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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NO: DEC-S2002-078-083

**Ann Stokes & Ors.
(represented by the Equality Authority)**

V

**Norevale Ltd., trading as The Vault Bar/Hearne's Hotel,
Clonmel
(represented by Nolan Farrell & Goff, Solicitors)**

File No. ES/2001/276-281

Date of Issue 02/07/2002

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Summary of Decision DEC-S2002-078-083

Ann Stokes & Ors

-v-

Norevale Ltd., trading as The Vault Bar/Hearne's Hotel

Headnotes

Equal Status Act, 2000 - Direct discrimination, section 3(1)(a) - Membership of the Traveller community, Section 3(2)(i) - Disposal of goods and supply of services, Section 5(1) - Refusal of access to bar/nightclub - Prima facie case .

Background

This dispute concerns claims that the complainants, who are members of the Traveller community, were discriminated against by the respondent when they were refused access to The Vault Bar on the night of Thursday, 21 December, 2000. The respondent denies that the complainants were discriminated against and states that the reason access to the bar was refused on the date in question was that some of the complainants had excess alcohol taken.

Conclusions of the Equality Officer

The Equality Officer concluded that, on the balance of probabilities, the complainants had been discriminated against because of their membership of the Traveller community, in contravention of Section 3 (1) of the Equal Status Act 2000 and in terms of Section 5 of the Act.

Decision

The Equality Officer found in favour of the complainants and that €2000 be paid by the respondent to each of the individual complainants for the effects of the discrimination. The Equality Officer also ordered that the respondent take immediate steps to review all of its customer service practices to ensure that they are fully compliant with the requirements of the Equal Status Act 2000, and that all staff involved in the direct provision of services to the respondent's client base be fully trained in the scope and requirements of the Act.

Complaint under the Equal Status Act 2000
DEC-S2002-078-083

Ann Stokes & Ors
v
Norevale Ltd., trading as The Vault Bar/Hearne's Hotel.

Each of the complainants referred a complaint to the Director of Equality Investigations under the Equal Status Act 2000. In accordance with her powers under section 75 of the Employment Equality Act 1998 and under the Equal Status Act 2000, the Director delegated the cases to me, Dolores Kavanagh, an Equality Officer for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part III of the Equal Status Act.

1. Dispute

1.1 This dispute concerns claims by Ann Stokes, Mary Stokes, Pam O'Reilly, Sue Ellen O'Reilly, Ellen Reilly, and Ellen Delany that they were discriminated against by the respondent contrary to the Equal Status Act, 2000, on the Traveller community ground. The respondent denies that discrimination occurred.

2 Summary of Complainants' Case.

2.1 The complainants sought entrance to the respondent's bar/nightclub on the evening of Thursday, 21 December, 2000. They were refused admission despite the fact that they had earlier had a meal in the hotel. The complainants regard the refusal to admit them as discrimination on the Traveller community ground.

3. Summary of Respondent's Case

3.1 The respondent states that the complainants were not discriminated against but were, instead, refused admission to the nightclub as it appeared that some of them had excess drink taken and it was deemed prudent to refuse the entire group, as refusal to some of the group could cause a dispute.

4. Evidence of the Parties

4.1. Complainants' Evidence

The complainants' representative forwarded a written submission prior to the Hearing, in which the following information was given:-

- In early December, 2000 Mr. Jimmy McCarthy of TACCTIC, (Together All Communities Can Tackle Issues Constructively) which is a group set up and supported by Clonmel Community Development Project, telephoned Ms. Veronica Barry of Hearne's Hotel to make arrangements for a Christmas night out for the TACCTIC group members, comprising Travellers and non-Travellers.
- Ms. Barry informed him that she would not be letting Travellers into the Hotel and could not accept the booking.
- When Mr. McCarthy queried this Ms. Barry had told him that trouble had been caused by Travellers at a function in the , (then), recent past and as a consequence Travellers would not be allowed into the hotel to socialise.
- Ms. Mary Furlong, chairperson of TACCTIC and Ms. Siobhan Rossiter , TACCTIC committee member, subsequently met with and had discussions with Ms. Barry regarding her refusal to allow Travellers to socialise in the Hotel, in the course of which Ms. Barry reiterated her position on behalf of the hotel.
- When it was pointed out to Ms. Barry that TACCTIC members, including Travellers, had used the hotel facilities for meetings/interviews, Ms. Barry had stated that they could continue to do so but that they would not be allowed to socialise in the hotel.
- Ms. Rossiter asked for the names of the Travellers who had caused trouble in the hotel. Ms. Barry did not know the names of those involved but confirmed to Ms. Rossiter that none of those involved in the trouble were connected with Clonmel Community Development Project.
- The complainants, all members of the Courageous Millennium Girls group, were also booking a night out and booked a meal in Hearne's Hotel for Thursday evening, 21 December, 2000. The booking was made by phone.
- On arrival at the hotel reception the complainants felt uncomfortable because the receptionist, on seeing them, went to speak with someone else and the complainants were sure that they were being discussed with this other person.
- They were eventually shown to a table and were joined by Jimmy McCarthy of TACCTIC Ltd., who is a project leader with the group to which the complainants belongs (i.e. "Courageous Millenium Girls").
- The group had the meal accompanied by a small amount of wine.

