



Bulletin 221

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SCHOOL UNIFORM BANNING CORNROWS WAS DISCRIMINATORY

In the case of *G v Head Teacher and Governors of St Gregory's Catholic Science College*, the High Court has held that a school's uniform policy prohibiting boys from wearing their hair in cornrows resulted in indirect racial discrimination.

However, the policy was found not to amount to sex discrimination.

The law on indirect discrimination

Section 19 of the Equality Act 2010 (EqA) deals with indirect discrimination as it relates to the various protected characteristics identified in section 19(3), including race and sex. Section 19 states:

"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purpose of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
- (b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
- (c) A cannot show it to be a proportionate means of achieving a legitimate aim."*



The court considered that, although the EqA does not use precisely the same language as the previous legislation governing race discrimination (the Race Relations Act 1976 (RRA)) there is no difference in its effect.

Section 71 of the RRA and section 76A of the Sex Discrimination Act 1975 required public authorities (including schools) to have due regard to the need to eliminate unlawful discrimination. That obligation is now contained in section 149 of the EqA.

Department for Education Guidance on uniforms

The Department for Education (DfE) has published guidance on uniforms and uniform policy for schools. When formulating a uniform or appearance policy, a school needs to consider its obligations not to discriminate unlawfully on the grounds of sex, race, disability, sexual orientation, religion or belief. Schools should also be aware of the concept of indirect discrimination.

Paragraph 23 of the guidance states:

"An example of indirect discrimination could be a school that bans cornrow hairstyles. As these are more likely to be adopted by specific racial groups, banning this type of hairstyle without justification could constitute racial discrimination."

Facts

The school's ban on cornrows for boys was stated at a school meeting which the claimant did not attend. The first the claimant knew of the ban was the school's refusal to allow him to attend unless

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he removed his cornrows. The school's reasoning behind its uniform policy was to:

- Keep gang culture out of the school
- Avoid accompanying ethnic tension and violence
- Make the school a safe environment where pupils were treated equally

Additionally, the school believed that distinctive haircuts could be badges of ethnic or gang identity, and that its otherwise zero tolerance approach to male hairstyles could not be justified if an exception was made for a particular style.

The claimant was unable to take up his place at the school since he was not prepared to comply with the school's policy on cornrows. He, therefore, lodged a claim that the school had indirectly discriminated against him on the grounds of his race and sex, even though he had already started attending another school.

A ban on braids for boys was later added to the school's uniform policy.

Decision

To prove indirect discrimination, the claimant had to show that the school's policy resulted in discrimination within the meaning of the legislation and that there had been a particular disadvantage to him in the prohibition on cornrows. If that was established, it would be for the school to justify discrimination.

Race Discrimination

In order to attempt to establish that he was a member of a group that did suffer a particular disadvantage as a result of the ban, the Claimant submitted evidence that there are a group of people of Afro-Caribbean ethnicity who, because of their culture and ethnicity, believe that cutting their hair is wrong and they therefore need it to be kept in cornrows. The court was satisfied that a group existed who could be particularly disadvantaged by a refusal to permit them to wear their hair in cornrows.

The school submitted that the claimant's evidence fell short of establishing a cultural or ethnic need to maintain his cornrows. The school suggested that it was necessary to show that a practice had exceptional importance to the person alleging the disadvantage and that the claimant's evidence fell short of establishing this. The court rejected this submission and pointed out that the words used in the statute are "particular disadvantage". It considered that the need to show "exceptional importance" was too high a threshold. The claimant had suffered a traumatic experience in being turned away on his first day and the court was satisfied that the claimant had suffered a particular disadvantage in any event.

Based on the finding of indirect discrimination on the part of the school, the court had to consider whether the policy was capable of justification. The court felt that it was clear the school had not complied with the applicable public sector equality duty under section 149 of the EqA. However, that did not of itself mean that the policy could not be "a proportionate means of achieving a legitimate aim". The DfE guidance was taken into account in light of the fact that it specifically refers to possible discrimination arising from a prohibition on cornrows. It was submitted on behalf of the claimant that, had the school carried out the necessary exercise suggested by the guidance, it would have been able to ascertain whether there was a need to grant exception to the policy in particular cases.

The school believed the policy to be proportionate, since there had been no complaints from other African-Caribbean boys about the prohibition on cornrows. Although the court accepted that the absence of any complaints was a material factor, it was not determinative. Although the aim of the policy was legitimate, the court considered that the indirect discrimination which resulted from the absolute prohibition on cornrows was not justified.

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Sex Discrimination

The court rejected the claimant's suggestion that there was sex discrimination. The provision in the school's uniform policy required both sexes to have conventional haircuts. Cornrows for African-Caribbean girls were acceptable because they were a satisfactory means of keeping long hair neat and under control. This was an acceptable rationale. Therefore, boys were seen not to have been treated less favourably than girls.

Comment

This case supports the idea that cultural, family and social customs can form part of ethnicity and bring a person of a given ethnicity within the scope of race discrimination legislation.

The decision on sex discrimination is arguably difficult to reconcile on the basis that the court accepted the cultural belief of certain groups that men's hair should be kept long. Arguably, if girls should be allowed cornrows as a way of keeping long hair neat, then why shouldn't boys?

Organisations should be careful when drafting presentation and uniform policies to avoid potential discrimination and be aware that they should not apply the policy rigidly, but rather must consider making exceptions for those who contend that cultural or family practices mean they cannot conform to a policy.

Although not strictly an employment law case, the themes and considerations here are clearly relevant to employers looking to introduce or enforce dress or appearance policies.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you would like to receive the bulletin please let us know by contacting Liz Fox at Liz.Fox@brabnerscs.com

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