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Not What To Wear? Employers Liability for Dress Codes?

This article argues that in the United Kingdom currently there is a lack of an effective legal basis for challenging the imposition by employers of unfair or discriminatory dress codes in the workplace on employees or workers. Given the breadth of this topic it will not be possible to also consider appearance or grooming standards such as outlawing beards or banning piercings or tattoos. Also consideration will be restricted to the aspects of discrimination which are contentious or most affected by dress codes or have not been dealt with in detail elsewhere¹ namely sex and transgender discrimination. It is sadly the case that there is often uncertainty on the part of both employers and employees about when dress codes are acceptable or not and this should be addressed. There have been a number of research studies and legal cases highlighted recently which make this article timely.² The cases tend to support the employers managerial prerogative to impose dress restrictions. Of recent interest is an incident where a woman was sent home from work on her first day for not wearing high heels which caused a public outcry, of which, more later.

Clearly dress codes are often contentious and can lead to the discontent of employees and workers. In the absence of adequate legal protection in the UK this article will examine what steps should be taken by management and legislators to deal with problem dress codes.

¹ While dress codes and religious adherence is an important topic it is covered in depth elsewhere e.g. Howard, E (2013) The European Court of Human Rights Gets It Right: A Comment on Eweida and Others v the United Kingdom Talk for European Journal of International Law <https://www.ejiltalk.org/the-european-court-of-human-rights-gets-it-right-a-comment-on-eweida-and-others-v-the-united-kingdom/> accessed November 2017
Vickers, L (2017) Direct Discrimination and Indirect Discrimination: Headscarves and the CJEU Oxford Human Rights Hub <http://ohrh.law.ox.ac.uk/direct-discrimination-and-indirect-discrimination-headscarves-and-the-cjeu/> accessed November 2017

² E.g. Secretary of State for DWP v Thompson (2009) UKEAT 0234_09_2010
Whiterod v Karen Millen Fashions (2014) ET/1102510/2012

Introduction

The following quote although somewhat dated highlights the problem neatly: “There is no doubt that the power to control appearance is widely, though subtly, used in the workplace...from refusing to employ people whose facial features depart very substantially from the accepted norm of good looks, through to the informal request to wear a shirt instead of a T-shirt.”³ There is no doubt that dress codes are often utilised in workplaces in the UK particularly in medium to large organisations however, there is a lack of substantial statistical data on their use. What follows is a review of research into the use and impact of dress codes in the United Kingdom.

Research Into Dress Codes

Acas recently commissioned a research paper and the researchers found that: “the presence of an explicit appearance policy was largely absent in the smaller to mid-sized firms. In these environments, there was a general expectation that employees would be socialised into the culture of the firm and learn the dress norms through day to-day observation. Acceptable dress and appearance was understood in some cases to either mirror client attire or that of the business owner / senior management.”⁴

Research in 2011 by XpertHR⁵ into the types of dress codes used by organisations revealed that: 35% of employers had a dress code that was smart casual or business casual; 23% required suits or formal business attire to be worn; 28% had staff who wore uniform or overalls; and 9% had a relaxed dress code. They also found that around 9 in 10 employers (89%) that had dress codes in place took steps to ensure that their policy does not discriminate⁶ HR most frequently takes responsibility for setting the dress code; managers were

³ Clayton, G Pitt, G (1997) Dress Codes and Freedom and Expression European Human Rights Law Review Vol. (54) 1 p 55

⁴ Nath, V Bach, S and Lockwood, G (2016) Dress Codes and Appearance at Work: Body supplements, body modification and aesthetic labour School of Management and Business, King's College London, Ref: 07/16, p 31

⁵ The survey was based on responses from 218 organisations operating 269 different dress codes, which covered a total of 163,483 employees

⁶ Personnel Today 4th April 2011 www.personneltoday.com accessed September 2017

the employee group most likely to be subject to a dress code and employees tend to adhere to dress codes, with little enforcement action required.

