with a significant South Asian population. Although on their own these statistics offered a crude measure on which to assess the ethnic inclusivity of an individual school, when the FAC looked at the 100 secondary schools that appeared the least inclusive of children of Asian ethnicity, faith schools comprised 59 of them. This is when faith schools only comprise 18.9% of all schools at the secondary stage in England. Faith schools were significantly overrepresented.

This should not be especially surprising given that the vast majority of people of South Asian heritage are not Christian, while almost all faith schools are of a Christian denomination. Data from the 2011 Census does not offer a category for people of South Asian heritage, but data is broken down for people recorded as having either Indian, Pakistani or Bangladeshi ethnicity. Add together these comprise the vast majority of people of South Asian heritage in the UK. The 2011 Census showed⁶ that of the over 2.6 million people in England and Wales counted as of Indian, Pakistani or Bangladeshi ethnicity, just 160,000 (6%) of them were Christian. Over 37% of state funded primary schools in England are faith schools meaning that, overall, more than a third of all state funded schools in England and Wales are faith schools, 98% of which are Christian. Most show preference on the grounds of church membership or/ and attendance in their oversubscription policy.

Complaints raised about Archbishop Tenison's School, Blue Coat School, Bury Church of England School and St Bonaventure's

The Accord Coalition decided to object on behalf of the FAC to the Office of the Schools Adjudicator (OSA) about the admissions policies of four schools that had appeared to have a significant mismatch between the ethnicity of their pupils and local state school children. Three are Church of England (Archbishop Tenison's School in Croydon; The Blue Coat School in Oldham, and Bury Church of England School) and one is Roman Catholic (St Bonaventure's in Newham). Two are in London and two in the North West of England. The four all have slightly different admission policies, are very popular, academically successful, and admit disproportionately few local children of South Asian backgrounds.

Complaints to the OSA of indirect racial discrimination by different schools have previously been brought by others, but these four complaints were the first ever to challenge religiously selective admission arrangements for serving as a proxy for selection by race. The 2010 Equality Act provides a firm basis for such a challenge, and the objections were something of a test case.

The OSA is a free tribunal service which upholds the statutory School Admissions Code and law related to admissions. We believed the precedent of a successful challenge would help to highlight the growing problem of indirect racial discrimination and so demonstrate the need for religiously selective schools to be inclusive of people of other beliefs, especially those schools located in ethnically diverse areas.

Proving indirect racial discrimination

During our complaints we produced detailed statistics looking at the ethnic profile of children living locally to the four schools and the ethnic profile of pupils at the schools themselves⁷; data showing

⁶http://www.nomisweb.co.uk/census/2011/DC2201EW/view/2092957703?rows=c_ethpuk11&cols=c_relpuk1

¹

⁷ We obtained data on the ethnic profile of the schools' pupils from the Department of Education's School Census, and data showing the religion or belief of people according to their recorded ethnicity in each school's local borough from the 2011 Census.

how oversubscribed the schools were (i.e. how many children were being admitted who didn't meet the church attendance or membership criteria), and how many local people from the disadvantaged racial group were not Christian (and thus were not in a position to be able to meet the school's church criteria). Our findings are set out the table below.

	School			
	Archbishop Tenison's, Croydon	Blue Coat, Oldham	Bury Church of England, Bury	St Bonaventure's, Newham
% secondary school age children in school's MSOA ⁸ recorded as South Asian	22%	30.5%	32.4%	68.5%
% secondary school age children in school's MSOA and all neighbouring MSOAs counted as South Asian	9.7%	56.8%	20.2%	57.1%
% of school's pupils counted as South Asian	2.7%	2.2%	0%	10.7%
Maximum proportion of places that could be allotted by church attendance or membership	90%	100%	100%	100%
Average number of applications over preceding three years ranking school as 1st preference choice ⁹	186.33	401†	143.67	222
Average number of places offered over previous three years	102.67	218	156.67	186
% admitted on church attendance or membership (excluding LAC, PLAC and SEN)	90. 3%	100%	94.7%	100%
% of borough children of secondary school age (10 to 18 years) recorded as South Asian	9.7%	26.0%	8.1%	37.2%
% of South Asian borough residents recorded as Christian	12.2%	1.5%	1.6%	4.8%

The data shows that all four schools have a significant mismatch between the number of their pupils recorded as having a South Asian ethnicity, and the proportion of children of secondary school age living locally with that ethnicity. The two with the starkest disparity were the Blue Coat School in Oldham, with only 2.2% of its pupils recorded as having a South Asian ethnicity compared to 56.8%

⁸ As mentioned in an earlier footnote, Middle Super Output Areas (MSOAs) are geographical areas that have a minimum size of 5,000 and an average of 7,500 residents. To build a picture of the ethnic profile of the children in the local area, we looked at the ethnic profile of secondary school-aged children living in each school's MSOA, as well as then all those living in the school's MSOA and all neighbouring MSOAs.

