



House of Commons

Petitions Committee and
Women and Equalities Committee

High heels and workplace dress codes: Government Response to the First Joint Report of the Petitions Committee and the Women and Equalities Committee of Session 2016–17

**First Joint Special Report of the Petitions Committee and
the Women and Equalities Committee of Session 2016–17**

**Second Special Report of the Petitions Committee of
Session 2016–17**

**Fourth Special Report of the Women and Equalities
Committee of Session 2016–17**

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Petitions Committee

The Petitions Committee is appointed by the House of Commons to consider e-petitions submitted on petition.parliament.uk and public (paper) petitions presented to the House of Commons.

Current membership

[Helen Jones MP](#) (*Labour, Warrington North*) (Chair)

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The following were also members of the Committee during the inquiry:

[Ian Blackford MP](#) (*Scottish National Party, Ross, Skye, and Lochaber*)

[Mr Nick Hurd MP](#) (*Conservative, Ruislip, Northwood and Pinner*)

Women and Equalities Committee

The Women and Equalities Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Government Equalities Office (GEO).

Current membership

[Mrs Maria Miller MP](#) (*Conservative, Basingstoke*) (Chair)

[Lucy Allan MP](#) (*Conservative, Telford*)

[Tracy Brabin MP](#) (*Labour, Batley and Spen*)

[Maria Caulfield MP](#) (*Conservative, Lewes*)

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[Jess Phillips MP](#) (*Labour, Birmingham, Yardley*)

[Mr Gavin Shuker MP](#) (*Labour (Co-op), Luton South*)

The following were also members of the Committee during the inquiry:

[Ruth Cadbury MP](#) (*Labour, Brentford and Isleworth*)

[Jo Churchill MP](#) (Conservative, Bury St Edmonds)

[Mims Davies MP](#) (Conservative, Eastleigh)

[Gill Furniss MP](#) (Labour, Sheffield, Brightside and Hillsborough)

Powers

The powers of the Petitions Committee are set out in House of Commons Standing Orders, principally in SO No. 145A.

The Women and Equalities Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152.

These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committees' websites at www.parliament.uk/petitions-committee and www.parliament.uk/womenandequalities and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) on the Parliament website.

Petitions Committee staff

The current staff of the Committee are Anne-Marie Griffiths (Clerk), Joseph Watt (Second Clerk), Emma McIntosh (Petitions and Engagement Officer), Kate Anderson (Petitions and Communications Officer), Paul Simpkin (Senior Committee Assistant), Sean Harris (Committee Assistant), Zsafia Kiss (Apprentice) and Laura Diebelius (Media Officer).

Women and Equalities Committee staff

The current staff of the Committee are Judith Boyce (Clerk), Sharmini Selvarajah (Second Clerk), Tansy Hutchinson (Committee Specialist), Holly Dustin (Committee Specialist), Shai Jacobs (Committee Specialist), Asaad Qadri (Inquiry Manager), Aaron Huang (Inquiry Manager), Alexandra Hunter-Wainwright (Senior Committee Assistant), Mandy Sullivan (Committee Assistant) and Liz Parratt (Media Officer).

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First Special Report

The Petitions Committee and the Women and Equalities Committee published their First Joint Report of Session 2016–17, *High heels and workplace dress codes* (HC 291), on 25 January 2017. The Government’s response was received on 23 March 2017 and is appended to this report.

In the Government’s response, the Committee’s recommendations appear in **bold text** and the Government’s responses are in plain text.