XpertHR carried out a further dress codes survey in 2015. Of the nearly 600 businesses they surveyed, three quarters of them operated a dress code policy.⁷ According to XpertHR's research into dress codes, there was a clear shift away from traditional business attire to less formal clothing. Among the businesses surveyed 40% operated a smart casual policy while only 17% required that their employees dress in business attire. Very few of the workplaces allowed their employees to dress as they please. Just over two-thirds of organisations believed that the enforcement of appearance guidelines had helped to enhance the external image of the organisation. However, a higher proportion (81.1%) said that it had helped to set workplace culture standards. A quarter of respondents said one of the downsides of having a dress code was a fear that they would cause offence to employees. That said, only 2.6% have received a complaint that their code was discriminatory.

Acas also commissioned research in 2016⁸ which consisted of a smaller research sample⁹ but more detailed investigation of certain issues. Particularly the impact of dress codes on aesthetic labour.¹⁰

What these various research studies have shown is that less formal attire is more common than previously but, business attire is still a reality for some particularly those in management. Although many employers still find dress codes necessary they can be a thorny issue for them but the reality is in most workplaces workers will not raise formal complaints. For employees this could be explained by the perceived lack of

⁷ Majority of dress codes bar shorts and crop tops Personnel today 10.06.15 at [workhttp://www.personneltoday.com/hr/majority-of-dress-codes-bar-shorts-and-crop-tops-at-work/](http://www.personneltoday.com/hr/majority-of-dress-codes-bar-shorts-and-crop-tops-at-work/) accessed September 2017 The research covered 578 employers and 588 different dress codes

⁸ Nath, V Bach, S and Lockwood, G (2016) Dress Codes and Appearance at Work: Body supplements, body modification and aesthetic labour School of Management and Business, King's College London, Ref: 07/16

⁹ Around thirty people were interviewed.

¹⁰ This arises where employers in certain occupations or workplaces place a high premium (and employment choices) on aesthetic features of employees such as dress, physical attractiveness, voice etc. The retail and hospitality sectors most commonly restrict themselves to employing workers that are in their view aesthetically pleasing.

grounds for challenge in face of their contractual acceptance of dress standards in the workplace.

Many employers have a particular standard of dress in the workplace which can be represented through contractual terms or customary practices. The research undertaken in 2011 by XpertHR¹¹ found the most common form of dress code was contractual, followed by written guidelines and verbal guidelines. There are a number of reasons why employers will have a dress code. These mainly centre on protecting or maintaining the organisations external corporate image. “Employers may wish to promote a certain image through their workers which they believe reflects the ethos of their organisations.”¹² An exception to this is where employers introduce dress codes for health and safety reasons. The research undertaken by XpertHR in 2015 showed businesses gave clear reasons for implementing their dress codes. The most common reason was health and safety (58.5 per cent), followed by reinforcing internal culture (56.9 per cent), practicality (41.2 per cent) and hygiene (28.7 per cent).¹³

Although the research illustrates that there are variations in the type of standards required under dress codes in different industries and more standards apply the larger the organisation gets. Also there are still few employees either willing or feel able to challenge these restrictions.

Legal Position

An employer's dress code must not be discriminatory in respect of the protected characteristics in the Equality Act 2010.¹⁴ However, the courts have tended to support employers in their desire to introduce and maintain dress standards in the workplace except where it involves the most blatant use of discriminatory tactics. As seen dress codes are often contractual which will reinforce their use and ensure workers accept

¹¹ Personnel Today 4th April 2011 www.personneltoday.com accessed September 2017

¹² Dress Codes ACAS Help & advice for employers and employees
<http://www.acas.org.uk/index.aspx?articleid=4953> accessed October 2017