⁹ i.e. 2011/12, 2012/13 and 2013/14. For Blue Coat data for 2013/14 only was provided.

of children in the school's local MSOAs, and Bury Church of England School, with 0% of its pupils recorded as having a South Asian ethnicity versus 20.2% of children in the school's local MSOAs. The four schools were all oversubscribed. Excluding those children who were given highest priority because they were looked after¹⁰, previously looked after or had a special educational needs statement naming the school, all or almost all of their pupils were admitted on the grounds of having a record of church attendance or membership. The very large majority of people in each of the schools' local boroughs who are South Asian are also not Christian (but very largely Muslim).

Many families from religious minority groups would choose to send their children to a Christian school when presented with the option of doing so. As the Church of England website notes¹¹ of its schools, 'Many church schools (both VC and VA, primary and secondary) have a high proportion of Muslim children, a substantial number have over 80 per cent intake from the Muslim community.' and that '25% of pupils attending C of E Secondary schools are from Black or Minority Ethnic backgrounds'. In the case of the Roman Catholic St Bonaventure's, the school's own admission statistics were detailed enough to show that such families had in fact applied to the school, but been unsuccessful¹². At no point during our four objections did other parties argue that the schools were not attractive to and popular with local non-Christian families.

In addition to highlighting with the OSA the indirect discrimination, we similarly queried whether the schools were adhering to their Public Sector Equality Duty,¹³ along with paragraph 1.8 of the Admissions Code where it states 'Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular... racial group' – although the importance of these was essentially the same as our charge of indirect discrimination.

Were the aims of each school's policy legitimate and being advanced proportionately?

To consider whether an indirectly racially discriminatory policy breaks the Equality Act it should first be established whether the admission policy is seeking to advance legitimate aims and, if so, whether they are being advanced proportionately. St Bonaventure's stated that the aim of its religiously selective admissions policy was to educate children from Catholic families while, broadly, both Archbishop Tenison's in Croydon and Blue Coat School said they aimed to educate Christians and used religious selection to help uphold their religious ethos. Bury Church of England's policy privileged those with a record of Church attendance which it said it did 'to clearly communicate to prospective families through attendance at Public Worship ... what that [our] ethos is all about so they are able to make an informed choice about whether they want to apply to us or not.'

¹⁰ A child is looked after by a local authority if he or she has been provided with accommodation for a continuous period of more than 24 hours, in the circumstances set out in sections 20 and 21 of the Children Act 1989, or is placed in the care of a local authority by virtue of an order made under part IV of the Act.

¹¹ <http://ww104.churchofengland.org/our-views/education/church-schools-faqs/faqcofeschools.aspx#divisive>

¹² After Christians, the school's policy gave preference to non-Christian families who had had their application formed signed by a religious leader within their faith. Even though no pupil had been admitted under this criterion in recent years, the school still received 26 applications to start in its Year 7 in 2013/2014 from families that met this criterion. The 26 families stood little or (as it turned out) no chance of being admitted, yet still confronted the likely stigma of having their application to a faith school outside of their faith signed by one of their religious leaders, clearly indicating that many local non-Christian religious families were wishing to send their child to the popular and highly rated school - the majority of whom were (as the 2011 Census revealed) of South Asian heritage.

¹³ Section 149 of the Equality Act requires public authorities and those exercising public functions to have due regard to the need to foster good relations between persons who share and are of different protected characteristics (protected characteristics include race and religion or belief).

We accepted that the aims that the four schools sought to advance were legitimate, but not that the disadvantage the policies were causing was proportionate. However, the OSA upheld the schools' policies from this charge in all four of its determinations, which we believe contained several weaknesses and flaws.

St Bonaventure's School

For example, in St Bonaventure's determination, which was the first of four published, the adjudicator applied the wrong legal test in assessing the grounds on which a child faced disadvantage, writing that:

'An individual Catholic boy who meets the school's test of practice has the same chance of securing a place at the school as any other Catholic boy living in the area irrespective of the race of the boy.'