Appendix: Government Response

Introduction

1. The House of Commons Petitions Committee and Women and Equalities Committee (WESC) report on high heels and workplace dress codes was published on 25 January 2017, following an inquiry by the former Committee into Nicola Thorp’s petition ‘*Make it illegal for a company to require women to wear high heels at work*’¹ which closed in November 2016, having attracted 152,420 signatures.
2. The Government welcomes the Petitions Committee and WESC’s work and recommendations. Some of the evidence presented to the Petitions Committee during its inquiry suggested employment practices in some industries which appear sexist, unacceptable and potentially unlawful. In 2017 such practices should not be part of the workplace.
3. The Government takes this issue very seriously and will continue to work hard to ensure women are not held back in the workplace by outdated attitudes and practices. We are committed to enhancing the role of women and removing barriers to equality, including outdated attitudes and practices, by tackling the gender pay gap, increasing the number of women on boards, increasing support for childcare costs and ensuring that employers are aware of their obligations to pregnant women.
4. The report made nine recommendations about discriminatory dress codes in the workplace, including developing guidance and raising awareness of the issue.
5. The Government’s response to each of the recommendations is set out below. These responses, particularly to recommendations 3, 4, 5 and 6, show the action we are taking, within government and with the Equality and Human Rights Commission, to deal with this problem.
6. It should also be made clear at the outset that scope for redress already exists. Part 5 of the Equality Act 2010 (the Act) contains provisions which make it unlawful for an employer to discriminate or harass a person because of or for reasons related to sex in employment, including in the arrangements it makes for deciding to whom to offer employment, or as to the terms on which it offers employment. This protection also applies for existing employees, for example when seeking a new job or promotion within an organisation.

1 <https://petition.parliament.uk/petitions/129823>

7. In particular, the Act prohibits direct sex discrimination, which in the field of employment occurs where one employee (or applicant) is treated less favourably than another by their employer because of sex. We are clear that a dress code that makes significantly more demands of female employees than of their male colleagues will be unlawful under this provision.

8. It is also unlawful to victimise a person for making a complaint about such conduct. This protection means that an employer cannot dismiss or demote an employee because they have complained—whether informally or to a tribunal—about alleged discrimination by their employer.

9. The law is designed to protect the rights of women in the workplace but we accept that awareness of the law among employers and employees is patchy and that there are bad employers who knowingly flout the law—this is where Government can do more to raise awareness and knowledge of employees' rights and employers' responsibilities.

10. Gender discrimination cannot be tackled with regulation alone. Changing attitudes and raising awareness is also crucial in removing the barriers to equality, and building a fairer society. We are taking this opportunity to challenge all employers with dress codes to review them and consider whether they remain relevant and lawful. More generally, we will continue to work hard to ensure women are not excluded from or held back in the workplace by outdated attitudes and practices, including discriminatory dress codes.

Recommendation 1

The Government Equalities Office should work with the Ministry of Justice to examine what proportion of cases relating to discrimination in the workplace failed because the claimant could not establish less favourable treatment. They should also seek to discover how many people are deterred from bringing a case because they feel that the law is unclear. If this represents a significant proportion of cases, then the Government should consider adapting the less favourable treatment test to place greater weight on the subjective element—the claimant's feeling of being discriminated against—and issuing guidance to this effect. (Paragraph 57)

Government response

11. The Survey of Employment Tribunal Applications (SETA—carried out by the Department for Business Energy and Industrial Strategy) provides information on key features of employment tribunal cases. This includes information on the characteristics of employment tribunal claimants and employers, assessing the costs of going to tribunals for claimants and employers and monitoring the performance of the employment tribunal claim process. However, data on the proportion of workplace discrimination cases which failed because the claimant could not establish less favourable treatment, would be too specific a requirement to obtain from SETA data. And a separate analysis of judgements would only make it possible to collect information on cases that reached a hearing, as opposed to those that were withdrawn prior to hearing because the claimant did not believe they could prove the claim.

12. The Government will consider whether further bespoke research could be undertaken on this issue, while noting the cost and potential value of undertaking such work, bearing in mind that we are aware of very few actual employment tribunal cases involving an employer's requirements on the appearance of its employees—the focus of the petition and the inquiry which followed it.

13. In cases where people feel the law is unclear, it is possible to gain free advice through the Citizens Advice Bureau, the Advisory and Arbitration Service (Acas) helpline for employees and employers and the Equality Advisory and Support Service (EASS).

14. The Government is intending to produce new guidance this summer on dress codes in the workplace (see recommendation 5) with the intention of making the law clearer to employers and employees.