¹³ Majority of dress codes bar shorts and crop tops Personnel today 10.06.15 at
[workhttp://www.personneltoday.com/hr/majority-of-dress-codes-bar-shorts-and-crop-tops-at-work/](http://www.personneltoday.com/hr/majority-of-dress-codes-bar-shorts-and-crop-tops-at-work/) accessed September 2017

¹⁴ Age, disability, gender reassignment, religion or belief, sex or sexual orientation

them as a contractual duty making legal challenges unlikely. However, even if there is no explicit reference to clothing in the contract employees are still under an implied duty to obey their employer's reasonable and lawful instructions regarding expected standards which might include their clothing and appearance. However, if an employer introduces a restrictive dress code for employees with pre-existing contracts then there might be a ground for claiming a breach of contract. This could be viewed by employment tribunals etc. as a breach of an employer's implied duty to maintain their employees trust and confidence.¹⁵ What follows is analysis of the most common or contentious forms of discrimination claims in this respect.

Sex discrimination claims

In the past legal challenges to the imposition of a dress code by an employer under sex discrimination law were rarely successful. In *Schmidt v Austicks Bookshops* (1978) Ms Schmidt¹⁶ was an employee who challenged her employer's insistence that women should not wear trousers. The employment tribunal found in favour of the employer, holding that different dress codes for men and women are acceptable as the burden of restrictions on mens' dress were equal to that placed on women. In *Smith v Safeway plc*¹⁷ Mr Smith claimed he had been discriminated against on the ground of sex when he was dismissed for refusing to cut his hair. The Safeway dress code required both men and women to wear hats, but women were allowed to keep their hair long if they tied it back. However, men were not allowed to have it below shoulder length. The Court of Appeal held that the claimant had not been treated less favourably, simply because Safeway had applied the same conventional standards to both sexes. Lord Justice Phillips

¹⁵ In *Whiterod v Karen Millen Fashions* (2014) ET/1102510/2012 an employee claimed that the employer's dress code required staff to be of a particular size, stature and appearance and that the employer's actions constituted a breach of the contract of employment. The Employment Tribunal dismissed the claim concluding that the implied duty of mutual trust and confidence had not been breached.

¹⁶ (1978) ICR 85 EAT

¹⁷ (1996) IRLR 456 (CA)

confirmed the correctness of a package approach to dress codes summarised thus: ¹⁸ “this is not to say that when applying the test, the requirement of one particular item of a code may not of itself have the effect that the code treats one sex less favourably than the other. But one has to consider the effect of any such item in the overall context of the code as a whole.” ¹⁹ A similar decision was reached in *Dansie v Metropolitan Police* ²⁰ where it was held by the Employment Appeal Tribunal (EAT) that a requirement that a male employee cut his shoulder-length hair did not amount to discrimination or harassment under the SDA 1975 simply because a female employee would not, in similar circumstances, have been required to cut her hair, provided the overall dress code was equally balanced between the sexes. In *Cootes v John Lewis plc*. ²¹ the case involved staff who were working in a department store and had contact with customers. Under the dress code men were required to wear a dark business suit, shirt and tie, whereas women were required to wear a blue suit and green blouse made of a polyester material. The women complained that what the men were expected to wear made them appear to be more senior than the women. The Employment Appeal Tribunal upheld the employment tribunal's finding that this did not amount to less favourable treatment of the female staff. Similarly in *Secretary of State for DWP v Thompson* ²² the Employment Appeal Tribunal had to decide if a dress code that imposed a certain dress code on men (i.e. the requirement to wear a shirt and tie) but, not on women, was discriminatory. ²³ Mr Thompson had worked for Jobcentre Plus. His work did not bring him into contact with members of the public. So when he was required to wear a collar and tie at work, he objected. He complained that the requirement discriminated against men. The original employment tribunal had ruled in his favour and awarded him

¹⁸ *Smith v Safeway plc* (1996) IRLR 456 (CA) p 458

¹⁹ In *Murphy and Davidson v Stakis Leisure Ltd* (Unreported, ET 0534/89 and 0590/89), a requirement for women to wear make-up and nail polish was justifiable because there was also a ban on men having beards.

