

**OFFICE OF THE DIRECTOR OF EQUALITY
INVESTIGATIONS**

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION DEC-E-2000/08

PARTIES

**Ms Mary Keane
(Represented by the Equality Authority)**

AND

**CERT
(Represented by Walsh Harte & Co, Solicitors)**

File No: EE/30/99

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1. DISPUTE

1.1 This dispute concerns a claim by Ms Mary Keane that she was discriminated against by CERT on the ground of gender - contrary to the provisions of section 2 and section 6 of the Employment Equality Act, 1977 - when she was required to wear a standard uniform to attend interviews on CERT premises. The claimant alleges that the standard female uniform is demeaning for female trainees, that she was too uncomfortable to wear the uniform to interviews and that she thereby missed out on job opportunities.

2. BACKGROUND

2.1 The claimant took part in an Elementary Reception Skills training course operated by CERT at its Training Centre between 5 January 1999 and 26 March 1999 (both dates inclusive). All trainees were required to wear a standard uniform, provided by CERT, at all times while in the Training Centre. The claimant alleges that the standard uniform provided for female trainees was demeaning to women, and that she felt uncomfortable in it at all times.

2.2 The subject matter of this complaint however relates to interviews held in the last two weeks of the training course. Several hotels interviewed trainees for job opportunities and these interviews were held on the CERT premises. The claimant was refused permission to attend these interviews in her own clothes, and she alleges that she missed job opportunities as a result of her refusal to attend the interviews in the standard uniform.

2.3 The Equality Authority (then the Employment Equality Agency) referred a claim under section 19 of the Employment Equality Act, 1977 to the Labour Court on 9 September 1999. The Labour Court referred the matter for investigation and recommendation by an Equality Officer in December 1999. Submissions, including photographs of the uniform in question, were sought from both parties and a joint hearing was held in August 2000.

3. SUMMARY OF THE CLAIMANT'S CASE

3.1 The claimant alleges that male trainees had more favourable conditions in relation to dress code than female trainees, except in the case of chefs who have a unisex uniform. She states that the design of the female uniform (a knee length, buttoned black cotton dress with white collar, white apron and short sleeves) was demeaning, by contrast with the design of the male uniform (trousers, long sleeved white shirt, bow tie and waistcoat). She states further that the design of the uniform is more suitable for a catering or waitressing position, as opposed to a trainee receptionist, although she feels that it would have been demeaning for any woman.

3.2 While the claimant alleges that she felt uncomfortable in the uniform at all times, she alleges active discrimination against her in relation to the requirement to wear the uniform when attending interviews conducted on CERT premises. The Training Centre arranged for various hotels to interview trainees during the final two weeks of the training course. The claimant applied for permission to attend the interviews in her own clothes on the grounds that she would otherwise feel too uncomfortable in the uniform to attend the interviews. She states that she was advised by her supervisor that the wearing of the standard uniform was policy and that CERT would not deviate from this policy.

3.2 As a result, the claimant alleges that she and a number of other female trainees did not attend the interviews and thereby missed job opportunities. She also states that her self esteem was seriously undermined by her experience on the training course and that as a consequence she has not yet returned to employment. She asserts that the requirement to wear the standard female uniform to interviews, her refusal to do so and the resulting loss of job opportunities amount to discrimination under section 2 and section 6 of the Employment Equality Act, 1977.

3.3 As a remedy, the claimant seeks

- (i) a finding that CERT discriminated against her contrary to sections 2 and 6 of the Employment Equality Act, 1977;

- (ii) that CERT be directed to change the standard female uniform in order to achieve equality of opportunity for men and women; and
- (iii) an award of compensation for the distress alleged.

4. SUMMARY OF THE RESPONDENT'S CASE

4.1 CERT denies that the claimant was discriminated against contrary to the provisions of the 1977 Act, or at all. The company states that all trainees at CERT, both male and female, accept placement on any training course subject to CERT's General Conditions of Training for all its Training Centres. In the interest of hygiene, these Conditions provide that the wearing of the uniform while on CERT premises is a standard requirement for all trainees at all times, as well as for all staff working in the Training Centres.