Recommendation 2

The Government should also examine what proportion of such cases failed because the employer was found to be pursuing a legitimate aim. If this represents a significant proportion of cases, then the Government should consider changing the law to define what legitimate aims can be. We would propose the following legitimate aims:

- (1) **health and safety;**
- (2) **to establish a truly necessary public image, for example, the judiciary;**
- (3) **to project a smart and uniform image; and**
- (4) **to restrict dresses or insignia which may cause offence.** (Paragraph 58)

Government response

15. The same issues governing collection of tribunal data apply here as to recommendation 1.

16. The legitimate aims suggested in this recommendation seem reasonable, and we are grateful to the Committees for giving thought to the codification of this important defence in the Equality Act. We will certainly consider their inclusion as illustrative examples in the guidance currently being prepared. It is worth noting that all of them could have implications for religious aspects of dress codes at work—an equalities issue with its own case law which is not examined in the report. We do not favour a prescriptive approach to defining a legitimate aim in the legislation. In part, this is because it would undermine the principle that courts and tribunals should be free to consider the particular circumstances of each case brought before them and any defence that is offered. A key problem in practice however, is that these suggested aims could only be a small subset of the full range that might legitimately serve as a defence against discrimination claims on other grounds—for example:

- a) age discrimination case law has shown that training and developing fire brigade officers² and the maintenance of a stable workforce during a redundancy exercise and rewarding corporate loyalty³ were legitimate aims; and

2 Smith v Strathclyde Fire Board ET/S/107290/07

3 Rolls-Royce plc v Unite the Union [2009] IRLR 576

- b) cases on religion and belief grounds have shown that providing a good education beneficial to a student⁴ is a legitimate aim.

Recommendation 3

It is clear that many employees do not feel able to challenge the dress codes they are required to follow, even when they suspect that they may be unlawful. We therefore recommend that the Government develop an awareness campaign to help workers to understand how they can make formal complaints and bring claims if they believe that they are subject to discriminatory treatment at work, including potentially discriminatory dress codes. Advice should be provided about:

- **discrimination in the workplace and in job applications;**
- **statutory employment rights (including unfair dismissal, notice and rights to pay on dismissal or resignation); and**
- **approaches to seeking advice and resolving workplace disputes (including the roles of Acas, the Equality and Human Rights Commission, Citizens' Advice Bureau, employment tribunals and free or pro bono legal services).**

The awareness campaign should cover all sectors but be targeted particularly at the following industries:

- **Hotels and tourism**
- **Travel and airlines**
- **Temporary work agencies**
- **Corporate services**
- **Retail, especially luxury retail**
- **Hospitality, especially bar, waitressing and club work (Paragraph 64)**

Government response

17. We welcome this recommendation. The Government Equalities Office will be producing guidance on dress codes in the workplace as a specific response to the Thorp petition and the issues it raises (see also recommendation 5). We expect to be able to issue this during the summer. The GEO working closely with Acas, the Equality and Human Rights Commission (EHRC) and the Health and Safety Executive (HSE) will explore options for raising further awareness of this issue.

Recommendation 4

In view of the evidence we have received about the particular impacts of discriminatory dress codes on younger workers, this awareness campaign should also be extended to include all sixth form and further and higher education institutions in England. (Paragraph 65)

Government response

18. The Government is exploring the scope to extend any awareness campaign in the labour market to older students. We agree on the importance of preparing and equipping students for the world of work, and helping them to understand their rights, for example, to be able to work free of unlawful discrimination by their employer and to know how to complain if things go wrong. Higher Education Institutions, sixth form and further education colleges are autonomous institutions, and therefore Government does not set their curriculum. However, there are a variety of routes that could be used to reach a student audience and we are carefully considering those options.

Recommendation 5

The Government Equalities Office should work with Acas and the Health and Safety Executive to ensure that detailed guidance for employers is published, to help them to understand how discrimination law and health and safety law apply to workplace dress codes. Given the importance of this issue for millions of workers, we recommend that the Minister for Women and Equalities ensure that this updated guidance is published by July 2017. (Paragraph 73)

Government response

19. We are clear that the law to deal with this sort of discrimination is adequate, but we recognise that some employers lack awareness of the law or even choose to flout it, taking advantage of reluctance by employees to take action when they feel discrimination has occurred. We therefore welcome this opportunity to develop new guidance for employers.

