The Truth within Our Roots: Exploring Hair Discrimination and Professional Grooming Policies in the Context of Equality Law

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Abstract

Hair discrimination is a form of social injustice targeted at those of Black heritage. The Equality Act 2010 provides protection from discrimination, harassment, and victimisation on the basis of nine protected characteristics, one of which is race. Under its provisions, race can mean colour, nationality, ethnic or national origins. Hair is not explicitly mentioned, creating a grey area within the law. This paper considers the prevalence of hair discrimination cases in the United Kingdom, where racialised hair discrimination can be perpetuated through policies in schools or workplaces. Recent media reports have illustrated that these policies, which aim to regulate 'professional' hairstyles, can have a disparate impact on those with Afro-textured hair. Mixed raced pupils have been excluded from schools, with their hair perceived as 'unprofessional' and 'inappropriate'. The United States of America (USA) has taken steps to address these issues through the CROWN Act 2020, which prohibits racialised hair discrimination. This paper posits that our current legal understanding of race, as it exists in the Equality Act 2010, is inadequate to address racialised hair discrimination. It proposes that reforms similar to those contained in the USA CROWN Act 2020 could be enacted to better encapsulate a more holistic statutory understanding of race.

1 Introduction

In 2019, Ruby Williams, a mixed-race high school student from east London, was awarded monetary compensation in an out-of-court settlement after being repeatedly sent home from school due to her 'Afro style hair'.[1] Williams was told that her hair breached the school's policy, which stated that 'Afro style hair must be of reasonable size and length'.[2] Despite the prohibition of racial discrimination in the Equality Act 2010 (EQA) cases of hair discrimination (HD) remain prevalent.[3] Further clarity within both the law and society is required in order to acknowledge and address the socialised perceptions of Black hair. In education and corporate policies, Black hair is often negatively labelled as 'unprofessional' or 'inappropriate', reflecting the treatment of Black people in professional environments.[4]

As 'one of the primary signifiers of [B]lack heritage', hair requires legal recognition and protection within the EQA and by the Equality and Human Rights Commission (EHRC).[5] This paper addresses the inadequacy of available law and guidance in the following ways:

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[1] Kameron Virk, 'Ruby Williams: No Child with Afro Hair Should Suffer Like Me' *BBC News* (London, 10 February 2020) <https://www.bbc.co.uk/news/newsbeat-45521094> accessed 4 September 2020.

[2] ibid.

[3] *G v X*: Challenging an Discriminatory Work Hairstyle Policy <https://legal.equalityhumanrights.com/en/case/challenging-discriminatory-work-hairstyle-policy> accessed 27 May 2021

[4] Aftab Ali, 'Bournemouth University Graduate Lara Odoffin "Discriminated Against" After Recruiter Revokes Job Offer Because She Has Braided Hair' *The Independent* (London, 27 November 2015) <https://www.independent.co.uk/student/news/bournemouth-university-graduate-lara-odoffin-discriminated-against-after-recruiter-revokes-job-offer-because-she-has-braided-hair-a6751231.html> accessed 5 September 2020; Meah Johnson, 'I Am Not My Hair, Hair Discrimination in Corporate America' (2019–20) 11 J Race, Gender & Poverty 109.

[5] Emma Dabiri, 'Black Pupils Are Being Wrongly Excluded over the Hair. I'm Trying to End This Discrimination' *The Guardian* (London, 25 February 2020) <https://www.theguardian.com/commentisfree/2020/feb/25/black-pupils-excluded-hair-discrimination-equality-act> accessed 13 September 2020; Wera Hobhouse, 'We Must End Hair Discrimination' (Liberal Democrats, 14 October 2020) <https://www.libdems.org.uk/end-hair-discrimination> accessed 4 November 2020.

Section 2 defines HD by discussing its evolution. Following this, Section 3 analyses the EQA and the EHRC's guidance with reference to HD case law, arguing it provides insufficient protection against HD. Section 4 assesses the United States of America's (USA) CROWN Act 2019, contending that it could provide a useful guide for the UK for understanding why HD requires legal protection. Building on this, Section 5 justifies the proposal to add 'hair' to the existing definition of race in the EQA, focussing on systemic issues of race perception. Overall, this article suggests that education is a vital mechanism for a change in approach and concludes that, whilst it is crucial for students and employees to be educated through policy internal to professional institutions, this must be accompanied with legal action to guarantee recourse for HD victims.

