Public / Discrimination

The cornrow row

Sarah Watson assesses the lawfulness of a school's ban on cornrows

IN BRIEF

- School's prohibition on boys wearing cornrows was indirect discrimination on grounds of race and was not justified.
- School's policy to allow girls but not boys to wear hair in cornrows did not amount to less favourable treatment on grounds of sex.

In *G (by his litigation friend) v The Head Teacher and Governors of St Gregory's Catholic Science College* [2011] EWHC 1452 (Admin), [2011] All ER (D) 113 (Jun), the High Court considered the lawfulness of a school's ban on boys wearing cornrows (hair braids), which the claimant ("G") contended was discriminatory on grounds of race and sex. The school's policy was considered under the Equality Act 2010. The relevant sections were stated to be no different in their substantive effect from the previous related sections of the Race Relations Act 1976 and the Sex Discrimination Act 1975.

Background facts

G is of African-Caribbean ethnicity. In accordance with his family tradition he has never cut his hair and it is kept in cornrows. G was due to commence his secondary education at St Gregory's Catholic Science College ("the school") in September 2009. The school's uniform and appearance policy required boys to have a "short back and sides" haircut. Girls were permitted to have long hair, which could be tied back in cornrows. G was not prepared to cut his hair and when he arrived for his first day at school he was turned away because of non-compliance with the policy. He now attends a different school where he is allowed to wear cornrows.

Indirect race discrimination claim

G had to establish that there was a group of which he was a member which suffered a "particular disadvantage" by the "provision, criterion or practice" of prohibiting cornrows. Collins J held that proving a particular disadvantage was a high threshold, which required more than choice, but that it was putting the threshold too high to require G to prove that wearing cornrows was of "exceptional importance" (*R (on the application of Watkins-Singh) v Aberdare Girls' High School Governors* [2008] EWHC 1865 (Admin), [2008] All ER (D) 376 (Jul) doubted).

In addition to evidence from G and his mother, two experts gave evidence on the historical background and recognised family traditions related to wearing cornrows. Collins J was satisfied that there were those of African-Caribbean ethnicity who, for reasons based on their culture and ethnicity, regard cutting their hair to be wrong and so need to keep it in cornrows. Family and social customs could be "part of ethnicity" as protected under the discrimination legislation (*Mandla v Dowell Lee* [1983] 2 AC 548, [1983] 1 All ER 1062 applied) and this was a group of people who could be particularly disadvantaged by a refusal to permit cornrows. G had personally suffered a particular disadvantage as a result of being turned away on his first day at school because he wore his hair in cornrows. Collins J was therefore satisfied that the policy was indirectly discriminatory.

The school sought to justify the policy, as a proportionate means of achieving a legitimate aim, principally on the basis that if it allowed one hairstyle such as skinhead, patterned or cornrows this would lead to pressure to unravel its strict policy which had been successful in keeping influences of gang and pop culture out of the school.

Collins J accepted that the school was pursuing a legitimate aim, but he did not accept that the policy was a proportionate means of achieving that aim. The school had failed to comply with its statutory equality duty and the DCSF (now the Department for Education) guidance on uniform policies had specifically highlighted the possibility of indirect discrimination arising from a prohibition on cornrows. The policy was not applied in the same way to boys in the sixth form of the school and other schools in the area permitted boys to wear cornrows. The lack of complaints before or after G's case was not determinative. Collins J considered that boys in a similar situation to G may have decided not to apply to the school in the first place or been prepared to accept the disadvantage in order to get a place in an excellent academic establishment. The school had acknowledged that exceptions to the policy would apply for religious or medical reasons, for example for boys who were Sikhs or Rastafarians. Collins J found that there was no difference in principle between those exceptions and G's case. The strictness of the policy would not be undermined by allowing an exception only where there was a particular requirement based on genuine ethnicity, religious or medical grounds. Pupils could be made aware of the reasons why there were limited exceptions to the otherwise strict policy. The policy as applied, without any exception in cases of genuine cultural and family practice, was not justified.

Direct sex discrimination claim

The school was found to allow girls to wear cornrows because it regarded them as conventional for girls and a satisfactory way of keeping long hair under control. While cornrows were not uncommon for African-Caribbean boys, the school had not been wrong to regard them as unconventional. The policy operated by the school applied standards of conventional appearance to both boys and girls. The policy therefore did not amount to less favourable treatment on grounds of sex even though it applied different rules to girls and boys in relation to hairstyles (*Smith v Safeway Plc* [1996] ICR 868 applied). NLJ

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