- One of the group asked the hotel manager, Ms. Veronica Barry, if they could go from the hotel into the nightclub adjoining the hotel after the meal.
- Ms. Barry told them that there was no direct access to the nightclub from the hotel and that access to the nightclub was strictly via the street entrance outside. Another member of TACCTIC, Ms. Siobhan Rossiter, provided a written statement to the effect that in her experience practically everyone who was socialising in the hotel went into the nightclub via the hotel and did not have to go out into the street.
- As the group was leaving the hotel through the foyer they saw Ms. Barry speak to another manager, Mr. Paddy Pyke.
- When the group approached the door of the nightclub they saw a piece of A4 paper posted up with the words “private function” written on it.
- Mr. Pyke was, at this time, standing at the door of the nightclub, having, it appeared, come through from the hotel. He pointed out the sign to the complainants and said that they should come back in about one hour, as the function would be over by then, and they should bring I.D.’s and that they would probably get in.
- Mr. McCarthy decided to go home. The complainants accompanied him to his car. On their way back down the street they noticed that the “private function” sign was gone and that there was nobody standing at the entrance to the nightclub.
- Ann Stokes went into the nightclub followed by Mary Stokes and Ellen Delaney. Ann Stokes went to the bar. As the barman was about to serve her she asked if the private function was over. The barman replied that there was no private function on that night.
- Mr. Pyke, waving his arms, then came towards the three complainants who had entered the nightclub and said “look girls, I told you that there was a private function on tonight”. Ann Stokes told Mr. Pyke what the barman had said and Mr. Pyke stated that the barman was wrong. He again told them to come back in about an hour and to bring ID’s with them.
- The complainants went to the Coachman’s Bar. While there some of the complainants had a drink, others did not. In the Coachman’s Bar the complainants met and spoke with Ms. Mary Furlong. Ms. Furlong provided a written statement to the effect that she had met the complainants in the Coachman’s Bar circa 11.00 p.m. and that it was her view that they had had very little, if anything, to drink.
- At 11.30 p.m. Mary Stokes and Ellen Delaney went back to the nightclub. There were two doormen on duty at this time. Initially the doormen ignored them but admitted other people to the nightclub.

- Mary Stokes and Ellen Delaney were joined by the other complainants. They asked the doormen if they could go in to the nightclub. The doormen did not reply. The complainants again asked if they could go in and after a considerable delay were told no, that they could not.
- The complainants asked for a reason as to why they were being refused admission and were told by one of the doormen that he did not have to give a reason.
- Mary Stokes asked to speak to the manager and was told by the doorman that the manager would not come out to speak to her.
- Mary Stokes again asked to speak to the manager and was allowed past the doormen into the porch of the nightclub where she spoke to Mr. Pyke. Ms. Stokes explained to Mr. Pyke that the group had had a meal in the hotel and had spent a considerable amount of money on the meal and now just wanted to end the evening with some dancing in the nightclub. The latter said that he would go and consult with his boss and would come back and talk to Ms. Stokes.
- The complainants waited for some 30-40 minutes and Mr. Pyke did not come back. The complainants saw several people, who were clearly drunk, being admitted to the nightclub. The complainants were treated without respect and with disdain by the manager and doormen of the nightclub on the night in question and were embarrassed, humiliated and discommoded by the respondent's refusal to admit them to the nightclub. The refusal was based solely on the complainants' membership of the Traveller community and this treatment constitutes less favourable treatment on grounds of membership of the Traveller community in contravention of section 5 of the Equal Status Act 2000 in terms of section 3 of the Act.

The submission had, attached, a copy of the advertisement placed by the Vault Bar/Cavern Nightclub in the "Nationalist" newspaper which indicated the entertainment schedule from 21 December, 2000 to 31 December, 2000. This shows that entertainment was to be provided every Thursday, including 21 December, 2000. It also states that entry to the Cavern Nightclub was "free to early patrons of the Vault Bar" and that admission was free for ladies every Thursday.

Ms. Siobhan Rossiter, Mr. James McCarthy and Ms. Mary Furlong confirmed at the Hearing that all of the conversations with Ms. Veronica Barry, referred to in the written submission, had taken place and that the submission by the complainant's representative had accurately conveyed the content of those conversations. Ms. Rossiter further stated that her own daughter regularly gained access to the nightclub via the hotel and that she could submit statements to that effect from her daughters.