This assessment was based on religion and not on race, which was the charge against the school. Instead, to have properly addressed the complaint, the adjudicator should have asked not what the likelihood was of a Catholic or specifically South Asian heritage Catholic boy attending the school, but the likelihood of any given local South Asian boy being able to meet the school's criteria, when compared with any given boy of other ethnicities. In considering how otherwise ethnically diverse the school was (which was irrelevant to the objection of indirect discrimination towards children of South Asian heritage), the adjudicator concluded that the school's policy was not indirectly racially discriminatory. We are not clear how this conclusion could be made when the statistics we presented offered a compelling case that indirect discrimination was occurring.

The adjudicator was not taken with our suggestion that the school could still advance its aim of educating Catholics while simultaneously making sure some places were made available for children of other beliefs (so reducing the indirect racial discrimination). The adjudicator also deemed it reasonable that the school should show preference to non-Catholic Christians ahead of non-Christians, even though the school's stated aim was (only) to make sure it educated Roman Catholics. However, the determination gave us cause for optimism when the adjudicator noted:

'If the school's aim were to run a successful school or even to run a school with a Catholic ethos then it might be possible for it to do this without giving priority for all its places on the basis of faith.'

We agreed with the adjudicator that it would be harder to consider indirect racial discrimination caused by such a policy (one which merely sought to uphold a religious ethos) as proportionate. We therefore looked forward with renewed interest to the other three determinations, as the adjudicator's comment appeared to bring into question the proportionality of the three schools' approaches. The aim of Bury C of E's policy related fully to its ethos, while the aim of the policy of the other two schools related partly to their ethos.

Archbishop Tenison School

Archbishop Tenison School was (to its credit) the only one of the four schools to have already limited the number of places allotted by faith. 50% of its places were reserved for Anglicans, 40% for other Christians and 10% were open ones, meaning it was in the strongest position to counter the charge of causing disproportionate indirect discrimination.

However, the adjudicator did not agree with us that its policy was disadvantaging children unfairly from a particular racial group, though did conclude that its policy disadvantaged unfairly children

from a particular social group because it admitted so few children entitled to free school meals compared to other schools in the borough (7.5% at the school vs 21.1% across the borough). Whilst of course we welcomed this second finding, we are not clear how the adjudicator could arrive at the two conclusions together when the statistics pointing to disadvantage to local children of South Asian heritage was stronger than those highlighting socioeconomic unfairness.

Blue Coat School

We considered Blue Coat's admissions policy particularly worrying, as it appeared to have the effect of making other schools in the town much more ethnically segregated, when the town had suffered from race riots in 2001. A complicating (but welcome) factor was that the school had already arranged to expand its Year 7 intake for the following academic year by 22 places and would be making these available to 'members of a faith other than Christian'. However, in our view this was still a long way from satisfactorily addressing the disadvantage for children of South Asian origin and the requirements of the Equality Act.

Bury Church of England School

Bury CofE's second nearest neighbour is St Luke's Church of England Primary School, where almost 70% of the pupils are of Pakistani heritage (and the 2011 Census shows that the vast majority of people in the area with Pakistani heritage are Muslim). This should not be a surprise given that the school is located near to where many of the borough's residents of South Asian heritage live, and echoes the Church's own findings that its schools are often popular with Muslim families. But, crucially, St Luke's does not select children by their parent's faith.

The religious segregation of local children at the secondary stage caused by Bury C of E's religiously selective admissions policy is further highlighted by a comparison of the ethnic profile of pupils at Bury C of E with those at the next door Derby High School - the two secondary schools share a common border. When we raised our objection, Bury C of E only had one or two pupils recorded as having a South Asian ethnicity (by January 2015 the figure had risen to 4 of 780). In contrast, over 440 of the 840 pupils at the not so highly rated or nearly as popular Derby High School were of South Asian ethnicity. The two schools also had a contrasting socio-economic profile. In 2013 5.7% of Bury C of E's pupils were entitled to free school meals, whereas 23.5% were at Derby School (the average figure at Bury's secondary schools at that time was 13.7%).

Encouragingly, the adjudicator appeared to accept in their determination that Bury C of E's policy was discriminatory, noting that the church attendance criterion 'would be unlikely to give priority to the majority of families of South Asian origin'. However, in considering the legitimacy of the aim of school's policy they - and in our view inexplicably - introduced an aim that the school had not.