2 The Evolution of Hair Discrimination

Focussing on its historical origins, this section explores the relationship between definitions of HD in the legal literature and wider society and its influences on current attitudes towards Black hair. Intrinsically linked to racial identity, Black hair is a distinctive feature separating those of Black heritage from other races. Recognising this, HD has been defined by Mbilishaka and others as:

> A social injustice characterized by unfairly regulating and insulting people based on the appearance of their hair. Within Black communities, hair discrimination can be localized as the imposition of racially biased appearance standards on hair, which can be accompanied by verbal or nonverbal consequences.[6]

Discussions of HD must be attentive to its historical development. As

[6] Afiya M Mbilishaka and others, 'Don't Get It Twisted: Untangling the Psychology of Hair Discrimination within Black Communities' (2020) 90(2) Am J Orthopsychiatry 590.

Dabiri observes, Afro-textured hair[7] and hairstyles are seen as an invaluable symbol of identity, family, age, tribe, and social rank within Black communities.[8] The physical form of cornrows, for example, represents agriculture and order. Hairstyling knowledge is shared as a social activity, creating meaningful bonds between people.[9] Furthermore, it is important to note the importance of protective hairstyles. Black hair has the tendency to break and dry out, thus sometimes requiring protective hairstyles, including dreadlocks or braids, for the maintenance of healthy Black hair.[10] These shared practices, which have become embedded in tradition, were disrupted by the advent of fifteenth-century slavery and colonialism.[11] Black hair was reclassified as 'dreadful', indicating the derogatory attitude of colonists towards Black people's hair.[12] The term 'dreadlocks' originated in this period — a descriptor coined by slave owners.[13]

Historic intrusions upon, and attitudes towards, Black culture set precedence for the continued negative (and internalised) perceptions of Black hair.[14] Despite the abolition of slavery, narrow attitudes of what is perceived as acceptable and ideal hair are perpetuated through the circulation of global definitions of beauty, which are dominated by perennial racism.[15] Western European features associated with 'civility' and 'respectability' were held to be the standard and,

[7] Thanks to Avtar Matharu, Chair of the University of York's Staff Race Equality Forum and Committee for clarification of terminology.
[8] Emma Dabiri, *Don't Touch My Hair* (Penguin Books 2019) 16.
[9] Johnson (n 4).
[10] Aleesha Hamilton, 'Untangling Discrimination: The CROWN Act and Protecting Black Hair' (2021) 89 U Cin L Rev 483.
[11] Editorial, 'We're Building a Future without Hair Discrimination' (*The Halo Collective*, December 2020) <https://halocollective.co.uk/> accessed 8 December 2020.
[12] Dabiri, *Don't Touch My Hair* (n 8).
[13] Francesco Mastalia and Alfonse Pagano, *Dreads* (Artisan 1999).
[14] Emma Dabiri, *Twisted: The Tangled History of Black Hair Culture* (Harper Collins 2020) 172.
[15] ibid.

consequently, encouraged Black people to use straighteners and harsh chemicals to 'tame' their hair in an attempt to mirror European styles.[16]

Since the emergence of the natural hair movement in the 1960s, Black people have been rejecting the Eurocentric standards of beauty that pressurise Black people to disguise and damage their natural hair.[17] Marcus Garvey, an activist of that movement, inspired Black people to embrace their natural hair, arguing that copying white Eurocentric standards of beauty 'denigrated the beauty' of Black people.[18] Nonetheless, Akutekha argues that the movement has failed Black people by encouraging the acceptability of Black hair 'only when it leans toward Eurocentric beauty standards'.[19] Akutekha asserts that the movement's failure is due to the glamorisation of 'looser curls', limiting the acceptance of all Black hair types defined by their unique textures.[20]

Given its history, HD lingers in the UK, particularly in professional environments. Demonstrative of this is *Erogbogbo*.[21] Here, an African woman was informed that her short spiky plaits were unacceptable in the workplace, with her employer deeming them unprofessionally messy. Erogbogbo's claim for racial discrimination was upheld, as there was no objective justification for the employer's disapproval of her natural hair. Despite Erogbogbo's successful claim and the establishment of the EQA a decade later, there appears to have been no significant change in this period.[22] Tied to the existence of HD cases,

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[16] Mbilishaka and others (n 6).

