

Hair Length and Dress Codes

If you are formulating a dress code for employees, it is important not to treat one sex less favourably, if you are to avoid leaving yourself open to claims under the Sex Discrimination Act 1975. However, this does not mean that the provisions for men and women have to be identical.

In a recent case, a police trainee who was told to get his shoulder-length hair cut or face disciplinary action lost his appeal against the decision of the Employment Tribunal (ET) that he had not been unlawfully discriminated against on the grounds of his sex (*Dansie v The Commissioner of Police for the Metropolis*).

Mr Dansie wore his hair in a bun when he reported at Hendon Police Training College to train for the Metropolitan Police Force. He complied with the demand that he have his hair cut in order to avoid disciplinary action and removal from the programme, but then filed a claim that he had been less favourably treated on account of his sex.

The Police Force's Dress Code Policy stated that the standard of dress should be smart, fit for the purpose and give a favourable impression of the service. Guidance on the Policy stated that 'for safety reasons, ponytails are not permitted and long hair must be neatly and securely fastened up and worn relatively close to the head'.

It was common ground that a female recruit would not, in similar circumstances, have been told to have her hair cut.

The Employment Appeal Tribunal (EAT) upheld the decision of the ET, which found that the Dress Code Policy was gender neutral. Earlier case law allows that a dress code 'can be considered as a whole and can be gender specific as well as gender neutral provided it is fair-handed between the sexes and fits with the conventions of society and the needs of the profession in question'.

The EAT judged that the ET was entitled to conclude that a female comparator who failed to comply with a dress code that was equally balanced between the sexes and necessary for a disciplined service like the Police Force would have been treated in the same way as Mr Dansie if she had failed to comply with the Policy as it applied to women.

"In this case, the dress code under scrutiny was found to take an even-handed approach to both sexes as a whole and the employer was able to establish a non-discriminatory reason for the difference in treatment. However, a code that applies different standards to men and women who do not work in public-facing roles may not be justifiable. Contact us if you would like advice on this subject."

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