²⁰ (2009) UKEAT 0234_09_2010

²¹ EAT/1414/00

²² (2004) IRLR 348

²³ The employment tribunal had been told that a number of other men who worked for Jobcentre Plus had taken a similar stance to that taken by Mr Thompson. Over 40 cases were put on hold awaiting the decision of the employment tribunal in Mr Thompson's case. When the employment tribunal ruled in Mr Thompson's favour a large number of men who worked for Jobcentre Plus lodged similar complaints with the employment tribunal. The number of cases awaiting the outcome of the appeal was estimated by the EAT to be in the region of 6,950.

compensation of £1,000. On appeal the Employment Appeal Tribunal said that the deciding factor was whether “an equivalent level of smartness to that required of the female members of staff could only be achieved in the case of men, by requiring them to wear a collar and tie”. If it could be achieved in some other way, then imposing such a rigid code might suggest less favourable treatment towards male staff. They decided that it was not discriminatory in this case.

One of the most contentious dress code incidents happened in December 2015 when Nicola Thorp a receptionist at one of the Big Four accountancy firms PwC was sent home without pay on her first day at work for not wearing high heels. Her employer asked her to buy a pair of shoes with at least a two-inch heel. She refused, pointing out that men were not required to wear similar shoes. She then launched a parliamentary petition calling for a law to stop firms from requiring women to wear high heels at work.²⁴ This led to the Petitions Committee and Women and Equalities Committee publishing a report High heels and workplace dress codes.²⁵ This revealed the troubling experiences of employees affected by discriminatory dress codes. Members of Parliament debated a ban on mandatory workplace high heels in response to the petition. Although the debate was non-binding it prompted MP’s telling employers not to require women to wear high heels under their dress codes.²⁶ Also the Government has promised to act against heel-height rules, makeup guidelines and other corporate codes that apply to women but not to men. There has not as yet been a test case on high heels however a common perception is that women who are expected to wear high heels are asked to do so by employers to be more feminine or alluring which if

²⁴ London receptionist sent home for not wearing heels, 11 May 2016, www.bbc.com/news/uk-england-london-36264229 accessed November 2017

²⁵ <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmcompetitions/291/291.pdf> accessed November 2017

²⁶ MP’s tell firms to scrap high heel rule The Scotsman Tuesday 7th March 2017 p 18 www.pressreader.com/uk/the-scotsman/20170307/281870118231755 accessed November 2017

proven to be the case is clearly a sexist reason. So men and women are not being treated equally under a dress code which requires women to wear high heels because the equivalent dress code for men will not involve the same degree of sexualisation. This would be an instance of direct sex discrimination. The high heel row has shown that sexist requirements in dress codes are unlikely to be tolerated from now on which can only be a positive development. While there are promises of further action by the UK Government on dress codes it is possible that it will not come to pass at least in the short term given their other priorities.

Transgender cases

Transgender cases can be the most complex in respect of dress codes.²⁷ “While the popular acronym LGBT suggests that sexuality-based discrimination and gender-based discrimination are similar in nature, transgender employees face unique challenges in comparison to lesbian, gay and bisexual employees.”²⁸ Under section 7 of the Equality Act 2010 gender reassignment is identified as an explicit protected characteristic. Section 7 (1) states that: a person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. (2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.²⁹ The broad definition used in the Act means that persons that are not undergoing any medical procedure can still be protected.³⁰ Irrespective of the legal protection in place victims of gender

²⁷ Eds. Brower, T Jones, J (2013) Dress and appearance codes in the workplace: gender, sexuality, law and legal institutions *Equality, Diversity and Inclusion* Volume 32 Issue 5 pp 400-420

²⁸ Chapter 1, Sawyer K (2016) Thoroughgood C, Webster J, Queering the Gender Binary: Understanding Transgender Workplace Experiences pp 21-42 in Ed. Kollen, T Sexual Orientation and Transgender Issues in Organizations Springer International Publishing, Netherlands

²⁹ S. 7 (3) In relation to the protected characteristic of gender reassignment (a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person; (b) a reference to persons who share a protected characteristic is a reference to transsexual persons.