[17] Amberly Alene Ellis-Rodríguez, 'Black Is Beautiful: Photographs on the Hip Hop and Natural Hair Movements in Cuba Today' (2019) 21(4) Souls 355; Dabiri, *Twisted: The Tangled History of Black Hair Culture* (n 14).

[18] Chanté Griffin, 'How Natural Black Hair at Work Became a Civil Rights Issue' (Politics and Government, JSTOR Daily, July 2019) <https://daily.jstor.org/how-natural-black-hair-at-work-became-a-civil-rights-issue/> accessed 3 April 2021.

[19] Esther Akutekha, 'How the Natural Hair Movement Has Failed Black Women' (*HuffPost*, 16 March 2020) <https://www.huffingtonpost.co.uk/entry/natural-hair-movement-failed-black-women_l_5e5ff246c5b6985ec91a4c70> accessed 5 April 2021.

[20] ibid.

[21] *Erogbogbo v Vision Express UK Ltd* [2000] ET/2200773/00.

[22] Editorial, 'Boy "Didn't Want to Be Black Anymore" after Being Sent Home from

there remains a consistent problem concerning the understanding of racial discrimination. It is therefore necessary to question the protection that the Act offers to victims of HD in the UK.[23]

3 The Current Approach in Practice

Recognising the continued existence of such cases, the sufficiency of the current approach towards protecting people against HD must be assessed, with particular focus on whether the law and guidance on HD misinterprets the understanding of racial characteristics.

Described by Dabiri as 'the metric by which discrimination is measured',[24] the EQA replaced previous anti-discrimination laws,[25] attempting to simplify and unify equality law.[26] However, as Hand observes, this rationale may present an inherent shortcoming regarding the interpretation of the Act — particularly when its provisions are applied to complex issues such as HD.[27] That is, because hair is not explicitly identified as an element of race within Act, there is a lack of awareness of HD being classed as a form of racial discrimination. The UK government has aimed to address the potential deficiencies of equality legislation by constructing the EHRC — a statutory body established by the Equality Act 2006 and whose remit was extended and reaffirmed in the Equality Act 2010.[28] The EHRC's purpose is to

School for "Too Short" Hair, Says Mum' *ITV News* (London, 17 May 2019) <https://www.itv.com/news/central/2019-05-17/boy-didnt-want-to-be-black-anymore-after-being-sent-home-from-school-for-too-short-hair-says-mum> accessed 4 January 2021.

[23] Emma Dabiri, 'Emma Dabiri on Slaying the Stigma with the Halo Code' (Dove, April 2021) <https://www.dove.com/uk/stories/real-voices/emma-dabiri-halo-code.html> accessed 3 April 2021.

[24] ibid.

[25] Race Relations Act 1976.

[26] James Hand, 'Outside the Equality Act: Non-Standard Protection from Discrimination of British Law' (2015) 15(4) Int'l J Discrimination & L 205.

[27] ibid.

[28] 'Our Powers' (Equality and Human Rights Commission, 12 November 2019) <https://www.equalityhumanrights.com/en/our-legal-action/our-powers> accessed 3 April 2021.

safeguard equality and human rights legislation through advice and guidance, as well as sometimes supporting relevant legal action. In the case of Williams, the chief executive of the EHRC observed potentially dangerous legal and social implications, stating that: 'policies which single out children from particular ethnic groups are unacceptable'.[29] The Commission argued that the policy was indirectly discriminatory, placing Williams and other Black pupils at a disadvantage. It is therefore important to note the different types of discrimination that are recognised under the current law and guidance, and how this relates to the interpretation HD.

3.1 Direct and Indirect Discrimination

Direct and indirect forms of discrimination are defined in the EQA and subject to guidance from the EHRC.[30] Direct discrimination occurs when one person is treated less favourably than another person in a comparable situation because of a protected characteristic.[31] If, for example, a Black man is not offered employment due to his race, this constitutes direct discrimination. Contrastingly, indirect discrimination occurs when a provision, criterion or practice applies to all groups equally but has a discriminatory impact on people sharing a particular protected characteristic.[32] A health club that only accepts customers on the electoral register may, for example, be indirectly discriminating against Gypsies and Travellers, groups who are less likely to be on the electoral register and therefore will likely find it more difficult to join.[33]

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[29] Mark Smulian, 'School Argues £8.5k Settlement to Pupil Excluded over Size of Afro' (*Public Law Today*, 13 February 2020) <https://www.publiclawtoday.co.uk/education-law/394-education-news/42668-school-agrees-8-5k-settlement-to-pupil-excluded-over-size-of-afro-hair> accessed 4 April 2021.

