

ODEI - the equality tribunal

OFFICE OF THE DIRECTOR
OF EQUALITY INVESTIGATIONS

3 Clonmel Street
Dublin 2.

Phone: 353 -1- 4774100
Fax: 353-1- 4774150

E-mail: info@odei.ie
Website: www.odei.ie

Equal Status Act 2000

Equality Officer Decision
DEC-S2002-086

Mr. John Roche
(Represented by The Equality Authority)

V
Alabaster Associates Limited t/a Madigans
(represented by GD Fottrel & Sons, Solicitors)

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Summary of Decision DEC-S2002-086

Mr. John Roche
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v.

Alabaster Associates Limited t/a Madigans.
(Represented by GD Fottrel & Sons, Solicitors)

Key words

Equal Status Act, 2000 - discrimination, section 3(1) - Disability, Section 3(2)(g) - special treatment or facilities- Section 4(1), nominal cost - Section 4(2) - visually impaired - Supply of goods and services, Section 5 (1) - access to pub - guide dog - food hygiene regulations - Section 14, comply with an enactment.

Dispute

The dispute concerns a claim by the above named complainant that he was discriminated against by the respondent, Alabaster Associates Limited t/a Madigans, in terms of Sections 2 and 4 of the Equal Status Act, 2000 and contrary to Section 3 of that Act when he was refused access to the respondents premises with his guide dog.

Background

The complainant, who is visually impaired and uses a guide dog, was refused access to a service in the respondent's premises. The complainant submits that he was discriminated against on the grounds of his disability as the respondent failed to provide special treatment to accommodate the needs of a person with a disability. The respondent's case is that it would have been contrary to the Food Hygiene Regulations to allow the complainant's dog into the pub which serves food. The respondent submitted that he tried to accommodate the complainant's needs and he offered to leave the dog at the door in the company of the doorman while the complainant had refreshments, but this was not acceptable to the complainant.

Conclusions of the Equality Officer

The Equality Officer found that the respondent, by refusing to allow the guide dog into the pub, failed to do all that is reasonable to provide the complainant with special treatment or facilities to accommodate the needs of a person with a disability contrary to Section 4 of the Equal Status Act. She was satisfied that it would be unduly difficult for the complainant to avail of a service in the pub without such special treatment or facilities. She also found that the Food Hygiene Regulations on which the respondent relied upon to prevent the complainant gaining access to a service in his premises are not sufficiently clear to constitute a requirement for the guide dog's exclusion under Section 14. The Equality Officer found that the Regulations did not specifically apply to the complainant's guide dog as she was on a leash and in any event the Department of Health circulars provide that guide dogs can be exempted from the Regulations.

Decision

The Equality Officer found that Alabaster Associates Limited did unlawfully discriminate against the complainant in terms of Sections 3(1)(a), and 3(2)(g) of the Equal Status Act, 2000, and contrary to Section 4(1) and Section 5(1) of that Act. The Equality Officer ordered the respondent to pay to the complainant the sum of €3,000 to compensate him for the distress, embarrassment and inconvenience suffered by him as well as the loss of the amenity to him. She also ordered the respondent to place a notice at the entrance to his premises stating that people with disabilities including people with guide dogs are welcome to the premises. All staff should be trained in relation to the provisions of the Equal Status Act, 2000 and be made aware of the relevant Regulations and circulars in relation to food hygiene and guide dogs.

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Delegation under Equal Status Act, 2000

The complainant referred a claim to the Director of Equality Investigations on 9 May, 2001 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 then delegated the case to Marian Duffy, 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, 2000.

1. Dispute

- 1.1** The complainant, Mr John Roche, alleged that he was discriminated against by the respondent, Alabaster Associates Limited t/a Madigans, in terms of Sections 2, 4 and 5 of the Equal Status Act, 2000 and contrary to Section 3 of that Act when he was refused access to the respondents premises with his guide dog.