4.2 CERT submits that there was no requirement on the claimant to attend interviews on CERT premises, and that she was free at all times to arrange interviews at another location. The company submits therefore that the claimant was in the same position as any other trainee, male or female, and that it would in fact have constituted discrimination against all other trainees if the claimant had been permitted to depart from the rules and attend interviews, on CERT premises, in her everyday attire.

4.3 CERT states that it acts only as a facilitator when it assists trainees to obtain employment by allowing interviews to take place on its premises, that there is no obligation on trainees to wear the uniform when not on the premises and that it "begs belief" in a climate of continuing shortage of staff in the catering and hotel trades that the claimant did not seek to attend interviews in her ordinary clothes and thus return to employment.

4.4 The company asserts that the concept behind the design of the trainee uniforms is hygiene and not fashion. The current design of the uniforms worn by CERT trainees was selected after a process which included consultation with the trainees of the time, and the particular style chosen would be similar to the catering industry norm today. CERT accepts

that it is probable that some trainees, male or female, would not like a particular style of uniform, but submits that dislike of, and consequent discomfort in, a particular design of uniform does not constitute discrimination. The company states that the claimant's view that the female uniform was demeaning for women but that the male uniform was not demeaning for men is no more than a statement of subjective opinion.

4.5 CERT summarises its response to the claimant's application for remedy as follows:

(i) the claimant's submission does not substantiate any discrimination against her by the company under sections 2 and 6 of the Employment Equality Act, 1977, or at all;

(ii) no direction to change the standard female uniform should issue because neither the policy in respect of the uniform or the design of the uniform create inequality of opportunity for men and women;

(iii) any distress alleged by the claimant is attributable to her personal and subjective attitude to a particular design of uniform, and could have been alleviated by the claimant availing herself of opportunities to attend interviews outside of CERT premises and in clothing of her own choosing.

5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 In reaching my conclusions in this case I have taken into account all the submissions, both oral and written, made to me by the parties.

5.2 The claimant alleges discrimination against her by CERT under sections 2 and 6 of the Employment Equality Act, 1977. Section 2 of the Act provides, inter alia

...For the purposes of this Act, discrimination shall be taken to occur in any of the following cases-

(a) where by reason of his sex a person is treated less favourably than a person of the other sex,...

Section 6 of the Act provides

(1) Any person or educational or training body offering a course of vocational training shall not, in respect of any such course offered to persons over the age at which those persons are statutorily obliged to attend school, discriminate against a person (whether at the request of an employer, a trade union or a group of employers or trade unions or otherwise)-

(a) in the terms on which any such course or related facility is offered,

(b) by refusing or omitting to afford access to any such course or facility, or

(c) in the manner in which any such course or facility is provided.

(2) In this section “vocational training” means any system of instruction which enables a person being instructed to acquire, maintain, bring up to date or perfect the knowledge or technical capacity required for the carrying on of an occupational activity and which may be considered as exclusively concerned with training for such activity.

5.3 The complainant’s case relates specifically to the fact that she was not permitted to attend the interviews held in March 1999 unless she wore the requisite uniform. This point is not at issue. CERT agrees that wearing the standard uniform on its premises is an obligation applied to both male and female trainees and to staff. This obligation is emphasised in the General Conditions of Training, supplied to all trainees and accepted by them in writing.

5.4 CERT argues that it had no responsibility for these interviews, as it merely facilitated them. CERT is not an employment agency; its statutory function relates solely to training, and it only provided the premises for the interviews. It was stated by the claimant at the hearing that no trainee on the course initially registered to attend the interviews. She further stated, and this was not disputed by the company, that the Training Centre Manager was unhappy at the lack of volunteers for the interviews and that pressure was exerted by the trainers to urge people to go forward. I consider that this behaviour constitutes more than mere facilitation.

5.5 The company argues further that there was no necessity for Ms Keane to attend interviews on its premises, and that she was free to organise her own off-site interviews at

which she could wear her own clothing. However, the fact that interviews would be held at the end of the course was made known to the trainees at an early stage, and they were informed of the identities of the businesses which would be interviewing. In the circumstances, I am satisfied that the trainees considered the interviews to effectively form part of their training course, and that they had a reasonable expectation of having an opportunity to obtain employment at the end of the course by means of these interviews.

