

From: [Owen Warnock \(LAW\)](#)
To:
Subject: RE: On the radio...
Date: 26 July 2013 11:10:00

Missed you - how did it go?

I've just been on Radio London this morning about the story today in D Mail about a govt minister saying that employers should prefer Brits to immigrants when recruiting.

Owen

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>-----Original Message-----

>From:
>Sent: Wednesday, July 24, 2013 3:27 PM
>To: LAW Faculty
>Subject: On the radio...

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>In case anyone's interested, I'm currently scheduled to be interviewed on
> on Radio a little after 4:45...

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>Wish me luck!

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On 26 Jul 2013, at 11:08, "Owen Warnock (LAW)" <O.Warnock@uea.ac.uk> wrote:

I have just been interviewed on Vanessa Phelps' Radio London programme about a news story carried by the Daily Mail this morning. Junior minister Matthew Hancock (a Suffolk MP) is reported as urging bosses to avoid the "easy option" of filling jobs with foreign workers when they could train local recruits instead. It is being suggested that he is saying that employers should prefer Brits to immigrants when recruiting.

In essence the following is what I said. I don't know if you think it is worthy of some kind of press release.

Does the law allow an employer to choose a British citizen over an immigrant job application on the basis that he or she prefers to employ a Brit? The simple answer is no – this would be illegal race discrimination. What's more, an employer could not evade this ban by saying that he or she was recruiting the person with the best standard of English - unless a good standard of English is needed to do the job.

However this may not be what the Minister was saying. First of all it is clear that he was urging employers to find and train local talent rather than recruit abroad. There is nothing illegal in that.

Secondly, the Equality Act does allow employers to discriminate positively in certain circumstances. If a particular racial group, and that could be British citizens, is underrepresented in a particular job by comparison with the make-up of the local population, then the employer can take action to encourage applications from the underrepresented group or even provide training for them. The difficulty for employers is that they are allowed to do this only if what they do is a "proportionate means of achieving that aim". In addition, under a controversial new provision, introduced in 2010, if an employer is faced with two candidates who are "as qualified" as each other then the employer can actually recruit the person from the underrepresented group.

It is possible that the Minister was referring to these special rules. However the reality is that employers very rarely rely upon these provisions because they are so hemmed around with conditions and qualifications. Anecdotal evidence suggests that sometimes employers will try to favour what they see as an underrepresented group – typically workers of a particular sex or ethnic group

rather than a particular nationality - but when they do so they do not expressly take advantage of these exemptions. It is far safer for them simply to assert that the person they have selected is the best candidate or is the candidate with the most potential.

The reality is that these special exemptions are good examples of over-complex employment law that will never be used to any significant extent in the real world. They were enacted from the best of motives, but in my view that is not a strict sufficient test for passing an employment law – to be worth adopting it also has to be clear, certain and workable.

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