³⁰ Croft v Royal Mail Group(2003) IRLR 592 CA

reassignment can still suffer serious detriments in their treatment in the workplace as the following quote identifies: “Despite laws and regulations that safeguard transgender individuals against such arbitrary rationales of discrimination in the UK, avoidance of disclosure before, during or after transition can still have important personal ramifications in itself.”³¹ Transgender employees should be able to wear clothes appropriate to their chosen gender identity and employers are expected to accommodate this if possible. Some practical steps that employers can take include ensuring that employees are able to wear clothes appropriate to their expressed gender and allowing them to use toilet facilities appropriate to their expressed gender. In the following case which was heard prior to the Equality Act 2010 with its broader definition of protected transgender behaviour an employee prior to transition failed to convince the court of their right to use female toilets. In *Croft v Royal Mail Group*³² an employee after ten years in employment as a man concluded she wanted to change her gender role. She was prescribed feminising hormones and it was her intention to undergo gender reassignment surgery. In 1998 following discussions with her employer and a week’s absence she went to work dressed as a woman. Sarah Croft wanted to use the female toilets from the outset but in light of objections raised by female employees who had known Croft for sometime as a man the employer refused. The employer permitted Croft to use the unisex disabled toilet and she agreed on the assumption that she would be entitled to use the female toilet once the surgery had been completed. The employer told her that if she insisted on using the female toilets she would be suspended for insubordination. However her employer had confirmed she would be able to use the female

³¹ Ozturk, M B Tatli, K (2016) Gender identity inclusion in the workplace: broadening diversity management research and practice through the case of transgender employees in the UK *International Journal of Human Resource Management* Volume 27, Issue 8 pp 781-802 at p 784

³² (2003) IRLR 592 CA

toilets in the future but did not give her a date for this to happen.

She brought a complaint of sex discrimination to the employment tribunal. They dismissed her claim on the basis that before her treatment Croft remained a male for the purposes of the Sex Discrimination Act 1975.

³³ The EAT dismiss her appeal and she then appealed to the Court of Appeal. She argued that it was unlawful for her employer to refuse to allow a pre-operative transsexual, who presented as female, to use the female toilets, or to require her to use a unisex toilet. It was held by them that a formerly male employee could not, by presenting as a female, necessarily and immediately assert the right to use female toilets. The status of transsexual did not automatically mean an employee was automatically allowed to be treated as a woman with regard to toilet facilities. The appeal was dismissed. A difficulty in these cases is that there is no set time or stage during the reassignment process when a person's gender changes and each person will find it appropriate at different stages in the process to use facilities for their expressed gender. Both parties should try and work together to find an appropriate transition process, taking into account the stage of treatment reached and the employee's own assessment of when it's appropriate.

The law does not require a transgender employee to inform their employer of their gender reassignment status. However the inevitable changes in dress and appearance that precede and/or accompany the gender reassignment process will serve to alert an employer to what is happening and employees will often be prepared to keep the employer informed of their status. These are various types of unlawful discrimination that can apply here. Direct discrimination ³⁴ could apply where the definition of gender under a dress code is unduly restrictive and does not allow an employee to be transsexual. ³⁵ Similarly it would be indirect

³³ Section 2A(1)(c) of the SDA stated that a person discriminates against another person if he treated that person less favourably than he would treat other people, on the ground that the person intended to undergo, was undergoing, or had undergone gender reassignment.

