**Hair Discrimination Should Not Be Brushed Aside**

Wigs Getting Twisted

The last few weeks have seen Barristers getting their wigs in a twist and posing the question to "wig or not to wig?". The arguments for and against keeping the wig are numerous and wide ranging. Recent Twitter feeds and newspapers articles throw up a number of emotive responses, some of which have pointed to hair discrimination.

On 9 February 2022 Michael Etienne Tweeted:

> Asked the Bar Council what could happen if, as a Black Barrister with an Afro, I declined to wear my wig. The answer included: "contempt of court". "wasted costs" and various potential breaches of Code of Conduct. "Unless the insistence was discriminatory"
>
> #HairDiscrimination

Twitter feeds rarely provide thorough context and reasoning and are often devoid of value to serious debates such as hair discrimination but often an open door to misinformation and vulgar exchanges.

Bar Council 'Guidance'

The Bar Council calls itself the lead representative body for Barristers in England and Wales. Their work is devoted to ensuring the Bar's voice is heard, efficiently and effectively, and with the interests of the Bar (and the public interest) as its focus. Well then, what do they say about wigs? They provide a *guidance* note on appropriate court dress, although, they are keen to point out that this is not "guidance" for the purpose of the BSB Handbook. In their document they provide a tick-box table which shows in which courts business attire is to be worn and when to wear court dress, namely, wig, gown, wing-collars and bands or collarettes. As a general rule, advocates are robed for the High Court and in the Crown Court unless the Judge otherwise orders. Robes are not generally worn in tribunals or magistrates courts. By convention cases which directly relate to the liberty of an individual require court dress

Religious Accommodation

The Bar Council quite properly intend their guidance to provide a note of what clothing is expected and acceptable, reflecting the seriousness of the function Counsel perform in Court, the role of Court dress as the

uniform of the profession and the need for such uniform to be inclusive of different religious practice. Clothing worn as a requirement or emblem of faith is permitted to be worn in Court. The note provides some examples:

> *"7.1* ***Christianity:*** *Jewellery bearing crosses or other symbols of religious belief is permitted (and this applies equally to other beliefs).*
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> *7.2* ***Judaism:*** *Kippahs may be worn (and worn under wigs where Court Dress is required).*
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> *7.3* ***Islam:*** *Headscarves may be worn but should be sober coloured. Headscarf-wearing Muslims need not wear wigs where Court Dress is required.*
>
> *7.4.* ***Sikhism:*** *Turbans may be worn but should be sober coloured. Turban-wearing Sikhs need not wear wigs where Court Dress is required."*

There has long been an accommodation of sorts for religious dress. Sikh Barristers wearing a turban and Muslim Barristers wearing a hijab, for clearly apparent reasons are not required to wear a wig. Sir Mota Singh, the first ethnic minority judge in England forsook the wig for a turban when he was appointed in 1982. Despite some accommodation for some races and religions the Bar Council's guidance is silent as to whether Barristers who have specific hairstyles such as afros, braids, twists, and locks should be exempt from wearing a wig. Should 'these' Barristers groom themselves to conform to a Eurocentric aesthetic in order to wear the wig? Regulating people based on the appearance of their hair is surely not discrimination?

Combing Through the Law

The Equality Act 2010 provides protected characteristic status to nine identity markers; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The features listed under race are currently: colour, nationality, and ethnic origins. Hair is not explicitly mentioned in the Act as an identity marker although recent caselaw acknowledges that hair discrimination is a form of discrimination.

*(G v Head Teacher and Governors of St Gregory's Catholic Science College* ***[2011] EWHC 1452 (Admin)*** was a claim concerning the lawfulness of the uniform policy applied by the defendants which, because the claimant was unwilling to comply with one aspect of it, meant he was unable to take up his place at the

school. G, of African-Caribbean ethnicity had not cut his hair since birth and kept it in cornrows. This is in accordance with his family tradition. Cornrows (sometimes called braids) were prohibited by the uniform policy of the school and so he was not permitted to attend school so long as he kept his cornrow style. It was held that there had been indirect discrimination. The requirement for a provision, criterion or practice which put a person at a "particular disadvantage" for the purposes of indirect discrimination under the Race Relations Act (now repealed) was discriminatory.

Within the judgement of this case, the Court considered that the claimant's religious beliefs were a valid justification for having cornrows, making an exception to the policy. There was no mention of racialised hair discrimination, but simply the allowance of one's religious belief. The High Court failed to comprehend the disproportional isolation of a black hairstyle, where an insinuation is made that cornrows are not acceptable, thus deemed unprofessional in schools. This omission creates confusion where professional environments often fail to recognise 'hair' to represent a distinctive feature of someone of black heritage.

Untangle the Law

Since the case of 'G' there have been a number of instances where hair policies enforced by schools and employers have led to racial discrimination; black children being sent home from school because of their afros (Ruby Williams) or 'extreme 'haircuts (Josiah Sharpe), black boys being told to cut off their dreadlocks (Chikayzea Flanders), black women being turned down for jobs because they wear their hair in braids or cornrows (Lara Odoffin), and black employees being told to chemically straighten their natural hair. I am cautiously confident that no Judge at the English Bar would impose a Barrister to wear a wig where their hairstyle does not allow for it. However, there must be clear and unambiguous guidance for the Bar, for schools and employers to prevent hair discrimination in policies and practices.

The Equality Act can address this issue by regarding 'hair' as a protected characteristic (both texture and style). This will increase the clarity of the law, as well as the UK's understanding of systemic racial issues amongst our current systems. A similar approach has been taken by parts of the United States through the creation of the CROWN (Create a Respectful and Open World for Natural Hair) Act 2020. The Act prohibits discrimination based on hair texture and protective hairstyles in professional environments.

The Bar Council need not wait for UK Legislation to untangle its subjective understanding of black 'hairitage' and ought to comb through its own guidance in order to weave into it accommodation for diverse hair styles and textures and understanding of hair discrimination. We must understand that dress codes and indirect grooming policies that ban natural hair including afros, braids, twists, and locks compel individuals

to mask their ethnicity and conform to European norms. It is not acceptable to brush hair discrimination aside.

**Shabinah Ladha**

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