5.6 Based on the foregoing, I am satisfied that CERT is *a training body offering a course of vocational training* and that the interviews held at the end of the training course constitute a *related facility* within the context of section 6 of the Act. The matter remaining to be determined, therefore, is whether CERT's uniform policy constitutes discrimination against the claimant on the basis of gender.

5.7 "It is well settled that discrimination involves the application of different rules to comparable situations or the application of the same rule to different situations".¹ The 1977 Act says that discrimination *shall be taken to occur...where by reason of his sex a person is treated less favourably than a person of the other sex....* In principle therefore it is discriminatory to apply different rules concerning dress to male and female employees doing the same work, where this constitutes less favourable treatment for either gender.

5.8 The claimant argues that the female uniform was demeaning to women, in a way that the male uniform was not demeaning to men. She says that she and the other female trainees had several problems with the design of the female uniform. She feels that the short sleeves and skirt involved less favourable treatment for women. The apron, in particular, she feels to be both demeaning and subservient. She claims the uniform was also uncomfortable and unsuitable winter wear, and alleges that there was a high absentee rate due to colds and flu suffered by female trainees. She also states that the uniform was a constant source of admittedly light-hearted teasing from the male trainees and some trainers, with the apron being singled out as a topic of amusement.

¹ European Court of Justice, *Gillespie*, Case No C342/93

5.9 CERT emphasises very strongly that the focus of the uniform is hygiene and not fashion. Uniforms are usually re-ordered every three years, as trainees are given use of them during their training and return them to CERT for use by the next group of trainees. The style in question, which the company says is the norm in the catering industry, was originally selected in the early 1990s, re-ordered in 1994 and re-ordered again in 1997. The respondent suggests that it is probable that any particular style of uniform may be disliked by some trainees, but submits that Ms Keane's complaint is no more than a statement of subjective opinion which, no matter how honestly held, cannot be interpreted as constituting discrimination.

5.10 In 1993, in a case under the 1977 Act involving a catering company which obliged male employees to cut their hair short while permitting female employees to wear long hair tied back, the Labour Court said:

“The Court accepts the Company claim that it is entitled to set standards of dress and appearance for its employees which will project the commercial image it seeks and ensure that the necessary levels of hygiene are maintained. While the requirements for such standards should be the same for male and female employees they may differ in some respects between men and women for business reasons allied to public perception. These differences do not necessarily retain their justification over time. Fashions of dress and appearance and their public acceptability are constantly changing. For example, the wearing of trousers by women would not have been acceptable in past times but now the Company has an identical uniform for male and female employees consisting of trousers and shirt.

...The Company itself is satisfied that its regulations concerning its women employees' hair-style, which has no length limitations, does not contravene its hygiene regulations. There is no case, therefore, to justify more restrictive rules for male employees as regards the wearing of their hair.”²

5.11 In this particular instance, CERT makes no case in relation to the uniform's role in projecting a commercial image. Indeed, it confirmed specifically during the investigation that

² *Pantry Franchise v A Worker* (Labour Court Order No EEO793)

the only purpose of the uniform was to ensure hygiene standards on its premises. It is established as a matter of fact that trainee chefs have a unisex uniform which includes trousers. The company has been unable to offer any objective reason, unrelated to gender, why hygiene requirements meant that all female trainees other than chefs should wear dresses. Since all chefs and all other male trainees wore trousers as part of the standard uniform, the company cannot consider that there is anything inherently unhygienic about trousers. The only conclusion I can draw is that the uniform policy is based on a conventional view that women should wear skirts.

5.12 It is my finding on the basis of the claimant's evidence that the uniform complained of was uncomfortable, had overtones of subservience and was demeaning for her. It emerged at the hearing that CERT changed its uniform for the 1999/2000 academic year. Male and female trainees now wear shirt, wine-coloured waistcoat and black trousers, with female trainees having the option of black skirt. The fact that no unnecessary gender distinction appears to be now in place seems to me to suggest a modern, professional image with equality of opportunity for both genders.

5.13 The claimant stated at the hearing that the trainees were given a module on interview techniques during the course. They were told that they would perform better and have a better chance of succeeding at the interview if they felt comfortable. She said that for the duration of this module they were permitted to wear their own clothes, possibly to ensure they felt comfortable, and that they were never told that the uniforms would be required for the real interviews. When the claimant was told she could not attend the interviews in what she considered to be comfortable clothing, she says that she was very upset by this and felt she would not perform properly at the interview if she did attend it. The claimant told me at the hearing that she contacted both her local TD and SIPTU, in a state of considerable distress, the day after the course ended. I have no reason to doubt the level of distress claimed by her.

