

# Indirect religious discrimination: Blanket “no beards” policy indirectly discriminated against Sikh job applicant

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## THE FACTS

Mr Sethi is a Sikh who adheres strictly to Kesh, which is the requirement that the hair of the body not be cut. Because of his belief in Kesh, Mr Sethi never cuts his beard.

Mr Sethi applied for work with Elements Personnel Services Ltd, a specialist agency providing temporary hospitality staff mainly to five star hotels. At an induction day, he was told that the agency had a “no beards” policy. The wording of the policy made it clear that this was for reasons of personal appearance rather than for hygiene reasons. Mr Sethi explained that he could not shave his beard for religious reasons, and Elements told him that they would not therefore be able to give him enough shifts because their clients, five star hotels, required all staff to be clean-shaven for “health and safety/hygiene reasons”.

Mr Sethi claimed that he had suffered indirect religious discrimination.

The Employment Tribunal held that the “no beards” requirement was a provision, criterion or practice that places Sikhs generally, and Mr Sethi in particular, at a disadvantage, because it is a fundamental tenet of the Sikh faith for a male to have an uncut beard.

The Tribunal went on to look at whether the policy was justified. It did not consider that the aim of the policy was “health and safety/hygiene”, because the policy made it clear that its aim was related to standards of personal appearance. Maintaining high standards of personal appearance was a legitimate aim, but the tribunal did not consider that the very significant impact of the policy on Mr Sethi and other Sikhs was justified because this aim could have been met by less intrusive means - for example, by requiring Sikhs to wear their beards in a tidy fashion.

The Tribunal went onto consider Element Personnel’s primary justification defence, which was that a “no beards” policy was a requirement of its clients. The Tribunal accepted that it can be a legitimate aim to try to comply with client requirements. However, the Tribunal did not consider that the blanket “no beards” policy was justified as a proportionate means of achieving the aim of complying with clients’ requirements. There was no evidence that any client had been asked whether they would make an exception for a Sikh worker, and no evidence of what clients would in fact require from a Sikh worker. Additionally, not all Element’s clients had a blanket “no beards” requirement, so Mr Sethi could have been taken onto its books to work for clients who did not have this requirement.

The Tribunal considered that the aim of meeting client requirements would have been met by accepting Sikhs onto the agency’s books and then addressing client requirements on a case by case basis, seeking exceptions for Sikhs who were unable to shave.

Elements therefore failed to justify its policy and Mr Sethi’s claim was successful.

## WHAT DOES THIS MEAN FOR EMPLOYERS?

Employers seeking to reply on a justification defence to discrimination must be able to show that they have fully considered ways in which they can meet their legitimate aims in a non-discriminatory way. A blanket application of a policy relating to dress or appearance is unlikely to be justifiable.

It is possible for employers to show that they have a legitimate aim of meeting client requirements. However, such justification arguments will not be successful unless the employer can show that they have explored other options, including speaking to clients about varying their requirements.

[Sethi v Elements Personnel Services Ltd \[2019\]](#)

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