2. Background

The complainant, who is visually impaired and uses a guide dog, was refused access to a service in the respondent's premises on 11 January, 2001, because he was accompanied by his guide dog. The complainant submits that he was discriminated against on the grounds of his disability as the respondent failed to provide *special treatment or facilities* to accommodate the needs of a person with a disability. The respondent's case is that dogs are not allowed into his pub. He submitted that would have been contrary to the Food Hygiene Regulations to allow the complainant into the pub with a dog as food is served on the premises. The respondent said that he tried to accommodate the

complainant's needs and offered to leave the dog at the door in the company of the doorman, while the complainant had refreshments, but it was not acceptable to the complainant.

Summary of the Complainant's Case

2.1 The complainant is visually impaired and uses a guide dog. The following evidence was submitted in support of the complaint:

- On 11 January, 2001 between 9:00 and 9:30 p.m., the complainant accompanied by his guide dog and his two friends Mr. Tony Lynch and Ms. Tuija Tittananen went to the respondents premises, Madigans Public House and the complainant was refused entry by the doorman.
- The complainant said he was told by the doorman that the manager had instructed him not to allow dogs on the premises. The complainant explained to the doorman that he was visually impaired and the dog was a guide dog. He was not asked for identification but would have produced it if requested to do so. He submitted that the dog is specially trained, with a special white harness and handle attached to his back which distinguishes him from other dogs, and it was not possible that the doorman would have any doubt that the dog was a guide dog. The doorman went into the premises to speak to the manager and told the complainant on his return that there were no dogs allowed in under any circumstances.
- Mr. John Lynch asked to speak to the manager and was allowed to enter the premises. He spoke to the manager Mr. Thomas Keogh. Mr. Lynch explained to Mr. Keogh that the complainant had a guide dog and because of this was refused entry to the premises. Mr. Keogh said that there was food being served on the premises and that the guide dog would not be allowed in. Mr. Lynch noticed that the front part of the bar was practically empty and he asked Mr. Keogh if the complainant and his guide dog could be accommodated there, but this suggestion was not acceptable either.
- The complainant and his friends then left and went to another public house and the complainant had no difficulty in gaining access. The complainant was in a restaurant with his guide dog prior to being refused entry to the respondent's pub and his guide dog presented no difficulties in gaining access. He also stated that he never had

difficulty in the past in bringing his dog into premises which served food. He said that because of his visual impairment he needs his guide dog with him at all times.

- The complainant's representative submitted that the complainant was discriminated against contrary to Section 3(1) and in terms of Section 4(1) of the Act. In response to the respondent's case, that he was prevented by the Food Hygiene Regulations 1950 from allowing the guide dog into the premises, the complainant's representative submitted that he was only required to take reasonable precautions to exclude dogs which are not leashed. She submitted that the respondent greatly overstepped the requirements of the Regulation in his treatment of the complainant. Two circulars were issued by the Department of Health one in 1991 and the other in 2000 stating that guide dogs could be exempted from the regulations. The representative also pointed out that it was after 9 p.m. when the complainant attempted to gain access to the pub and no food appeared to be served at that time. She also stated that guide dogs have specialised training and grooming and therefore would present no risk to hygiene.
- The complainant's representative submitted that the complainant was greatly upset, embarrassed and discommoded by the failure of the respondent to allow him access to a service in the premises. She said that nowadays most service providers including restaurants and other food outlets have no difficulty in admitting guide dogs and many display stickers to that effect. It is only a small minority of service providers who persist in excluding guide dogs from their premises and thereby excluding their owners from accessing their services.

3. Summary of the Respondent's Case

3.1 The respondent denies that the respondent was discriminated against and stated the following:

- the complainant was not allowed into the premises with his guide dog because the pub served food. The manager, Mr. Thomas Keogh, stated that due to the Food Hygiene Regulations dogs were not allowed on the premises and instructed his doorman accordingly.