The school stated in its correspondence with the OSA that:

'Many families attend worship at a CTBi [Churches Together in Britain] church for a number of years to support an application for a place in our school, not because they are particularly religious or Christian, but because they want to secure a place for their child ... Application for a place in our school is open to any who wish to walk into their local parish, or any other church, to attend an act of worship on a regular basis. There is no requirement for membership of the Church of England, nor indeed any profession of any Christian faith. The requirement to attend public worship ensures that parents and prospective pupils understand the ethos of our school and can make an informed choice as to whether they wish to play their part in that ethos by choosing our school. It also ensures that places are available to all, irrespective of whether they can afford a house in the locality of the school

of their choice or not, and irrespective of their racial heritage or socio economic circumstances'

The school therefore rewarded church attendance, not so that it necessarily educated Christians, but so that parents better understood the religious ethos that the school sought to uphold. It takes upholding its ethos and Christian worship seriously, and wants to ensure families are aware what this will entail. This aim was not in any way hidden. Its admission arrangements asked parents to read the prospectus 'carefully' and attend open days and open events including school tours 'to satisfy yourselves that our school is the appropriate school for your child, bearing in mind the Christian ethos of the school. We offer a Christian education based on the Anglican tradition which places emphasis on the importance of, and participation in, worship'.

Notwithstanding the fact that the school was clear in setting out the aim it was pursuing through its policy, the adjudicator introduced an alternative aim to justify the disadvantage being caused. In doing so they found and quoted the mission statement on the school's website, which noted that 'We are determined to work to enable the school to pursue its commitment to Christian values and principles, to be a worshipping community and to continue learning as it looks to Jesus Christ and faces the challenge of the Gospel in its life and work.' In then ruling against our objection, the adjudicator argued that 'In the absence of these criteria a proportion of worshipping Christians may be disadvantaged by not being admitted to this faith school. Therefore, I am of the view that the arrangements are a proportionate means of achieving the legitimate aims of the school.'

Even if this was the school's aim, we do not see how the level of disadvantage being caused to local children of South Asian heritage could be justified. But at no point did the school say it sought to create a community of *Christian* worshipers, but a Christian school that placed special emphasis on worship. It was upfront that, despite its emphasis on the importance of worship, it was not trying to ensure its pupils were Christians.

It is therefore not clear why the adjudicator interpreted the meaning of the school's mission statement in this way – interpreted the statement that 'We are determined to ... be a worshipping community' to mean that the school existed to provide a community for worshipping Christians to gain access to, and further, that the school sought to advance this aim through the way its admissions policy was worded. This was at odds with the school's explanation and, in ascribing this new aim to the school, the adjudicator failed to take into account a relevant material consideration when forming their conclusion, namely to test the actual aim the school sought to advance through its admissions policy. The determination was thus flawed. Had the adjudicator tested the actual aim the school stated then we find it implausible that they could have deemed it as proportionate, as there are several non-discriminatory ways in which the aim could otherwise have been advanced.

For example, the school could have advanced its aim (of educating parents about its ethos and importance it places on the participation of worship) by making better use of the school website, prospectus or/and open days (if parents could not already work out that as a C of E school it would have a special emphasis on Christianity and worship in the Anglican tradition). These seem easy alternative options, which would not have had the effect of being at all indirectly racially discriminatory. Although the FAC wishes religiously selective schools would move away from selection by faith, the school might otherwise have reduced the indirect racial discrimination being caused to a level deemed proportionate by reserving some places for children of Muslim parents or, more generally, those of non-Christian faiths. However, it was not apparent from the adjudicator's determination that they had deliberated these options.

Conclusions

Two of the schools queried why we had picked on them for our objections. To some extent the four schools were simply unlucky. We knew based on earlier data for the FAC's 2013 online map that the policy of the four seemed to be creating a problem, but we only produced detailed statistics proving indirect discrimination during the objection proceedings. We did not consider their policies to be the very worst in the country - the problem of indirect racial discrimination is a much wider one and is likely to occur wherever a popular religiously selective school is located in an area where selection by religion serves a proxy for selection by race.