The submission also contained extracts from the Report of the Task Force on the Travelling Community (1995) which stated that discrimination is experienced at both the individual and the institutional level by Travellers. The Report states that "discrimination at the individual level is most common when a Traveller seeks access

to any range of goods, services and facilities, to which access is denied purely on the basis of their identity as Travellers. Examples abound of public houses refusing to serve Travellers, hotels refusing to book Traveller weddings, bingo halls barring Traveller women, leisure facilities barring access to Travellers and insurance companies refusing to provide motor insurance”.

The submission also states that “negative stereotypes play a significant role in perpetuating discrimination. Decision making within the provision of services that is shaped by such stereotypes inevitably leads to discrimination. These stereotypes include assumptions about Traveller customers invariably

- Being drunk
- Causing trouble
- Being rowdy.

The discrimination can take a range of forms. It can be:

- A direct and unexplained refusal of service.
- A more indirect put-off and refusal to engage with the Traveller customer.
- Avoiding addressing the issue with the Traveller customers by referring them to another decision maker who is usually not available, a process that can often be repeated and futile.
- Serving regulars.
- Providing service to a small group of Traveller customers and using this as a cover to refuse any other Traveller customers”.

Following the Hearing Ms. Rossiter forwarded written statements from her two daughters confirming that they had gained entrance to the nightclub via the hotel. One daughter, Ms. Shannon Rossiter stated that this had been the case on “a few occasions”.

Oral Evidence provided by the complainants at the Hearing

Ms. Ann Stokes stated:-

- That she does not drink and she did not drink on the night of 21 December 2000 as she was driving.
- On arriving at reception on the night in question the receptionist, before she spoke to any of the complainants, was visibly shocked when she saw the group and she went to speak with someone else before telling the group where to go for the meal which they had booked.

- Ms. Stokes had experienced the same type of reaction a number of times from non-Travellers whom, she felt, recognised her, or others from her community, as Travellers.
- Ms. Stokes is descended from generations of Travellers.
- She had never been to Hearne's Hotel before 21 December, 2000 and has not been there since.
- She does not know anybody who goes to the hotel as she has moved out of the town.
- The sign displayed at the entrance to the nightclub on the night in question i.e. "private function" was hand written in black marker

Ms. Mary Stokes stated:-

- That she only drinks occasionally and had nothing to drink on 21 December, 2001 except a very small amount of wine, as the wine was not to her liking. Ms. Stokes explained that traditionally drinking by single girls in the Traveller community is frowned upon.
- That the receptionist was visibly shocked when the group approached reception in the hotel on the night in question.
- That she is the sister of Ms. Ann Stokes .
- That she had never been to Hearne's Hotel before 21 December, 2000 and has not been there since and she does not know of anyone who goes to the Hotel to socialise.
- After the doorman had refused to admit them on the night of 21 December, 2000 she had seen a woman who was obviously very drunk approach the nightclub. The woman in question was walking close to the wall leading to the door of the nightclub and was visibly holding the wall for support. When she got to the door she spoke to the doorman. Her speech was extremely slurred and it was necessary for her to hold on to the door of the nightclub for support. The doorman admitted the woman to the bar/nightclub.
- A number of people were arriving at the nightclub from nearby pubs and were clearly drunk. None of these were stopped by the doorman.

Ms. Ellen Delaney stated:-

- That she does not drink alcohol and did not have anything to drink on the night of 21 December, 2000.
- That she was made to feel very uncomfortable on the night in question by the receptionist's reaction to the group when they first entered the hotel.
- That her family have travelled for generations and that she was born to the Traveller community.
- That she had never been to the hotel prior to 21 December, 2000 and has never been back there since that night.

Ms. Pam O'Reilly stated:-

- That she only drinks occasionally and had only had a small amount of wine, (with water in it because she found it to be too strong), and one "Smirnoff Ice" (while in the Coachman's Inn) to drink on the night of 21 December, 2000.
- That her family have traditionally travelled and have done so for generations.
- That she had not been to Hearne's Hotel prior to 21 December, 2000, has not been to the hotel since that time and does not know of anyone from the Traveller community who socialises in the hotel.

Ms. Sue Ellen O'Reilly stated:-

- That she only drinks occasionally and had only had a small amount of wine, (with water in it because she found it to be too strong), and one "Smirnoff Ice" (while in the Coachman's Inn) to drink on the night of 21 December, 2000.
- That her family have traditionally travelled and have done so for generations.
- That she had not been to Hearne's Hotel prior to 21 December, 2000, and has not been to the hotel since that time.
- That her brother and sister-in-law had recently gained access to the hotel bar when they "chanced their arm to go there as they knew that there was a problem for Travellers getting served there". (Ms. Rossiter of TACCTIC clarified that Ms. O'Reilly's sister-in-law is an active committee member with TACCTIC and is aware through contacts in the group of the hotel's policy not to serve Travellers)

Ms. Ellen O'Reilly stated :-

- That she rarely drinks as her parents are very strict about her drinking. She did not have anything to drink on the night in question.