³⁴ Section 13 of the Equality Act 2010

³⁵ Although not highly relevant to dress codes discrimination by perception applies where an employer thinks someone is transsexual and discriminates against them because of it but, they are not transsexual. Also discrimination by association occurs if the employer discriminates against an employee because they have an association with a transsexual employee.

discrimination³⁶ where transsexual employees are particularly disadvantaged by a provision or criteria in the dress code which applied to all employees but in practice impacted unfavourably on them.³⁷ An example would be a requirement for employees to wear a particular form of dress depending on their gender.³⁸ Probably the most relevant type of discrimination claim here is for harassment which can be pursued where an employee acts in a way that violates the dignity of another person or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person because they are transsexual.³⁹ There is protection from less favourable treatment of a worker because they submit to, or reject, sexual harassment or harassment related to sex or gender reassignment. While there is very little case law in the UK dealing with harassment of transgender employees the evidence suggests that harassment of those employees is common.⁴⁰ Research has shown that around half of trans people (42 per cent) are not living permanently in their preferred gender role citing the reason that they are prevented from doing so is because they fear it might threaten their employment status. More significant is the finding that over 10 per cent of trans people experienced being verbally abused and six per cent were physically assaulted at work. Also it found that as consequence of harassment and bullying a quarter of trans people felt obliged to change their jobs.⁴¹

The Equality Act 2010 makes exceptions for certain actions which would otherwise be discrimination on

³⁶ Section 19 of the Equality Act 2010

³⁷ An employer may indirectly discriminate if the discrimination is a proportionate means of achieving a legitimate aim and is objectively justified

³⁸ E.g. dress code in *Secretary of State for DWP v Thompson* (2004) IRLR 348 for advice for transsexuals on discrimination see <http://www.stonewall.org.uk/help-advice/discrimination/discrimination-work> accessed November 2017

³⁹ Section 26 of the Equality Act 2010

⁴⁰ Stonewall Report on a YouGov survey of the experiences and expectations of discrimination of over 2000 lesbian, gay and bisexual people. *Gay in Britain* (2013) www.stonewall.org.uk/resources/gay-britain-2013

⁴¹ For guidance on harassment <https://www.stonewallscotland.org.uk/employer/harassment> accessed December 2017

the grounds of gender reassignment. Here are a couple of examples although neither of these would have wide application and would not often apply to dress code requirements. Firstly the job involves an occupational requirement that someone is not a transsexual or secondly positive action is taken by an employer to help the employment of a transsexual person in order to achieve a more diverse workforce. The positive action in the latter case could involve changing a dress code to facilitate the employment of transgender employees.

An example of how the law might help an employee who has started the transition process (the process which involves gender reassignment surgery) is that it would be unlawful for an employer to refuse such an employee the chance to dress according to their new gender.⁴² In such circumstances it could be sensible for an employer to provide support and counselling to transgender employees. Employers should not concern themselves with what transgender employees wear outside of work unless it could have an adverse impact on how they carry out their job. Also they should not inquire about such activity nor take adverse action against such an employee should it learn about off-the-job cross-dressing from another source.⁴³ In *Kara v. Hackney Council*⁴⁴ an employment tribunal held that prohibiting a cross-dresser from wearing a skirt was not discriminatory. This decision was upheld by the European Court of Human Rights in the case of *Kara v UK*⁴⁵ where they decided that the dismissal by the London Borough of Hackney of a bisexual male transvestite employed as a careers advisor who went to work in female clothing was not in breach of articles 8, 10 and 14 of the European Convention of Human Rights as restrictions under the dress code were a proportionate measure in pursuit of a lawful aim. Namely, that the employer was concerned about the appropriateness of dress in their business-like organisation.