As noted, Bury C of E stated that 'Application for a place in our school is open to any who wish to walk into their local parish church, or any other church, to attend an act of worship on a regular basis. There is no requirement for membership of the Church of England, nor indeed any profession of any Christian faith.' For clear reasons of conscience (and it is not clear to us how a school with such a discriminatory policy could hold this view and be credibly deemed as upholding its Public Sector Equality Duty) such a course of conduct is not acceptable to most South Asian families near to the school. As a result, they do not have the same choice of schools as most non-South Asian families. This is the case with such families living near the other three schools as well.

The nature and magnitude of this barrier is something the adjudicators need to be aware of. Otherwise they cannot consider the extent of the disadvantage being caused and thus the proportionality of the schools' policies, and whether the aims the schools were seeking to advance could 'reasonably be achieved in a different way which does not discriminate', or in a way that is less discriminatory. All four schools could still provide many Christian parents with a choice, but operate in a way that is less racially discriminatory than current, which we believe the law requires.

Given that in three of the four cases the adjudicator did not even acknowledge the discrimination and in the one where it was recognised the school's aim was not tested (but a different and stronger one was created), it is not clear that the OSA has given sufficient weight to the barriers that South Asian families face. We are therefore dissatisfied with the outcome of the four objections and how they have been handled.

Implications of indirect racial discrimination for cohesion and equality of opportunity

Community cohesion and integration

Indirect racial discrimination by religiously selective schools should worry those concerned about cohesion in society. Religious segregation in the school system has long been cited as a source of division, militating against integration and helping create conditions where mistrust can more readily grow. The often cited example in a British context is Northern Ireland, where almost 95% of children are still educated at either a Roman Catholic school or notionally non-denominational but in practice protestant one. Meanwhile, as mentioned, the 2001 'Cantle Report' found that the presence of faith schools in race riot areas in Northern England exacerbated community division.

Since then the flow of academic research has consistently pointed to ethnically mixed schools making a strong contribution towards promoting better cohesion. The schools are found not simply to avoid pitfalls of segregation and creating environments where mistrust can more easily build up, but to take better advantage of the natural inclination of young people to form friendships that cross barriers, whether of race, religion, gender or socio-economic background. For example, we find among the key findings of the 2006 paper 'Social Capital, Diversity and Education Policy', by Professor Irene Bruegel of the London South Bank University:

'Friendship at primary schools can, and does, cross ethnic and faith divides wherever children have the opportunity to make friends from different backgrounds. At that age, in such schools, children are not highly conscious of racial differences and are largely unaware of the religion of their friends. These findings speak against policies promoting single faith schools, since such policies are likely to lead to reduced ethnic diversity in schools.' (p2)

In the 2008 paper 'Identities in Transition', Brown, Rutland & Watters found that:

'... the effects of school diversity were consistent, most evidently, on social relations: higher self-esteem, fewer peer problems and more cross-group friendships. Such findings show that school ethnic composition can significantly affect the promotion of positive intergroup attitudes.' (p9).

The 2015 study 'Do Ethnically Mixed Classrooms Promote Inclusive Attitudes Towards Immigrants Everywhere?' by Germ Janmaat assessed survey data collected from over 100,000 13 and 14 year olds in 38 countries. In conclusion the author argued:

'On the whole, the results of this study suggest that ethnically mixed schools are well positioned to promote inclusive out-group attitudes among native students ... in sum, this study suggests that policy makers should consider ethnic mixing as a strategy to promote more inclusive out-group attitudes'. (p819-820)

To look even further back in 1830 Dr James Doyle, the Roman Catholic Bishop of Kildare and Leighlin said, before a Committee of the UK Parliament, that:

'I do not see how any man, wishing well to the public peace, and who looks to Ireland as his country, can think that peace can ever be permanently established ... if children are separated at the commencement of life on account of their religious opinions. I do not know any measure which would prepare the way for a better feeling in Ireland than uniting

children at an early age, and bringing them up in the same schools, leading them to commune with one another, and to form those little intimacies and friendships which often subsist through life ... To separate them is, I think, to destroy some of the finest feelings in the hearts of men.'

His gender biased vocabulary has dated, and faith schools are not responsible for all of Northern Ireland's segregation and intercultural tension – roots of segregation are often economic, accidental and residential. However, had Bishop Doyle's warning about erecting barriers in childhood been heeded inter-community relations on the island of Ireland might have been stronger and the island's history more peaceful. His prescience should not be ignored by policy makers of today, especially when segregation by religion and race is potentially more pernicious for community relations than segregation by religion alone.