- That her family were traditionally nomadic but settled when she was very young.
- She had worked in the hotel prior to the night in question . She was gaining work experience for a FÁS course which she was participating in. She had worked there for three weeks and in those three weeks she had never heard anyone refer to her Traveller background and she had been treated well by the staff of the hotel but was never left on her own.
- She has never returned to the Hotel or nightclub since December 2000 and does not know any member of the Traveller community who goes to either.
- She could confirm Mary Stokes evidence in relation to the woman who was obviously drunk being admitted to the nightclub and that a number of people were coming from the pubs around, some were obviously drunk yet had no difficulty gaining admittance to the nightclub.

The complainants' representative added:-

- That the capacity of the Vault bar/Cavern nightclub was in excess of 700 and that the management of the hotel were stating that the entire premises was given over to a party of an estimated 30-50 people on the night in question.
- That the fact that the hotel and nightclub were separately managed at the time was irrelevant as both were registered under the one company name i.e. Norevale Limited and the complaints were lodged against the registered company.
- That there were 12 security cameras on the hotel premises, three of which are located in the Vault/Cavern. One is located at the entrance to the nightclub, one in the hallway beyond the entrance and one at the bar . Video evidence would have been available to the respondent at the time that notice was given by each of the complainants, as required under Section 21 of the Equal Status Act 2000, but that no attempt was ever made to produce this evidence when the complainants wrote to the hotel giving formal notification of their complaints or since then.
- The formal notifications had been sent to the respondent before end February, 2001 which allowed time for Ms. Barry, before she left her employment with the hotel in March 2001, to interview the staff concerned but she had not done so, nor had she presented any video tape evidence in the matter at a time when it would have been available to her.

4.2 Respondent's Evidence

In a letter forwarded prior to the Hearing by Ms. Veronica Barry who was the manager, Hearn's Hotel, at the date of the alleged discrimination, Ms. Barry stated that:-

- Mr. Paddy Pyke was no longer employed by the Hotel
- Mr. Pyke had discussed the incident with her when it had happened but she had been unable to get a detailed statement from him since his departure from the Hotel.
- The Hotel does not have a policy of refusing admission to Travellers and that this is supported by the fact that the group had a meal accompanied by drinks in the Hotel on the night in question. While Ms. Barry does not know any of the complainants personally she expects that they were served in the restaurant, bar and nightclub on many occasions both before and after the alleged incident.
- At the time of the alleged discrimination the Hotel and the nightclub were run and managed separately.
- There was a private function on in the Vault Bar on the night in question and that the complainants had acknowledged that there was a sign to that effect at the entrance. This is the reason that the complainants were refused admission at 9.30 p.m. and 10.45 p.m.
- The fact that the complainants were told to return at 11.30 p.m. when the Cavern nightclub would be open to the public supports the fact that Hearn's hotel does not have a policy of refusing admission to members of the Traveller community.
- It was Ms. Barry's understanding from her conversations with Mr. Pyke at the time that the complainants were refused admission when they returned at 11.45 p.m. because it was considered that some of them had consumed excess alcohol by this time and that it was more prudent to refuse admission to all of the group rather than to selectively refuse individuals as this always causes disputes.
- It appeared that the refusal could have been handled better by the staff and the complainants should have been informed of the reason for the refusal, but that the Cavern nightclub and the Vault bar had only been opened some eight weeks at the time and the staff in question had been taken on for this venture.
- There is only one official entrance to the Vault Bar and the Cavern Nightclub and this is from the street rather than from the hotel. This is to ensure that the numbers entering the bar and nightclub are monitored so that the hotel can comply with its fire safety obligations.

At a later date, again prior to the Hearing, the respondent submitted a till receipt for finger food which, it is claimed, refers to food served at the private function in the Vault Bar on the night of 21 December, 2000. The receipt is for a total amount of £498.30, includes amounts for food sales in the amount of £288 and function

food in the amount of £115.60, is dated 22 December, 2000, and was issued at 00:39 a.m. A cash takings summary attached to the receipt states that the receipt and takings refer to the evening carvery (handwritten on to summary). Bar sales amounted to £14.65 and wine sales to £80.05. The department code, i.e. 0015, is the same for all items contained on the receipt. The receipt also shows that a total of 27 customers accounted for the takings. A further attached document is a copy receipt for finger food in the amount of £115.60 for the Vault Bar under the heading "luncheon" for December 21 2000.