5.15 I consider, therefore, that the insistence that she wear the female uniform had the direct result of causing her to lose the immediate job opportunities afforded by the interviews held at the end of the course. The company claimed that allowing her to wear her own

clothes would have discriminated against the other trainees. But of course if all trainees had been allowed to wear their own clothes, there could have been no discrimination.

5.16 While I am satisfied that the claimant suffered immediate distress at the end of the course, I am not satisfied in relation to the matter of the long-term consequences alleged by her. She said in her submission received February 2000 that she had not yet returned to employment, some eleven months after the course concluded, because of the undermining of her self esteem. I note the company's point regarding the continuing shortage of staff in the hotel and catering industry, and it does not appear to me to be unreasonable to consider that the claimant could have sought to return to employment at an earlier date, given that there was now no obstacle to her wearing clothing of her own choosing.

6. RECOMMENDATION

6.1 Based on the foregoing, I find that CERT directly discriminated against Ms Keane in terms of section 2 (a) of the Employment Equality Act, 1977 and contrary to section 3 of that Act when it insisted that its standard female uniform must be worn to interviews held on its premises, and thereby caused her to miss job opportunities.

6.2 I recommend that

(i) CERT ensure that all of its policies, including its policy in respect of uniform design, support equality of opportunity for men and women;

(ii) Ms Keane be paid a sum of £3,000 in respect of lost employment opportunities, distress caused by the discrimination and the stress relating to the necessity to pursue her claim.

Anne-Marie Lynch
Equality Officer

15 November 2000

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1. DISPUTE

1.1 This dispute concerns a claim by Ms Mary Keane that she was discriminated against by CERT on the ground of gender - contrary to the provisions of section 2 and section 6 of the Employment Equality Act, 1977 - when she was required to wear a standard uniform to attend interviews on CERT premises. The claimant alleges that the standard female uniform is demeaning for female trainees, that she was too uncomfortable to wear the uniform to interviews and that she thereby missed out on job opportunities.

2. BACKGROUND

2.1 The claimant took part in an Elementary Reception Skills training course operated by CERT at its Training Centre between 5 January 1999 and 26 March 1999 (both dates inclusive). All trainees were required to wear a standard uniform, provided by CERT, at all times while in the Training Centre. The claimant alleges that the standard uniform provided for female trainees was demeaning to women, and that she felt uncomfortable in it at all times.

2.2 The subject matter of this complaint however relates to interviews held in the last two weeks of the training course. Several hotels interviewed trainees for job opportunities and these interviews were held on the CERT premises. The claimant was refused permission to attend these interviews in her own clothes, and she alleges that she missed job opportunities as a result of her refusal to attend the interviews in the standard uniform.

2.3 The Equality Authority (then the Employment Equality Agency) referred a claim under section 19 of the Employment Equality Act, 1977 to the Labour Court on 9 September 1999. The Labour Court referred the matter for investigation and recommendation by an Equality Officer in December 1999. Submissions, including photographs of the uniform in question, were sought from both parties and a joint hearing was held in August 2000.

3. SUMMARY OF THE CLAIMANT'S CASE

3.1 The claimant alleges that male trainees had more favourable conditions in relation to dress code than female trainees, except in the case of chefs who have a unisex uniform. She states that the design of the female uniform (a knee length, buttoned black cotton dress with white collar, white apron and short sleeves) was demeaning, by contrast with the design of the male uniform (trousers, long sleeved white shirt, bow tie and waistcoat). She states further that the design of the uniform is more suitable for a catering or waitressing position, as opposed to a trainee receptionist, although she feels that it would have been demeaning for any woman.

3.2 While the claimant alleges that she felt uncomfortable in the uniform at all times, she alleges active discrimination against her in relation to the requirement to wear the uniform when attending interviews conducted on CERT premises. The Training Centre arranged for various hotels to interview trainees during the final two weeks of the training course. The claimant applied for permission to attend the interviews in her own clothes on the grounds that she would otherwise feel too uncomfortable in the uniform to attend the interviews. She states that she was advised by her supervisor that the wearing of the standard uniform was policy and that CERT would not deviate from this policy.