[30] Equality Act 2010, ss 13, 19; Editorial, 'What Is Direct and Indirect Discrimination?' (*EHRC*, 25 November 2019) <https://www.equalityhumanrights.com/en/advice-and-guidance/what-direct-and-indirect-discrimination> accessed 3 April 2021.

[31] EQA, s 13.

[32] EQA, s 19.

[33] Citizens Advice Bureau, 'Gypsies and Travellers — Race Discrimination' (*Citizens Advice Bureau*) <https://www.citizensadvice.org.uk/law-and-

3.2 Case Law's Ignorance of Hair Discrimination

Having identified the relevant types of discrimination, the following section details how indirect discrimination has been determined in case law, demonstrating the ignorance towards HD within judgments. The case of *SG* [2011] concerned a challenge to a school uniform policy that banned cornrows.[34] The claimant was a Rastafarian whose religious beliefs prohibited him from cutting his hair. The High Court accepted that the policy indirectly discriminated against Black pupils, agreeing that the policy was not proportionate.[35] Yet, a significant part of the Court's reasoning relied upon a narrow exception to the claimant's hair, explaining that pupils who had a 'genuine cultural practice or family practice of not cutting hair' were to be regarded as an exception to the school's uniform policy.[36] The court took a restricted approach towards the protection from indirect discrimination, rather than wholly dismissing the uniform policy as explicit racial discrimination. Despite *SG* demonstrating a successful advancement towards identifying discrimination, the Court's analysis does not explicitly consider HD a form of racial discrimination within its judgment.

The public sector equality duty imposes a requirement on public authorities to have due regard to the need to *inter alia* eliminate discrimination and remove or minimise disadvantages suffered by persons who share a relevant protected characteristic when exercising its functions.[37] Yet, as Wagner observes, the consideration of HD issues was not made in *SG*.[38] The school assumed that HD was not a matter of

courts/discrimination/protected-characteristics/gypsies-and-travellers-race-discrimination/> accessed 28 May 2021.

[34] *SG v St Gregory's Catholic Science College* [2011] EWHC 1452 (Admin), [2011] ACD 91.

[35] ibid [48] (Collins J).

[36] Adam Wagner, 'Hey Teacher! Leave Those Cornrows Alone' (*UK Human Rights Blog*, 20 June 2011) <https://ukhumanrightsblog.com/2011/06/20/hey-teacher-leave-those-cornrows-alone/> accessed 4 March 2021.

[37] Equality Act, s 149; 'Public Sector Equality Duty' (*EHRC*) <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty> accessed 4 April 2021.

[38] Wagner (n 36).

concern, because there were no complaints regarding their questionable policy. Assessing the reasoning for the lack of complaints, the judge in *SG* noted: 'It may be that those who complied were prepared to accept the disadvantage to receive a place in an excellent establishment.'[39] This statement reiterates the notion that Black people are expected to conform to Eurocentric ideals in order to avoid being excluded from valuable educational opportunities. Overall, *SG* illustrates how schools or workplaces, when defending their establishment's policies, are actively involved in perpetuating the disadvantages that Black people face in professional environments, through their ignorance of HD. The Court's decision displays a misinterpretation of a uniform policy that reflects the inherent nature of racial discrimination within an establishment's system. The next section discusses the implementation of the Creating a Respectful and Open World for Natural Hair Act (CROWN Act 2019), which recognises HD as a violation of human rights in parts of the USA, and offers useful insights for the UK context.

4 The CROWN Act 2019

The USA has recognised HD as a form of racial discrimination and has enacted legislation to tackle its prevalence in the country, in response to a rising number of cases. Seven states, including California, currently have anti-hair-discrimination laws, in the form of state-based CROWN Acts. The federal CROWN Act was passed by the House of Representatives in 2020 and is now awaiting Senate approval. The Act prohibits discrimination based on natural hair texture, and the legal definition of race has been expanded to include hair in several USA states.[40] The definition contained within the California Fair Employment and House Act, for example, now recognises: 'traits historically associated with race including, but not limited to, hair texture and protective hairstyles'.[41] For Johnson, the formation of CROWN highlights the extent to which European traits have been normatively embedded into the perception of 'professional' appearance

[39] *SG v St Gregory's Catholic Science College* (n 34) [45] (Collins J).
[40] CROWN Act 2019.
[41] Fair Employment and Housing Act, California Government Code, s 12926(w).

in society.[42] What is considered 'beautiful', 'acceptable', and 'professional' has undoubtedly been shaped by societal standards to which people have been exposed.[43] The lack of representation of Black hair in the USA within facets of public life, and in mainstream social media, encourages the ignorance of Black people and their distinctive traits. Despite the approval of the CROWN Act from states that have acknowledged the misinterpretation of Black people, the Act has been rejected by others.[44] The following section discusses the reasons for such opposition.