Oral evidence given by the Respondent at the Hearing

Present at the Hearing on behalf of the respondent were Mr. John Goff, solicitor, Mr. Seamus Healy, present manager of the hotel and the nightclub, and Mr. Eamonn Burke, Head Doorman.

Mr. Healy stated that:-

- Ms. Veronica Barry is no longer employed by Hearn's Hotel. She left the hotel's employment in March 2001.
- The hotel and nightclub are no longer run or managed separately. Mr. Healy now manages both. He was appointed in September, 2001.
- Since his appointment Mr. Healy is aware that a number of bookings have been taken for events at which Travellers attended. Specifically, three bookings were taken for a primary health care course which is specifically designed for Traveller women.
- At the time when the hotel and nightclub were run separately each had specific staff and resources allocated to them and each was responsible for its own publicity and promotion but shared one accountant. Mr. Paddy Pyke managed the nightclub and Ms. Veronica Barry managed the hotel.
- The hotel/nightclub does not have a policy of refusing service to Travellers or to other groups.
- He could not comment on the complainants assertion that Ms. Barry had stated in conversation to members of TACCTIC that Travellers were not to be allowed to socialise in the hotel.
- He was not aware of the violent incident which Ms. Barry referred to in the course of her conversations with members of TACCTIC.
- He could not say whether the matter had been resolved or whether those alleged to have been involved in that incident had been identified.

- In such incidents, whether Travellers or non-Travellers were involved, those identified as being involved would be refused admission thereafter. If the incident was not too serious the staff of the hotel/nightclub would get those involved out of the premises with the least possible trouble. If the incident were a serious one the staff would call the Gardaí to deal with it.
- The hotel keeps a diary of bookings etc. The diary for 2000 has disappeared therefore there is no record of the booking for the private function on 21 December, 2000.
- There are no details available to show how many people entered the nightclub on the night of 21 December, 2000.
- Private functions are normally held during the day e.g. communions but for those that are held in the evening the Vault Bar would normally be reserved for the private function up to 11.00 p.m. after which other patrons would be admitted. He cannot understand or explain therefore why the complainants would have been told to return at 11.30 p.m.
- In relation to Ms. Ellen O'Reilly's employment in the hotel, it was standard practice that trainees would not be left on their own at any time, and the housekeeper in the hotel had been full of praise for Ms. O'Reilly as an employee.
- The receipt submitted in relation to the sale of function food was issued from the carvery till, not the Vault Bar, but that till was always used for food sales as the till in the Vault bar could not itemise food sales.
- That there are a number of video cameras on the premises as stated by the complainant's representative and video tape recordings from the security cameras is normally kept for three months but such taped evidence from the date of the alleged discrimination was not kept.
- That the nightclub does have capacity for a large number of people (circa 700) but that it generally does not get busy until after midnight. When possible, bookings for private functions are taken as it generates takings for the bar.
- Entertainment advertised for the night in question would take place when regulars were admitted to the premises, i.e. after the private function.

Mr. Eamonn Burke stated that:-

- Doormen at the nightclub are employed by Hearn's hotel.
- He was on duty as doorman at the nightclub on the night in question.
- He came on duty at 11.00 p.m.

- He recalled that the complainants were “giddy” when they came to the nightclub entrance.
- He recalled that two of them came to the door before the others. He stopped them from entering but gave them no reason for doing so.
- They “got cheeky” with him. The others in the group then arrived and started “giving him lip” . They shouted at him and he ignored them.
- There was a second doorman on duty who has now left the hotel’s employment.
- The complainants stayed at the entrance for 20 minutes to half an hour looking to gain admittance. He did not talk to them. They left of their own accord and were shouting at him as they left.
- He did not recall any disturbance in the nightclub that night. He would recognise hotel residents and would not eject them from the nightclub.
- It did not happen that others who had drink taken were admitted to the nightclub.
- He had not been interviewed by Ms. Veronica Barry before her departure from the hotel in March 2001 about the refusal to admit the complainants to the nightclub. He had been questioned about it after she had left but could not recall when or by whom.
- He does not have a record of the alleged incident.
- He remembers the night well.
- He refuses admittance to people who appear to have too much drink taken for their own safety and the safety of other patrons but he could not state for certain that the complainants were at risk or posed a risk in that regard on the night in question.
- He could not recall how many people were refused admittance on the night in question but generally 8-10 people are refused

Following the Hearing the respondent’s representative forwarded a letter stating:-

- That none of the present staff of the hotel could give any information about the violent incident allegedly referred to by Ms. Veronica Barry in conversations with members of TACCTIC. Mr. Burke, Head Doorman, had never been informed of any such incident and was not aware of it.
- None of the bar staff who were on duty on the night in question are currently employed by the hotel but one of them, Ms. Jenny Ryan, had forwarded a statement to the effect that she was working in the Vault bar on the night of December 21, 2001, that she had come on duty at 6.00 p.m. , that a group of

people had come into the bar for finger food and that the majority of them had left by 11.30 p.m.