3.2 As a result, the claimant alleges that she and a number of other female trainees did not attend the interviews and thereby missed job opportunities. She also states that her self esteem was seriously undermined by her experience on the training course and that as a consequence she has not yet returned to employment. She asserts that the requirement to wear the standard female uniform to interviews, her refusal to do so and the resulting loss of job opportunities amount to discrimination under section 2 and section 6 of the Employment Equality Act, 1977.

3.3 As a remedy, the claimant seeks

- (i) a finding that CERT discriminated against her contrary to sections 2 and 6 of the Employment Equality Act, 1977;

- (ii) that CERT be directed to change the standard female uniform in order to achieve equality of opportunity for men and women; and
- (iii) an award of compensation for the distress alleged.

4. SUMMARY OF THE RESPONDENT'S CASE

4.1 CERT denies that the claimant was discriminated against contrary to the provisions of the 1977 Act, or at all. The company states that all trainees at CERT, both male and female, accept placement on any training course subject to CERT's General Conditions of Training for all its Training Centres. In the interest of hygiene, these Conditions provide that the wearing of the uniform while on CERT premises is a standard requirement for all trainees at all times, as well as for all staff working in the Training Centres.

4.2 CERT submits that there was no requirement on the claimant to attend interviews on CERT premises, and that she was free at all times to arrange interviews at another location. The company submits therefore that the claimant was in the same position as any other trainee, male or female, and that it would in fact have constituted discrimination against all other trainees if the claimant had been permitted to depart from the rules and attend interviews, on CERT premises, in her everyday attire.

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4.5 CERT summarises its response to the claimant's application for remedy as follows:

(i) the claimant's submission does not substantiate any discrimination against her by the company under sections 2 and 6 of the Employment Equality Act, 1977, or at all;

(ii) no direction to change the standard female uniform should issue because neither the policy in respect of the uniform or the design of the uniform create inequality of opportunity for men and women;

(iii) any distress alleged by the claimant is attributable to her personal and subjective attitude to a particular design of uniform, and could have been alleviated by the claimant availing herself of opportunities to attend interviews outside of CERT premises and in clothing of her own choosing.

5. CONCLUSIONS OF THE EQUALITY OFFICER

5.1 In reaching my conclusions in this case I have taken into account all the submissions, both oral and written, made to me by the parties.

5.2 The claimant alleges discrimination against her by CERT under sections 2 and 6 of the Employment Equality Act, 1977. Section 2 of the Act provides, inter alia

...For the purposes of this Act, discrimination shall be taken to occur in any of the following cases-

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(1) Any person or educational or training body offering a course of vocational training shall not, in respect of any such course offered to persons over the age at which those persons are statutorily obliged to attend school, discriminate against a person (whether at the request of an employer, a trade union or a group of employers or trade unions or otherwise)-

(a) in the terms on which any such course or related facility is offered,

(b) by refusing or omitting to afford access to any such course or facility, or

(c) in the manner in which any such course or facility is provided.

(2) In this section “vocational training” means any system of instruction which enables a person being instructed to acquire, maintain, bring up to date or perfect the knowledge or technical capacity required for the carrying on of an occupational activity and which may be considered as exclusively concerned with training for such activity.

5.3 The complainant’s case relates specifically to the fact that she was not permitted to attend the interviews held in March 1999 unless she wore the requisite uniform. This point is not at issue. CERT agrees that wearing the standard uniform on its premises is an obligation applied to both male and female trainees and to staff. This obligation is emphasised in the General Conditions of Training, supplied to all trainees and accepted by them in writing.

5.4 CERT argues that it had no responsibility for these interviews, as it merely facilitated them. CERT is not an employment agency; its statutory function relates solely to training, and it only provided the premises for the interviews. It was stated by the claimant at the hearing that no trainee on the course initially registered to attend the interviews. She further stated, and this was not disputed by the company, that the Training Centre Manager was unhappy at the lack of volunteers for the interviews and that pressure was exerted by the trainers to urge people to go forward. I consider that this behaviour constitutes more than mere facilitation.