4.1 False Perceptions of Black Hair in Professional Environments

This section discusses the common misconceptions of Black hair and hairstyles in professional environments, arguing that judgments in USA HD cases often dismiss Black hair or hairstyles as unprofessional. *Equal Employment Opportunity Commission v Catastrophe Management Solutions* (*EEOC*) exemplifies this.[45] In this case, heard in an Alabama Court in 2016, the claimant had been offered a job at a call centre on the condition that she would not wear her dreadlocks. The employer stated that her dreadlocks were in violation of the grooming policy, which prohibited 'excessive hairstyles'.[46] The claimant refused, and the offer of a job was consequently revoked by the employer.[47] The Alabama Court regarded dreadlocks as a mutable characteristic, concluding that the hairstyle was not indicative of a racial trait and that it has no relation to the claimant's racial background.[48] The claimant's

[42] Johnson (n 4).
[43] Johnson (n 4) 110.
[44] Melissa A Milkie, 'Social Comparisons, Reflected Appraisals, and Mass Media: The Impact of Pervasive Beauty Imagines on Black and White Girls' Self-Concepts' (1999) 62(2) Social Psychology Quarterly 190; 'Creating a Respectful and Open World for Natural Hair' (*The CROWN Act*) <https://www.thecrownact.com/about> accessed 2 January 2021; Hamilton (n 10).
[45] *EEOC v Catastrophe Management Solutions* 852 F3d 1018 (11 Cir 2016).
[46] ibid.
[47] ibid.
[48] Civil Rights Act 1964.

dreadlocks were classed by the court as a form of self-expression, an approach that denied the significance of the protective hairstyle.[49] This case has set a narrow precedent that ultimately relied on flawed federal discrimination law.[50]

Within the context of HD in the USA, the findings in *EEOC* are significant for several reasons. First, the court misinterpreted Black hair, labelling it a mutable characteristic.[51] This finding stands in opposition to the history of Black culture and affiliated hairstyles.[52] As noted in Section 1, Black hair holds cultural significance for one's identity, whilst protective hairstyles are required to maintain healthy hair, due to Black hair's susceptibility to breakage and dryness.[53] Second, the case highlights how previous USA court decisions have facilitated a pattern through a narrow interpretation of racial discrimination, where protective hairstyles are dismissed as a mutable characteristic.[54] For example, in *Rogers*, a case decided in the Southern District of New York in 1981, the Court held that an employer's grooming policy was not discriminatory, because cornrows were a 'mutable aesthetic choice'.[55] Unlike in *EEOC*, the court here contrasted cornrows with 'Afro hairstyles', and found that the latter are acceptable.[56] Both cases demonstrate a judicial failure to comprehend the necessity of Black hairstyles, displaying an incoherent approach towards the nature of workplace policies.[57] These cases adopt

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[49] Michelle De Leon and Denese Chikwendu, *Hair Equality Report 2019: 'More Than Just Hair'* (World Afro Day CIC, 2019).
[50] Hamilton (n 10).
[51] Title VII of the Civil Rights Act (n 46), 'protects persons in covered categories with respect to immutable characteristics, but not their cultural practices'.
[52] Hamilton (n 10).
[53] Hamilton (n 10).
[54] Hamilton (n 10) 497.
[55] *Rogers v American Airlines, Inc* 527 F Supp 229 (NY 1981).
[56] ibid.
[57] Dawn Siler-Nixon and Cymoril White, 'Diversity in the Works: The Crown Act — a Root to End: Overview for Employers on Hair Discrimination Laws and the Impact on Employer Grooming Code' (*JD Supra*, 3 March 2021) <https://www.jdsupra.com/legalnews/diversity-in-the-works-the-crown-act-a-6167912/> accessed 4 April 2021.