5 Matters for consideration

5.1 The matters referred for investigation turn upon whether or not the complainants were directly discriminated against contrary to Section 3 (1)(a) and 3 (2)(i) of the Equal Status Act 2000 in terms of Section 5 (1) of that Act.

5.2 Section 3 (1)(a) provides that discrimination shall be taken to occur where: *"On any of the grounds specified.....a person is treated less favourably than another person is, has been or would be treated".*

5.3 Section 3 (2)(i) provides that: *"As between any two persons, the discriminatory grounds ... are ... that one is a member of the Traveller community and the other is not."*

5.4 Section 5 (1) states that *"a person shall not discriminate in disposing of goods to the public generally or a section of the public or in providing a service, whether the disposal or provision is for consideration or otherwise and whether the service provided can be availed of only by a section of the public "*.

In this particular case the complainants claim that they were discriminated against because they are members of the Traveller community, while the respondent maintains that there was no discrimination.

5.5 At the outset, I must first consider whether the existence of a prima facie case has been established by each of the complainants. There are three key elements which need to be established to show that a prima facie case exists. These are:

- (a)** Membership of a discriminatory ground (e.g. the Traveller community ground)
- (b)** Evidence of specific treatment of the complainant by the respondent

(c) Evidence that the treatment received by the complainant was less favourable than the treatment someone, not covered by that ground, would have received in similar circumstances.

If and when those elements are established, the burden of proof shifts, meaning that the difference in treatment is assumed to be discriminatory on the relevant ground. In such cases the claimant does not need to prove that there is a link between the difference and the membership of the ground, instead the respondent has to prove that there is not. If they succeed in establishing prima facie evidence, the burden of proof then shifts to the respondent to rebut the inference of discrimination.

6 Conclusions of the Equality Officer

6.1 I am satisfied that the complainants are members of the Traveller community in accordance with (a) at 5.5 above. The complainants have provided evidence that they sought and were refused access to the respondent's premises, by a member of the respondent's staff, which has been confirmed by the respondent, and this fulfills (b) at 5.5 above.

In relation to key element (c) at 5.5 above I am satisfied that the hotel manager had indicated to a number of TACCTIC members that Travellers were not to be allowed to socialise in the hotel premises and that this is clearly less favourable treatment than that afforded to non-Traveller patrons of the hotel, and that the actions of the hotel receptionist and the refusal to admit the complainants to the nightclub raises an inference of discrimination by the respondent. The burden of proof now shifts to the respondent to show that the refusal of admission to the complainants was for reasons other than discriminatory reasons.

6.2 The respondent stated that the complainants were refused service because it was thought at the time that some of them had excess drink taken. The person making this statement, and the person whose account she states that she was relying on in doing so i.e. Mr. Pyke, nightclub manager, did not provide any evidence to the Hearing. The complainants provided evidence from third parties, who witnessed the

amount of alcohol they consumed on the night in question, which refutes this assertion.

The complainants sought admission to the nightclub at 10.30 p.m. and were refused. They walked Mr. McCarthy to his car and on their return again sought admission at 10.45 p.m. and were again refused. They then went to another bar where they were seen by Ms. Furlong at 11.00 p.m. Allowing that a few minutes would have elapsed when Ms. Ann Stokes and two of her companions went into the Vault (as the “Private Function” sign had gone by this time) and that it would then have taken them some minutes to get to the other premises, I estimate that the group would have arrived at the other premises circa 10.55 p.m. or perhaps slightly later. The group left this premises at 11.30 p.m. to go back to the Vault bar. This means that a total of thirty minutes was spent by the group in the bar in question. The amount of drinks which they could have ordered, received and drunk in this time was very limited, particularly given that none of the group has a propensity to drink a lot of alcohol. I am satisfied, therefore, that no member of the group was excessively intoxicated as claimed by the Head Doorman.

Given that the night in question was in Christmas week and that this is traditionally a time where people are in festive form and pubs, hotels and restaurants are exceptionally busy and that a number of functions traditionally take place, I am satisfied that the evidence given by the complainants to the effect that other people, some of whom were clearly drunk and in high spirits, were leaving nearby pubs, were approaching, and gaining admission to, the nightclub, is entirely reasonable and credible. This being so, the refusal to admit the complainants who were not so intoxicated, is even more conspicuous and questionable.