5.5 The company argues further that there was no necessity for Ms Keane to attend interviews on its premises, and that she was free to organise her own off-site interviews at

which she could wear her own clothing. However, the fact that interviews would be held at the end of the course was made known to the trainees at an early stage, and they were informed of the identities of the businesses which would be interviewing. In the circumstances, I am satisfied that the trainees considered the interviews to effectively form part of their training course, and that they had a reasonable expectation of having an opportunity to obtain employment at the end of the course by means of these interviews.

5.6 Based on the foregoing, I am satisfied that CERT is *a training body offering a course of vocational training* and that the interviews held at the end of the training course constitute a *related facility* within the context of section 6 of the Act. The matter remaining to be determined, therefore, is whether CERT's uniform policy constitutes discrimination against the claimant on the basis of gender.

5.7 "It is well settled that discrimination involves the application of different rules to comparable situations or the application of the same rule to different situations".¹ The 1977 Act says that discrimination *shall be taken to occur...where by reason of his sex a person is treated less favourably than a person of the other sex....* In principle therefore it is discriminatory to apply different rules concerning dress to male and female employees doing the same work, where this constitutes less favourable treatment for either gender.

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“The Court accepts the Company claim that it is entitled to set standards of dress and appearance for its employees which will project the commercial image it seeks and ensure that the necessary levels of hygiene are maintained. While the requirements for such standards should be the same for male and female employees they may differ in some respects between men and women for business reasons allied to public perception. These differences do not necessarily retain their justification over time. Fashions of dress and appearance and their public acceptability are constantly changing. For example, the wearing of trousers by women would not have been acceptable in past times but now the Company has an identical uniform for male and female employees consisting of trousers and shirt.

...The Company itself is satisfied that its regulations concerning its women employees' hair-style, which has no length limitations, does not contravene its hygiene regulations. There is no case, therefore, to justify more restrictive rules for male employees as regards the wearing of their hair.”²

5.11 In this particular instance, CERT makes no case in relation to the uniform's role in projecting a commercial image. Indeed, it confirmed specifically during the investigation that

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the only purpose of the uniform was to ensure hygiene standards on its premises. It is established as a matter of fact that trainee chefs have a unisex uniform which includes trousers. The company has been unable to offer any objective reason, unrelated to gender, why hygiene requirements meant that all female trainees other than chefs should wear dresses. Since all chefs and all other male trainees wore trousers as part of the standard uniform, the company cannot consider that there is anything inherently unhygienic about trousers. The only conclusion I can draw is that the uniform policy is based on a conventional view that women should wear skirts.

5.12 It is my finding on the basis of the claimant's evidence that the uniform complained of was uncomfortable, had overtones of subservience and was demeaning for her. It emerged at the hearing that CERT changed its uniform for the 1999/2000 academic year. Male and female trainees now wear shirt, wine-coloured waistcoat and black trousers, with female trainees having the option of black skirt. The fact that no unnecessary gender distinction appears to be now in place seems to me to suggest a modern, professional image with equality of opportunity for both genders.

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clothes would have discriminated against the other trainees. But of course if all trainees had been allowed to wear their own clothes, there could have been no discrimination.

5.16 While I am satisfied that the claimant suffered immediate distress at the end of the course, I am not satisfied in relation to the matter of the long-term consequences alleged by her. She said in her submission received February 2000 that she had not yet returned to employment, some eleven months after the course concluded, because of the undermining of her self esteem. I note the company's point regarding the continuing shortage of staff in the hotel and catering industry, and it does not appear to me to be unreasonable to consider that the claimant could have sought to return to employment at an earlier date, given that there was now no obstacle to her wearing clothing of her own choosing.

6. RECOMMENDATION

6.1 Based on the foregoing, I find that CERT directly discriminated against Ms Keane in terms of section 2 (a) of the Employment Equality Act, 1977 and contrary to section 3 of that Act when it insisted that its standard female uniform must be worn to interviews held on its premises, and thereby caused her to miss job opportunities.

6.2 I recommend that

(i) CERT ensure that all of its policies, including its policy in respect of uniform design, support equality of opportunity for men and women;

(ii) Ms Keane be paid a sum of £3,000 in respect of lost employment opportunities, distress caused by the discrimination and the stress relating to the necessity to pursue her claim.

Anne-Marie Lynch
Equality Officer

15 November 2000