inaccurate perceptions of Black hair and protective hairstyles as a fashion or aesthetic choice. For, whilst hairstyles can be fashionable, it is simply more practical and protective for some Black people to wear their hair in braids or dreadlocks.[58]

4.2 The Impact of The CROWN Act in the United States of America

The CROWN Act has created transformational change in parts of the USA, overcoming systemic barriers.[59] First, the Act has increased awareness of covert racism within establishments' policies, directly linking to the disproportionate treatment of Black people in such environments.[60] The Act forms part of a movement to educate those who misinterpret HD as insignificant, whilst also providing recourse for victims of HD.[61] Second, previous USA case law such as *Rogers* indicates that HD remains a divisive topic with no consensus on the identification and sanctioning of HD. The CROWN Act represents an opportunity for the country to develop consistent legal reasoning on a prevalent societal issue. With the Act's further growth as additional states consider its enaction, the country could see an eradication of the false narratives around HD, where such legislation has the ability to explicitly categorise HD as a form of racial discrimination.[62] Third, the Act represents part of a social justice movement through the broadening of entitled minority rights, and serving to educate those not affected by HD.[63] Drawing upon the relative successes of the USA's legislative action on HD, the penultimate section of this paper proposes that hair be added to the definition of race as it is set out in the EQA within the UK.

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[58] George Driver, '21 Hairstyles and Hair Trends You Need to Try in 2021' (*Elle*, 11 December 2020) <https://www.elle.com/uk/beauty/hair/g32408/hairstyle-trends/> accessed 4 March 2021; Hamilton (n 10).
[59] ibid.
[60] ibid.
[61] Siler-Nixon and White (n 57).
[62] The Crown Act (n 38); Hamilton (n 10).
[63] Hamilton (n 10).

5 Why Should Hair Be Added?

5.1 Racist Policies and Hair as a Mutable Characteristic

Formulated because of the prevalence of USA cases, and the incorrect notion that hair is a mutable characteristic, the challenges that CROWN addresses resonate clearly within the context of the UK. As such, legal reform, achieved through a refined definition within the EQA, is necessary for several reasons. The first justification for adding hair to the EQA race definition emerges from the *Williams* case. Despite succeeding in claiming compensation based on HD, the case's outcome has been viewed as controversial among some commentators.[64] For instance, a prominent barrister, Jon Holbrook, argued that Williams's school's policy is 'not an instance of racism', asserting that the establishment believed that Williams had breached policy.[65] However, Holbrook's interpretation inherently misunderstands a policy that was systematically racist, wherein the school initially refused to accept that their policy had a discriminatory effect. If an organisation bans Afro-textured hairstyles, such actions target people of Black heritage.[66] Views such as Holbrook's overlook the differential impact of policies on certain hairstyles and, therefore, certain races, which in turn constitutes a form of indirect discrimination. Despite Williams' school's policy being revised, Holbrook's assertions continue to echo throughout UK society.[67] If explicit legal recognition of hair as an element of the Act's definition of race is incorporated within the EQA, this could contribute to eliminating HD and its associated disadvantages.

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[64] Virk (n 1).

[65] Jon Holbrook, 'Should School Uniform Policy Have to Accommodate Cultural Sensitivities?' (*The Conservative Woman*, 25 January 2021) <https://www.conservativewoman.co.uk/should-schools-have-to-accommodate-cultural-sensitivities/> accessed 2 April 2021.

[66] Annie Fendrich, 'Why the Law on Indirect Discrimination Is So Vital in the Fight for Equality' (*Human Rights Pulse*, 11 February 2021) <https://www.humanrightspulse.com/mastercontentblog/why-the-law-on-indirect-discrimination-is-so-vital-in-the-fight-for-equality-1> accessed 4 April 2021.

[67] Virk (n 1); Justin Parkinson, 'Equality Debate Can't Be Led by Fashion, Says Minister Liz Truss' (*BBC News*, 17 December 2020) <https://www.bbc.co.uk/news/uk-politics-55346920> accessed 3 January 2021.