- The doorman, Mr. Darryl McGettrick, offered the complainant to leave his guide dog at the door where he would look after him. The complainant could then go into the bar with his friends, but this offer was not acceptable to the complainant
- Mr. McGettrick was not aware that the dog was a guide dog. He asked the complainant for identification which he did not produce. The respondent submitted that the complainant should have produced the guide dog identification as the identification is issued to guide dog owners to ensure that there is no dispute.
- The respondent stated that owners of food premises are obliged to comply with the Food Hygiene Regulations 1950 and are required to ensure that no contamination of food takes place from animals or otherwise. It is his understanding that the legislation in place prohibited dogs being let into premises where food is served and that there was no exception in relation to guide dogs. The circulars issued by the Department of Health and Children are only recommendations and do not take precedent over the Food Hygiene Regulations and that the Equal Status Act does not take precedent over the Regulations either. He said he was not aware of circular 15/2000 and pointed out that it was dated 28 November, 2000 and issued only 6 weeks prior to the refusal of service to the complainant. The respondent submitted that he acted in accordance with the legislation which is currently in force and in his view all animals should be precluded from food premises without exception.
- It was submitted that the respondent did all that was reasonable to accommodate a person with a disability, by providing him with facilities for his dog to be kept at the door by Mr. Mc Gettrick, to allow the complainant to avail himself of a service in the pub.
- Mr. Keogh said that the pub serves carvery food up until 3pm and after that serves wrapped toasted sandwiches and tea and coffee.
- The respondent's representative submitted that Mr. Keogh was not sure of the situation in relation to bona fide guide dogs and that the Circulars issued by the Department of Health and Children are only persuasive in content and that there is no mandatory or legislative requirement that guide dogs should be admitted to premises which serve food. He submitted that the action taken by the respondent was taken in good faith to comply with the regulations. He also stated that if the complainant had

produced his Identification as requested that Mr. Keogh may have been persuaded to change his mind about the admission of guide dogs to his premises.

5 Conclusions of Equality Officer

5.1 The matter referred for investigation turns upon whether or not the complainants were discriminated against contrary to Section 3(1)(a) and 3(2)(g) of the Equal Status Act and in terms of Sections 4 and 5 of that Act. In reaching my decision I have taken into account all the submissions, both oral and written, made to me by the parties in the course of my investigation into the complaint.

At the beginning of the hearing the solicitor for the respondent accepted that the respondent was vicariously liable for the actions of the doorman, Mr Mc Gettrick, who is not an employee of the respondent.

Section 3(1)(a) provides, inter alia, that discrimination shall be taken to occur where:

“On any of the grounds specified... (in this case the disability ground).... A person is treated less favourably than another person is, has been or would be treated. Section 3(2)(g) provides that: As between any two persons, the discriminatory grounds ... are ... that one is a person with a disability and the other either is not or is a person with a different disability (the disability ground).”

Section 5(1) provides inter alia 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.”

5.2 I have identified the following questions as the key relevant elements I must examine in this complaint to determine if discrimination contrary to the above provisions of the Equal Status Act has been established.

(i) Is the complainant covered by the discriminatory ground? (in this case has the complainant a disability?)

(ii) in what circumstances was the complainant refused service by the respondent on 11 January, 2001.

(iii) whether the respondent's actions amounted to a refusal or failure to provide reasonable accommodation in accordance with section 4 of the Equal Status Act for the complainant's needs as a person with a disability, which made it impossible or unduly difficult for him to avail of the service.

(iv) whether providing for those needs would have given rise to greater than nominal cost to the service provider

I am now going to examine the issues I have identified above.

5.3 Disability

Disability is defined in Section 2(1) of the Act as:

“(a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
(c) the malfunction, malformation or disfigurement of a part of a person's body,
(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
(e) a condition, disease or illness which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour”.

The complainant has a visual impairment and is covered by the Act. I am satisfied from the evidence that the complainant's disability would have been known to the respondent at the time he refused entry to the respondent's premises. While there was some conflict as to whether the complainant was requested to produce identification for the dog, I find on the facts that both Mr. McGettrick and Mr. Keogh knew that the dog was a guide dog. I also find that the complainant was not asked to produce identification for the guide dog as both Mr. McGettrick and Mr. Keogh knew he was a guide dog. I am also satisfied that the complainant's guide dog which has a special harness and handle is easily distinguishable

from other dogs and would therefore have been readily identified by the respondent as a guide dog.