⁴² Jones J, (2013) Trans dressing in the workplace, *Equality, Diversity and Inclusion* Vol. 32 Issue 5 pp 503-514

⁴³ E.g. Social media, clients, customers or co-workers

⁴⁴ (1995) Unreported

⁴⁵ (2011) ECHR 1345

Management Response

Over the years, employees have seen a shift towards a more casual dress standard. This is true even in industries that were previously very formal. Employers should try to ensure there is a balance between the underlying reason for any restriction in a dress code and the negative impact likely to be suffered by an employee or a worker. They must be able to justify their reasons for prohibiting articles of clothing because failure to do so could lead to them facing a successful discrimination claim. Employers' reasons for restrictions in dress codes will be considered by employment tribunals and other legal bodies and only genuine business or safety requirements will be acceptable. Before any restrictions are imposed by employers they should give due consideration to any alternatives. They should also have a clear written policy which when implemented is widely communicated. As part of the policy employers should highlight any negative consequences for employees that fail to comply with it. Prior to disciplinary measures being taken against an employee in breach of the code employers should discuss their concerns with them and give them the chance to explain their behaviour. If the employer is not convinced by the explanation, they should give the employee time to comply with the code before considering disciplinary action. Supervisors should also be trained on how to implement and enforce the dress code policy. Asking an employee to go home and change may be embarrassing for them and so a conversation like this should be conducted in a discrete and private manner.⁴⁶

A number of recommendations are made based on the findings of the study *Dress Codes and Appearance at Work*⁴⁷ including the need for employers to: "recognise and address appearance-based prejudices in the workplace through initiating more transparent and structured interviewing processes and providing ongoing

⁴⁶ The high heel incident mentioned earlier is a case in point

⁴⁷ Nath, V Bach, S and Lockwood, G (2016) *Dress Codes and Appearance at Work: Body supplements, body modification and aesthetic labour* School of Management and Business, King's College London, Ref: 07/16

⁴⁷ Around thirty people were interviewed.

unconscious bias training for those involved in staff selection. It is clear that employers need to be educated further about the moral implications and the legal ramifications that could arise when specifying dress codes and employee appearance issues at work. “⁴⁸

With regard to the position of transgender employees Stonewall have published various guides for employers and others but not much of this specifically deals with transgender issues.⁴⁹ However the Scottish transgender alliance and Stonewall Scotland in 2009 provided useful guidance for employers titled changing for the better.⁵⁰ There are a number of steps suggested for employers which are summarised here. The first of these is to send a positive message to all staff that the organisation is transgender inclusive. Secondly establish and widely publicise a method for staff to access confidential transgender support.⁵¹ Finally provide a transgender employment equality policy and ensure policies cover relevant issues such as; dress codes, access to facilities, protection from harassment, absence management and data protection.

Conclusion

What this research has shown is that the current legal system favours employers’ right to restrict how their employees’ dress and female and transgender employees are often disadvantaged because of it. It is interesting that in schools dress codes have experienced a bit of a revolution in thinking.⁵² As the following quote suggests this will lead to equality of treatment in terms of dress through use of gender neutral dress codes: “school boys will be allowed to wear skirts and girls to wear trousers under new

⁴⁸ Nath, V Bach, S and Lockwood, G (2016) Dress Codes and Appearance at Work: Body supplements, body modification and aesthetic labour School of Management and Business, King's College London, Ref: 07/16 quoted at <https://www.kcl.ac.uk/sspp/departments/management/news/index.aspx> accessed November 2017

⁴⁹ <https://www.stonewall.org.uk/our-work/stonewall-research> accessed November 2017

⁵⁰ Eds. Brower, T Jones, J Dress and appearance codes in the workplace www.scottishtrans.org/wp-content/uploads/2013/03/... accessed October 2017

⁵¹ Examples of this could be to provide support and information to staff about transgender issues through employee counselling services, the organisation website etc. and human resources

⁵² It was recently reported that as part of a Government funded drive for schools to be more open to children who are questioning their gender identity eighty educational institutions in the UK (which includes forty primary schools) have either removed any reference to girls and boys in their dress codes or rewritten their uniform policy.

gender neutral uniform policies introduced across the UK.”⁵³ Unfortunately no such change has happened within employment as very few employers have adopted gender neutral policies to protect the rights of and transgender workers or employees.