Entrenching socioeconomic inequality

Faith schools tend to get better academic results than other schools, and the research base shows¹⁴ it can be explained by the social and ability profile of those admitted. It is also made worse by the fact that some families cheat faith schools' religiously selective admissions policies, which can trigger a spiral effect. These families are found more likely¹⁵ to be from affluent backgrounds, and so popular religiously selective faith schools get better results, and so yet more people try to send their child to the schools.

Exhaustive research of all faith secondary schools in England produced for the Fair Admissions Campaign's online map showed a strong correlation between religious and socio-economic selection. The Campaign found that, on average, those faith secondary schools that did not have a religiously selective oversubscription policy admitted 1.40% fewer pupils entitled to free school meals (a key government measure of deprivation) than would be expected if the schools admitted local children. In contrast, those faith schools that had a fully religiously selective oversubscription policy admitted 30.43% fewer such children.

We object to an admissions system that incentivises religious cheating in the first place, and do not wish any family to fall back on it. However, policy makers should appreciate that this route is effectively closed to those from minority religious backgrounds, who cannot easily feign Church membership and attendance criteria. This means, regardless of their preferences, many faith schools - and almost always it is the best faith schools and, due to the number of faith schools, many of the best schools in the country - that are effectively closed to them.

The impact of the diminished choices of these parents will be likely be felt by future generations. Parental educational attainment, affluence and connections are important signifiers and drivers of achievement of children, and so the denial of opportunities to parents can be passed on. Furthermore, unless religiously selective faith schools change their approach, children from such

¹⁴ <http://accordcoalition.org.uk/2013/12/13/faith-schools-performance-due-to-back-door-social-selection/>

¹⁵ A 2012 survey published in the Sutton Trust's 2013 *Parent Power* report showed that 6% of all parents in Britain with a child at a state school admitted to attending church services, when they did not previously, so that their child could go to a church school. For parents from socio-economic group A this figure rose to 10%. The report is available at <http://www.suttontrust.com/researcharchive/parent-power/>. A 2015 survey for ITV's *Tonight* programme suggested parental cheating was a worsening phenomenon, finding that 12.6% of parents admitted to having practice a religion they did not believe in to get their child admitted to a faith school, with a further 23.7% indicating that would be prepared do this. Available at <http://accordcoalition.org.uk/wp-content/uploads/2015/05/Schools-for-ITV-by-One-Poll.-March-April-2015..xlsx>.

backgrounds will likely face greater disadvantage due to demographic change, as the non-Christian minority ethnic population is increasing. Between just the 2001 and 2011 Census the recorded Indian, Pakistani and Bangladeshi heritage population of England and Wales increased¹⁶ from 3.9% to 5.3%. In contrast and since 2001 the proportion of places in the state funded system that are at Christian faith schools has risen slightly.

Mismatch with stated ambitions of both faith school providers and Government

The indirect racial discrimination highlighted in this report is a relatively recent, though growing phenomenon, and it is one that schools, like all public bodies and those carrying out public functions must (under the Public Sector Equality Duty) be mindful of. Awareness of public and religious authorities about indirect racial discrimination in an educational context is slowly growing.

In May 2015 the Roman Catholic Diocese of Menevia and one of its secondary schools successfully challenged¹⁷ plans by Swansea Council to cut back on discretionary funding for transport for pupils attending faith schools (and not ones attending Welsh language schools). They were successful on the grounds that the move would have placed local children from black and minority ethnic backgrounds at a particular disadvantage, compared with local white British children.

Faith schools and their providers should however not just seek to avoid indirect racial discrimination against coreligionists, but the disadvantaging of any children on these grounds. This is not only to abide by the law and for matters of social harmony or simple fairness, but also because of how such discrimination clashes with their own stated aims and values.