6.3 The Head Doorman at the nightclub, who interacted with the complainants later on the night in question states that he “clearly remembered the night in question” but could not remember whether the complainants were drunk enough to pose a safety risk, did not recall any incident in the Bar on the night, and was adamant that the complainants “gave him cheek” and “gave him lip” on the night in question. He then clarified that these expressions referred to the fact that the complainants questioned

him about his refusal to admit them. He was unable to provide any evidence of the complainants having shouted at him, yet such evidence would have been available to him on video tape at the time the complaints were notified to the respondent, or by way of evidence from the other doorman who was on duty on the night. I am satisfied that the complainants, having been refused admission, were within their rights to question the refusal. I am satisfied that the complainants did not behave in an abusive manner towards the doorman, such that he would have been justified in refusing admission, and that in any event, the complainants alleged reaction came after the refusal and was not therefore the cause of the refusal.

6.4 The reason given by the former hotel manager for refusing to allow Travellers to socialise in the hotel was that a violent incident, involving Travellers, had occurred, and that the Gardaí were investigating this incident. At and following the Hearing the respondent could not confirm, or provide any evidence regarding, any such incident. Even if such evidence had been provided there was no indication that it was in any way connected with the complainants. In fact Ms. Barry, the hotel manager, had stated to the TACCTIC members that no member of the Clonmel Community Development Project were involved in any such incident. This statement by Ms. Barry, which was not denied by the respondent, is extremely puzzling in light of the fact that she also stated that she did not know the names of any of the individuals involved in the alleged violent incident. I am satisfied that the alleged violent incident was a complete fabrication and was designed to forestall objections to the hotel's policy of refusing to permit Travellers to socialise in the Hotel. This is clearly a planned and premeditated policy of discrimination against the Traveller community.

Ms. Barry further stated that, although the complainants were not known to her, she "expects that they were served before and after (21 December) on many occasions" in both the hotel and the nightclub. I find this statement entirely lacking in credibility in that I would expect Ms. Barry, as manager of the hotel, to have some knowledge of any individual who attended at the premises, which is located in a relatively small town, "on many occasions". The statement is not based on fact, but on conjecture.

6.5 The respondent stated that a private function was taking place in the Vault bar the first two times that the complainants sought admittance i.e. At 10.30 and 10.45 p.m.. The evidence produced by the respondent to support this claim was a receipt for finger food for a private function on the date in question.

The receipt appears to be a takings total for the day and includes a number of transactions, therefore I am satisfied that the time shown on same, i.e. 00.39 a.m. is the time that the takings were totalled as opposed to the time when the food was charged for. This is supported by the fact that another document submitted by the respondent in relation to the sale of the finger food in question clearly shows that the finger food sold on 21 December, 2000 is listed under the heading “luncheon” and not “supper snacks” which latter heading is also contained in the document.

6.6 The respondent submitted a statement from a member of staff indicating that she was on duty on 21 December, 2001 when finger food was served in the Vault bar. As the complaints refer to 21 December, 2000, i.e. 12 months prior to that date, this statement is of no value as evidence in this matter.

6.7 The respondent states that a notice regarding the private function was displayed at the entrance to the Vault bar on the night in question and this was confirmed by the complainants. The complainants also confirmed that the notice was hand written in black marker on A4 paper. The respondent could not provide any evidence with regard to the notice.

Some of the complainants stated that a few minutes after the initial refusal by the nightclub manager the sign had disappeared from the entrance to the bar, that they had walked into the bar and that the barman had stated to Ann Stokes that there was no private function on that night. Neither the hotel manager nor the nightclub manager at the time of the alleged discrimination were present to provide any evidence in this matter whatsoever and the statement was not denied by the respondent. I am satisfied that the notice was a device used to refuse the complainants admission to the bar.

6.8 The diary and documentation held by the respondent in relation to bookings etc for 2000, which would have shed some light on bookings for the private function and other matters, has “disappeared”. Video tape evidence has not been kept and was never offered in evidence even though the respondent was on notice of the complaints within the three month retention period. None of the bar staff from the night in question provided any evidence other than the aforementioned statement from one member of staff which cannot be taken into consideration for the reason already stated. While the hotel manager Ms. Barry had stated in writing that the only entrance to the Vault bar is from the street to ensure that the numbers entering the bar or nightclub are monitored so that the hotel can comply with its fire safety obligations, the hotel has no record of the numbers attending at the premises on the night in question.

6.9 The respondent stated that the complainants were directed to the street entrance to the nightclub as this is the only official entrance. While this may well be the case evidence given by Ms. Rossiter at the Hearing on behalf of the complainants indicated that patrons of the hotel are/were allowed access to the nightclub from the hotel, whether officially or unofficially.

6.10 The complainants submitted evidence that the respondent had specifically advertised entertainment in the Vault bar for the night in question, and that early patrons of the bar would get free admission to the nightclub. There was also a special promotion for ladies, i.e. that admission was free every Thursday yet the complainants, all young women, were refused admission early in the evening.

In summary, the respondent, who has not produced any credible evidence to support his case or any credible evidence to contradict the evidence submitted by the complainants, has failed to rebut the inference of discrimination.

