

# Employment news: UK Employment: Dress codes - equal but different

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For common sense reasons dress codes cannot always be applied in exactly the same way to men and women. A recent case reminds employers how the courts draw the line between acceptable differences of treatment and those that are discriminatory.

The case involved a claim brought against the Metropolitan Police by Mr Dansie, who commenced training as a police constable at the Hendon Training Centre in March 2008. Before the training started he asked whether his hair length would be acceptable and was told that it would comply with the Force's new Dress Code Policy. That Policy stated: 'The standard of dress should be smart, fit for the purpose and portray a favourable impression of the service.'

Manager's guidance on the Dress Code stated: 'Hair must be neat, not allowed to cover the ears and ... worn above the collar. For safety reasons, ponytails are not permitted and long hair must be neatly and securely fastened up and worn relatively close to the head'. When Mr Dansie reported at Hendon his hair, which was shoulder length, was slicked back on his head and tied in a bun on the back of his head.

The assurance Mr Dansie had been given before the training commenced turned out to be incorrect. Mr Dansie was told that he must cut his hair or face disciplinary action.

He complied with this request to avoid a disciplinary sanction but then brought a claim against the Force, alleging that he had been treated less favourably than a woman, who would not have been required to cut her hair but could have worn it tied up (a fact that the Force did not dispute). He also alleged that the threat of disciplinary action amounted to unlawful harassment.

The tribunal rejected these claims. It took into account previous cases on dress codes that differ in their precise requirements of men and women. These cases have established that there can be differences of detail, provided that the overall requirement, for example of smartness or formality, is applied equally to men and women. The Employment Appeal Tribunal (the 'EAT') agreed with the tribunal's decision on Mr Dansie's complaint and set out the principles that tribunals should apply:

- to determine whether an employer treats members of one sex less favourably than the other it is necessary to consider the dress code as a whole;
- a code that applies a conventional standard of appearance is not in and of itself discriminatory;
- a difference in treatment between the sexes on one particular aspect of a dress code is not necessarily more favourable treatment of a member of one sex compared with a member of the other sex.

The EAT found that in Mr Dansie's case the tribunal had applied the correct test and that a woman who had departed from the standards of dress required by the Dress Code would also have been threatened with a disciplinary sanction. Therefore, in the context of the Dress Code as a whole, Mr Dansie had not been treated less favourably, even though on the matter of his hair length he had been treated differently from a woman.

## Points for employers

An employer can impose a dress code that makes a requirement of conventional appearance, neatness or formality and will be entitled to apply some commonly held or contemporary assumptions about what these terms mean. The effect may be that some rules cannot be applied in precisely the same way to men and women, but provided that both men and women are required to meet the overall standard, an employer will not be found to have discriminated against either sex. In a 1996 case involving Safeway Stores, this approach achieved the same outcome – no less favourable treatment – with regard to an employee who wanted to wear his hair long while serving behind the delicatessen counter in a supermarket.

Employers need to remember, however, that some adjustments to dress codes may be necessary to take account of religious beliefs, unless the employer can objectively justify not making such adjustments, for example, on grounds of health and safety.

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