In October 2015 the Church of England, which is the largest sponsor of faith schools, released a discussion paper¹⁸ on character development at its schools. In discussing the religious character of its schools, and how it informs the formation of the character of staff and pupils, it sought to stress the importance of Christian love, noting:

“Love” may be a rather unfashionable virtue, or may be seen as lacking in robustness, but the Biblical injunction to “love your neighbour as yourself” when seen in the context of the parable of the Good Samaritan, is in fact an extremely demanding vision. For love, in this sense, calls Christians, and others who may share the vision, to serve the needs of all human beings, no matter how distant or different, to respect and even to cherish their uniqueness, and to transcend views or habits that might privilege one’s own group over another ... If character is developed by experiencing what it means to be part of a community, then the way in which the school community is organised, and the way in which it relates to other

¹⁶ <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/sty-ethnicity-in-england-and-wales.html>

¹⁷ The High Court's ruling (Case No: CO/4981/2014) can be found at <https://cases.legal/lang-en/act-uk2-67727.html>. The court was presented with statistics from the defendant which the judge deduced suggested that black and minority ethnic children were at least 3.65 times more likely to be disadvantaged by the Council's proposed policy than white British children, and probably by a quite a bit larger a multiple. Although the judge found that the Council was seeking to advance a legitimate aim, they were not satisfied that the Council had shown its policy was '... no more than is necessary to accomplish the objective. [and so that] I am not satisfied that the amended policy is a proportionate means of achieving a legitimate aim' (paragraph 80). The statistics that we presented to the OSA suggested that at three of the schools (Blue Coat, Bury Church of England and St Bonaventure's) local children of South Asian heritage were more than 3.65 times more likely to be disadvantaged than local white British children in accessing the schools, with a ratio of such disadvantage clearly far beyond 3.65 in regards to Blue Coat and Bury Church of England.

¹⁸ *The Fruits of the Spirit: A Church of England Discussion Paper on Character Education* is available at https://churchofengland.org/media/2386307/fruits_of_the_spirit.pdf.

communities, is critically important ... The Church's vision for education is that schools model, in a range of creative ways, that unbounded, self-giving love.' (p 13-19)

In November 2015 Pope Francis highlighted the risk of education serving to distance groups of people from each other. Speaking at an international Catholic education conference (in response to a question asking how educators can foster a culture of encounter and restore broken bonds among schools, families and society) Pope Francis said Catholic educators should overcome a tendency of schools to be selective, and to work to restore links broken in society by the placing of profit over people. He said¹⁹:

'This is a shameful global reality. It is a reality that leads us toward a human selectivity that, instead of bringing people together, it distances them; it distances the rich from the poor; it distances one culture from another.'

Indirect racial discrimination is not only legally dubious, but contradicts the inclusive and compassionate vision set out by the Church of England for its schools, and highlights the risk of schools dividing groups of people from each another and entrenching privilege, which Pope Francis wishes to avoid. Similarly, the discrimination goes against the ambitions of Government.

In his speech²⁰ to the 2015 Conservative Party Conference the Prime Minister set out a strategy for tackling extremism, including Islamic extremism, and cited a range of obstacles to doing this, including segregation and a lack of action by public authorities in tackling some exclusive practices out of a misguided fear of causing offence. He also affirmed his Party's commitment to advancing equality of opportunity and '... to end discrimination and finish the fight for real equality'.

The Government's Countering Extremism Strategy²¹ published a few weeks later made 'building more cohesive communities' one of its four key planks. In his foreword to the report the Prime Minister wrote 'There is still more to be done to defeat racism, promote genuine equality of opportunity and build a more cohesive society ... and we will seek to build more cohesive communities, tackling the segregation and feelings of alienation that can help provide fertile ground for extremist messages'.

A large proportion of those disadvantaged and excluded due to indirect racial discrimination by religiously selective schools are from a Muslim background. Clearly, the indirect racial discrimination being caused and a lack of willingness by government authorities and faith school provider to address it will do little to help create genuine equality of opportunity in a more religiously integrated society, as the Prime Minister seeks.

¹⁹ Available at <http://www.catholicnews.com/services/englishnews/2015/education-is-too-selective-elitist-pope-says.cfm>.

²⁰ Text of speech available at <http://press.conservatives.com/post/130746609060/prime-minister-conference-speech-2015>.

²¹ Available at <https://www.gov.uk/government/publications/counter-extremism-strategy>

Recommendations

When the 1944 Education Act came into force and brought most church schools into the state funded system there was no law against indirect discrimination and, in any event, Britain's population was almost entirely ethnically homogenous. Since the 1960s and 70s that has of course changed and, as the profile of areas change, so should the institutions that serve those areas. We therefore urge religiously selective faith schools, their sponsors and the Government to embrace reform and take action in the following ways.