What this article has highlighted is the practical difficulties for victims of discrimination caused by dress codes bringing legal claims against employers and in the absence of accessible legal redress they continue to suffer the indignities or unfairness caused to them by dress codes.⁵⁴ However, there are signs that employers’ use of dress codes maybe under closer scrutiny in the future.⁵⁵ One commentator highlights the fact that the relationship between the provisions of the Equality Act 2010 and workplace dress codes is not widely understood.⁵⁶ Also discriminatory dress codes that particularly disadvantage female and transgender employees remain widespread. It is therefore clear that the existing law is not yet fully effective in protecting employees from discrimination at work. The Government has said that it expects employers to inform themselves about their legal obligations and to comply with the law. This approach is clearly not working. The Government must do more to promote understanding of the law on gender and transgender discrimination in the workplace among employees and employers which could involve amending the legislation.⁵⁷ “The government must now accept that it has a responsibility to ensure that the

⁵³ Schoolboys allowed to wear skirts under new 'gender neutral' uniform rules Yeung, P Independent, Sunday 12 June 2016 <http://www.independent.co.uk/news/uk/home-news/school-boys-skirts-uniform-gender-neutral-a7077701.html> accessed September 2017

⁵⁴ Eds. Brower, T Jones, J (2014) Dress and appearance codes in the workplace: gender, sexuality, law and legal institutions, *Equality, Diversity and Inclusion* Vol. 32, Issue 5 pp 400-420

⁵⁵ Recently a group of MPs warned the UK Government that they needed to crack down on sexist dress codes which are still widespread in UK workplaces. The Government have responded to this by saying that the existing law is clear and that the dress codes are already unlawful.

⁵⁶ Wynn-Evans, C (2008) Discrimination what not to wear – ongoing UK case law developments on dress codes, Bloomberg *European Business Law Review* Vol. 2 pp 110-116

⁵⁷ High heels and workplace dress codes: Summary <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmcompetitions/291/29103.htm> accessed November 2017

law works in practice as well as in theory”⁵⁸ On a more positive note the Government has announced new proposals to streamline and de-medicalise the process for changing gender and will launch a nationwide LGBT survey.⁵⁹

Dress codes should be modified to avoid gender stereotypes and should apply consistently to all employees and allow transgender employees to dress consistently in accordance with their full-time gender presentation. Dress code policies give rise to a number of complex legal and employee relations issues which if not handled sensitively by employers can lead to dissatisfied employees and legal challenges. What is needed is a change in the law “On the whole, the law has taken a conservative approach, largely upholding the right of management to decide on appropriate dress in the workplace, subject to laws on discrimination and freedom of expression. However, employers should consider taking a more enlightened view, one of reasonable accommodation to allow for freedom of dress unless the restriction is necessary for a proportionate and legitimate reason.”⁶⁰ The final comments should be left to Ms Thorp who was recently involved in the high heels debacle. “This may have started over a pair of high heels but what it has revealed about discrimination in the UK workplace is vital, as demonstrated by the hundreds of women who came forward. The current system favours the employer and is failing employees. It is crucial that the law is amended so that gender neutral dress codes become the norm.”⁶¹

⁵⁸ Syal, R Law must be tougher over dress code discrimination, say MPs The Guardian Wednesday 25 January 2017 <https://www.theguardian.com/uk-news/2017/jan/25/law-must-be-tougher-over-dress-code-discrimination-say-mps> accessed December 2017

⁵⁹ <https://www.gov.uk/government/news/new-action-to-promote-lgbt-equality> accessed December 2017

⁶⁰ p 18

⁶¹ Sky news 25.01.17 Lax laws on sexist dress codes are 'failing female employees' <https://uk.news.yahoo.com/lax-laws-sexist-dress-codes-060500459.html> accessed December 2017