6.11 In the circumstances, and taking all of the evidence into consideration, I am satisfied that each of the complainants was directly discriminated against, contrary to Section 3 (1) of the Equal Status Act 2000 in terms of Section 5 of the Act.

7. Decision

7.1 I find in respect of the six individual complaints referred by the complainants that each of the complainants was discriminated against on the Traveller community ground contrary to Section 3(1) and 3(2)(i) of the Equal Status Act and in terms of Section 5(1) of that Act.

8. Vicarious Liability

8.1 While the action which constituted discrimination is directly attributable to the Manager of the nightclub and the Doorman on duty on the night in question, both of whom refused admission to the complainants, section 42(1) of the Equal Status Act, 2000 provides that:

“Anything done by a person in the course of his or her employment shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that person’s employer, whether or not it was done with the employer’s knowledge or approval”

As the manager and the doorman were clearly acting within the scope of their employment in the course of the refusal I find that their employer, Norevale Ltd., trading as Hearne’s Hotel/Vault Bar, is vicariously liable for their actions in accordance with section 42(1) of the Equal Status Act.

9. Redress

9.1 Under section 25(4) of the Equal Status Act, 2000 redress shall be ordered where a finding is in favour of the complainant in accordance with section 27. Section 27(1) provides that:

“the types of redress for which a decision of the Director under section 25 may provide are either or both of the following as may be appropriate in the circumstances:

(a) an order for compensation for the effects of the discrimination;

or

(b) an order that a person or persons specified in the order take a course of action which is so specified.”

9.2 I hereby order that €2000 be paid by the respondent to each of the individual complainants for the effects of the discrimination. I also order that the respondent take immediate steps to review all of its customer service practices to ensure that they are fully compliant with the requirements of the Equal Status Act 2000, and that all

staff involved in the direct provision of services to the respondent's client base be fully trained in the scope and requirements of the Act.

In making these awards I have taken into consideration what the likely general effects of discrimination are. They are as follows:-

- **social/personal effects:** humiliation, upset, anger, stress, and where discrimination is severe or repeated, a contribution to an overall lessening of self-esteem/empowerment, increased exclusion from the mainstream social and economic currents, and a loss of confidence in the fairness and legitimacy of the society in which a person lives or works. This is the human rights aspect of discrimination: that it is an affront to the dignity of the human person.
- **practical effects:** (e.g loss of amenity): this would vary depending on the nature of the goods or services which have been refused to the individual. For instance, the non-provision of a drink would be considered less serious than not being able to get accommodation, being sacked from a job or being physically harassed.
- **financial effects:** this would include loss of earnings, the cost of travelling further to obtain accommodation or to get served in a pub, not being admitted to an event for which tickets had been purchased, or having to pay higher rent for alternative accommodation because the accommodation sought was refused for discriminatory reasons.

While not specifically covered by Section 27, other factors which I consider to be important in determining the seriousness of the discrimination would include:

- whether there is evidence of a general discriminatory policy.
- whether discrimination was acknowledged afterwards and a sincere apology offered (see DEC-S2002- 030, *Stokes v The Middle Shop Pub*).
- whether the respondent had taken genuine measures to try to comply with the Equal Status Act subsequent to the act of discrimination (see DEC-S2002- 030, *Stokes v The Middle Shop Pub*).

9.3 In considering what level of redress would be most appropriate for the effects of the discrimination in this particular case, I was mindful of the humiliation, embarrassment, bewilderment and distress that the complainants must have felt in receiving an abrupt refusal in an open and public place and not being given a justifiable reason for their refusal at the time. Each of the individual complainants was treated shabbily and with contempt by the respondent.

This was compounded by the fact that it was subsequently alleged that some of them had excess alcohol taken, which they were, fortunately, in a position to disprove. Considering that none of them had ever been in the hotel before, I am satisfied that the only conclusion that they could have arrived at on the night was that they were being refused admission because they had been identified as members of the Traveller community.

I therefore consider that this incident would have had a damaging effect on the self-esteem and dignity of the complainants both at the time and since, resulting in them feeling increasingly excluded from mainstream social activities solely on account of their membership of the Traveller community. The discrimination also had a practical effect in that a great deal of the complainants' time and efforts were wasted trying to gain access to the respondent's premises, as they were repeatedly given hope that they would eventually be admitted to same. There was also a direct loss of amenity to each of the individual complainants as they were prevented from partaking in a socially enjoyable evening in a public venue, and were marginalised by the actions of the respondent.

Finally, the complainants' efforts in resisting the discrimination and pursuing their complaints involved a great deal of time and effort on their part and, while not having a direct financial effect, was a direct cost to them in terms of time and effort expended on this matter.

Dolores Kavanagh
Equality Officer
2 July, 2002