Given the success of the UK Government's 50% religious selection in admissions cap at all academy faith schools that have opened since May 2010, we urge: **1) the Department for Education and Welsh Government to phase in a 50% cap to all state funded faith schools over a fixed time frame.** Existing faith schools that already adhere to the cap, along with the growing number that have voluntarily chosen to reduce the proportion of their places reserved by faith, or which have gone further and opted not select any pupils on faith grounds, show that such selection is not necessary to uphold and maintain a school's religious ethos or, as the Archbishop of Canterbury argued in 2013, to run a successful school²².

We also urge: **2) the Department for Education to resume recording and publishing annual data showing the ethnicity and free school meal eligibility of local children that attend state funded schools** by Middle Super Output Area. Although indirect racial discrimination can be shown using statistics already produced by government, as the FAC has done during its four OSA investigations, this is a complex task. Having this MSOA data available again would make it easier for (among other interested parties) admission authorities to access the extent to which school admission policies are indirectly racial discriminating or not, and more generally assist schools in adhering to their Public Sector Equality Duty.

Faith groups often lead society in ensuring that marginalised groups and individuals are not overlooked. Likewise the religious authority of faith schools²³ should not ignore the problem of systemic indirect racial discrimination. Far from undermining the position of faith schools, resolving the worsening problem of indirect racial discrimination would help in ensuring fairer access to them. We therefore urge faith schools' sponsors - which have the ability to determine their schools' religiously selective arrangements - to continue to display leadership, to reform positively and take action.

The seminal 'Cantle Report' recommended that all state funded faith schools be required to admit a quarter of pupils from outside the faith. Given the worsening problem of religious selection leading to racial division and privilege, this insightful proposal seems more relevant in 2015. Adopting it

²² The Archbishop of Canterbury, The Most Reverend Justin Welby, said in an interview with *The Times* in November 2013, 'It is not necessary to select [by faith in admissions] to get a really good school. There are unbelievably brilliant schools that are entirely open to all applicants without selection criteria apart from residence, where you live, and which produce staggeringly good results. It's a question of — and you can point to them all over the place — it's a question of outstanding leadership'. Available at <http://www.thetimes.co.uk/tto/faith/article3921739.ece>. In April 2015, following the decision of a Church of England school in the Dioceses of Southwark to stop selecting its pupils by faith, the Church's Chief Education Officer, the Reverend Nigel Genders described Church of England schools as '... not faith schools for Christians but Church schools for all.' Available at <https://www.churchofengland.org/media-centre/news/2015/04/statement-on-school-admissions.aspx>.

²³ The relevant bodies or persons for faith schools in England are listed in two schedules to regulations: non-Jewish schools at <http://www.legislation.gov.uk/ukxi/2012/8/schedule/3/made>, and Jewish schools at <http://www.legislation.gov.uk/ukxi/2012/8/schedule/4/made>. In Wales - where the only faith schools are on sponsored by the Church in Wales and Catholic Church - the bodies responsible are local Dioceses.

would go a long way in addressing and alleviating the negative effects of indirect racial discrimination, while also making a significant contribution to boosting integration. We recommend that: **3) all providers of state funded faith schools should require their schools to reserve 25% of places to those from outside of the faith** via the school's oversubscription policy.

However, 25% may still not adequately address the problem of segregation and indirect racial discrimination at some popular religiously selective schools. For example, statistics we produced during the objection process of our complaints to the OSA suggest that reserving 25% of places (for those of other beliefs or even only for Muslims) would not have been sufficient at two of the four schools (Blue Coat School in Oldham and St Bonaventure's School in Newham). We therefore make the following call: **4) religiously selective schools located in ethnically diverse areas, where religious and non-religious belief aligns with race, should go further than just 25%.**

About the Accord Coalition and the Fair Admissions Campaign

The Accord Coalition for Inclusive Education is a campaign group of religious and non-religious groups and individuals who seek to ensure state funded schools, including state funded faith schools, are made open to all, regardless of their, or their families', religion or beliefs. Accord was founded in 2008 and born out of anxiety about the direction of education policy, including its impact on cohesion in society.

In 2013 the Fair Admissions Campaign was launched with the sole aim of bringing to an end all state funded faith schools religiously discriminating in their admission policy. The Campaign cites a range of reasons²⁴ why faith-based admissions are objectionable, including that it is wrong to entrench religious discrimination in the very institutions that should be equipping pupils to be positively critical and to engage respectfully with the challenges of living in a mixed-belief society.

²⁴ Available at <http://fairadmissions.org.uk/why-is-this-an-issue/>.