The second justification for adding hair to the EQA's definition of race derives from comments made in December 2020 by the UK's minister for women and equalities, Liz Truss MP. Truss suggested that efforts to incorporate hair within the definition of race amounted to identity politics.[68] This view is problematic and alludes to the mutable characteristic argument also adopted in USA courts in their justification for permitting HD policies.[69] As this paper has outlined, classing Black hair as a mutable characteristic is to misinterpret the significance of the distinct appearance of Black hair and its correlated culture.[70] Give some of the parallels between the issues in the USA and the UK surrounding HD, it is submitted that aspects of the CROWN Act, particularly its purpose to recognise HD in a sociolegal context, could be emulated in the UK through the EQA. In October 2020, Wera Hobhouse MP of the Liberal Democrats raised the issue of HD on her party's website, calling on government to act on 'an all-too prevalent form of racial discrimination'.[71] To date, the government has yet to respond.

5.2 Education as a Mechanism for Change

Despite this article's predominant focus upon legal change, it must be acknowledged that education remains a powerful mechanism for reform. The Halo Code, a Black hair guide that has been designed to protect HD victims in British schools and workplaces, is emblematic of this.[72] The Code represents a set of voluntary guidelines for professional establishments to adopt, encouraging the appreciation of Black hair and protective styles.[73] Since its inception in December 2020, the code has

[68] ibid.
[69] *EEOC* (n 45).
[70] Hamilton (n 10).
[71] Hobhouse (n 5).
[72] The Halo Collective (n 11).
[73] Michelle Chance and Chris Warwick-Evans, 'Voluntary New Code Issued by Campaigners to Tackle Hair Discrimination: What Are the Issues and How Can Employers Avoid Discrimination Claims?' (*Rosenblatt*, 18 January 2021) <https://www.rosenblatt-law.co.uk/media/voluntary-new-code-issued-by-campaigners-to-tackle-hair-discrimination-what-are-the-issues-and-how-can-

been adopted by more than 20 schools in South London, and various workplaces.[74]

Although the Halo Code has improved awareness of HD in professional settings, this educational and self-regulatory measure must be accompanied by legal protection. These actions may combine to challenge the ignorance surrounding HD and provide formal legal protection, redressing damaging and historically entrenched perceptions of Black hair in education. Whilst initiatives such as the Halo Code represent a positive step towards the eradication of HD, the adoption and implementation of such provisions remain at the discretion of workplaces and schools' headteachers.[75] The Code lacks a compulsory authority, which does not allow for the assurance of protection from HD. The recognition of hair as a characteristic feature of race within the EQA would help settle the issue of mutability and provide a route to redress for those faced with HD measures.[76]

6 Conclusion

This paper has outlined the historical origins of HD, its connection to racism, and the consequent development of negative perceptions of Black hair in professional settings. The paper has suggested that there exists a gap in the understanding and definition of race as it exists in the EQA. The existence of HD cases in the UK highlights ongoing discrimination within professional and educational establishments. Having examined the flaws within the UK's approach towards indirect discrimination, the paper has argued that the law inadequately addresses issues of HD.

The impact of the CROWN Act reforms in the USA was then examined, with its provisions proving to be a successful component of transitional change. The CROWN Act demonstrates an increasing awareness of the

employers-avoid-discrimination-claims/> accessed 18 January 2021; The Halo Collective (n 11).

[74] The Halo Collective (n 11); Chance and Warwick-Evans (n 73).

[75] Chance and Warwick-Evans (n 73).

[76] EQA (n 30) s 119.

multifaceted and immutable nature of race, leading to the expansion of racial discrimination's legal definition to include HD. Opposition to the introduction of such legislation can often be explained by reference to persistent misconceptions surrounding Black hair and hairstyles, for instance, dismissing braids as unprofessional or mutable. Lessons can be learned from the Act within a UK context for establishing necessary rights and eradicating problematic attitudes within professional spaces.

Existing efforts to address HD within the UK are essential for education and in furthering the equality agenda beyond formal law. Most notably, the guidelines contained in the voluntary Halo Code were considered in this paper. However, these voluntary mechanisms must form part of a suite of measures that include legislative reform to ensure substantive recognition of HD and avenues for its victims to seek redress. The proposal put forward in this paper, that hair should be added to the definition of race in the EQA, may achieve similar successes to the CROWN Act in the US, whilst also aiming to address racist misconceptions regarding the 'unprofessionalism' of Black hair and hairstyles. The examples of HD discussed in this paper demonstrate that our understandings of race and other characteristics must evolve and change over time as we understand and acknowledge past prejudices and failings. Further legal research and activism must continue to push the boundaries of these legal definitions and measures to ensure that the drive for equality does not stagnate and wither.