20. Government is working closely with Acas, the EHRC and the HSE to produce this guidance. We aim to publish the guidance in summer 2017.

21. In order to improve understanding of this type of discriminatory practice, the Equality Advisory and Support Service has agreed that it will refer any customer contacts it receives about dress code issues to the EHRC to consider further action. This will help ensure that the situation is investigated, and we can assess whether further action is required on the part of Government or other bodies.

Recommendation 6

At the very least, this guidance should address the more controversial dress code requirements which have been brought to light through this inquiry: high heels and footwear; make-up; manicures; hair (colour, texture, length and style); hosiery; opacity of work wear; skirt length; and low-fronted or unbuttoned tops. (Paragraph 74)

Government response

22. Government will consider all these aspects of dress code requirements in developing its guidance.

Recommendation 7

The Government must substantially increase the financial penalties for employers found by employment tribunals to have breached the law. Penalties should be set at such a level as to ensure that employees are not deterred from bringing claims, and to deter employers from breaching the legislation. (Paragraph 85)

Government response

23. Employment tribunals operate on the principle of restorative justice and accordingly their remedies are primarily about compensation for detriment or unfair treatment. Such remedies are not intended to be punitive.

24. A penalty on the other hand is a very specific mechanism. Penalties issued by the tribunal are payable to the Consolidated Fund rather than to the claimant.

25. For unlawful discrimination, such as sex discrimination, employment tribunals can award compensation for ‘injury to feelings’ as well as financial losses. They will take into account various matters including the individual’s personal characteristics, any relevant medical condition or particular vulnerability, the actual impact of the discriminatory act or acts on the individual and the extent to which the employer has sought to make amends.

26. Tribunals currently have power to make these awards in accordance with the Vento guidelines and case law over time has developed how tribunals are making these orders, depending on the facts of each case and what the claimant has suffered. These awards can be increased to reflect inflation.

27. The Vento guidelines are split into three bands depending on how serious the tribunal considers the injury to feelings to be.

28. The top band: The tribunal can award between £18,000 and £30,000 in the most serious cases of discrimination. For example, where an employee has suffered a long campaign of discrimination or harassment.

29. The middle band: The tribunal can award between £6,000 and £18,000 in cases which are serious but do not fall into the top band. They might include a serious one-off act of harassment or a lengthy but less serious act of discrimination.

30. The lower band: The tribunal can award between £500 and £6,000 in less serious cases of discrimination, such as a one-off act of relatively minor harassment or discrimination.

31. We consider the current guidelines to be proportionate and fit for purpose.

Recommendation 8

The Government should also make it quicker and easier for the claimant to resolve a legal problem with their dress code by allowing employment tribunals to award injunctions in these types of cases. (Paragraph 86)

Government response

32. An injunction is a serious judicial sanction which, in keeping with this status, can only be imposed by the High Court and above. We think that its use by employment tribunals in disputes between employers and their employees over the latter's appearance would be disproportionate. We would however certainly encourage an employer in question to suspend a disputed rule pending resolution at tribunal, and will consider this issue in the guidance now being prepared.

Recommendation 9

The Government must ensure that the Equality and Human Rights Commission is able to play an increased role in providing support and funding for antidiscrimination test cases and appeals brought before employment tribunals and courts. The Women and Equalities Committee will want to maintain a watching brief in this area as part of its ongoing scrutiny of the work of the EHRC. (Paragraph 92)

Government response

33. We welcome the continued interest of the Women and Equalities Select Committee in this issue. The EHRC itself is an independent body which makes its own decisions on legal interventions, though we understand it is currently considering its approach in this area more generally. As already noted, the EASS will be referring any relevant customer contacts to the Commission to consider whether further action is warranted, and scope for a test case might arise from this.

34. However, much of the EHRC's ongoing enforcement work involves investigating and where necessary resolving potentially unlawful practices with employers and service providers through correspondence and other means designed to settle the problem without recourse to a court or tribunal. As the response from Nicola Thorp's employer to her petition and the subsequent publicity—review followed by abandonment of its heels requirement—suggests, many employers may be reluctant to test this sort of issue at an employment tribunal and a persuasive enforcement approach may therefore be fully appropriate.