5.4 Circumstances of Refusal of Service

The next issue for decision is in what circumstances was the complainant refused service and whether the treatment afforded to him on 11 January was less favourable treatment than another person would have received. It was agreed by both parties that the complainant was refused entry to the respondent's premises on 11 January, 2001. The complainant's case is that because of his visual impairment he uses a guide dog and therefore it was for reasons connected to his disability that he was refused entry. The respondent's case is that dogs are not allowed on the premises which serve food under the Food Hygiene Regulations. The complainant could have had a drink in the pub provided he left the dog at the door, an offer which was unacceptable to the complainant. The respondent believes for these reasons no discrimination occurred.

I note in this case the respondent applied the same rules to everyone accompanied by a dog and provided no exception for a person accompanied by a guide dog. In considering the case I have noted the Equality Officer Decision in the case of Mr John Maughan v the

Glimmerman Limited DEC-S2001-020. In that case the Equality Officer stated that:
"I am satisfied that if a person brought a dog, which was not a guide dog, into the respondent's premises they would not have been served in line with the respondent's no dogs policy. On the face of it, therefore, the complainant was not treated less favourably because he was treated the same as anyone else with a dog would have been treated. However, because of his visual impairment the complainant was not in the same circumstances as someone else with a dog who was not visually impaired. This difference is important and to quote the European Court of Justice ruling in the case of Gillespie and others v Northern Health and Social Services Boards and others (Case no. C-342/93) "discrimination involves the application of different rules to comparable situations, or the application of the same rules to different situations". This principle is supported by the ruling in the US Supreme Court case of Jenness v Fortson (403 US 431 (1971)) and the

rulings in the Irish Supreme Court cases of O'Brien v Keogh (1972 IR 144) and de Burca v Attorney General (1976 IR 38).''

It is relevant therefore at this stage to examine the treatment of the complainant in the context of Section 4 of the Act which deals with the provision of special facilities for a person with a disability.

Reasonable Accommodation

5.6 Section 4 of the Act states, inter alia:

“(1) For the purposes of this Act discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service.

I am now going to examine if the respondent did *“all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities”*.

The respondent submitted that he made an offer to the complainant to leave his guide dog at the door. The complainant said that this offer was not made to him and even if it was, it was not acceptable offer as his guide dog has to be with him at all times. It would present a danger to the dog to leave him in the care of a stranger on a busy street and in any event the proposition would be in contravention of the Guide Dog Association rules. The complainant's representative submitted that unnecessary obstacles are placed in the way of guide dog users which diminish the dignity, confidence and independence of those with visual impairments and the only special treatment the complainant required was the admission of his guide dog to the premises. They further submitted that it was impossible or unduly difficult for the complainant to avail of the service in question without the admission of his guide dog to the premises, and submitted in support of this contention a publication by the **Irish Guide Dogs for the Blind** (attached Appendix 2) which sets out some of the benefits guide dogs give to their owners. These include enhancing the dignity of the owner and aiding integration into the community. The publication also points out that a guide dog provides safety and promotes confidence and independence

for the visually impaired owner. One owner states in the publication “ *because of my guide dog I am mobile. I can go from A to B without hassle. She is my eyes, I can depend on her*”. Because a guide dog is ‘*the eyes*’ for a visually impaired person I am satisfied that it would not be reasonable to expect the complainant to be separated from his dog in the manner suggested by the respondent. It is clear therefore that the complainant would have a need to have the guide dog with him at all times. In any case leaving a guide dog at the door of a busy pub on O’Connell Street in Dublin under the control of a stranger to the dog, in my view, would present a great danger to the dog and would have caused great upset and anxiety to the complainant. For the above reasons, I find that the respondent’s offer to leave the dog at the door was not a reasonable offer to accommodate the needs of a person with a visual impairment. I find also that it would be unduly difficult for the complainant to avail of a service in the pub without the assistance of his guide dog.

5.7 I have noted the case of Mr John Maughan v The Glimmerman Ltd

DEC-S2001-020 in which the Equality Officer stated:

“I consider that allowing a guide dog into a pub with a visually impaired person is special treatment without which it would be impossible or unduly difficult for the visually impaired person to avail of the service.”

I agree with the Equality Officer in the above case. I find that the respondent, by refusing to allow the guide dog into the pub, failed to provide the complainant with special treatment or facilities to accommodate the needs of a person with a visual impairment contrary to Section 4 of the Equal Status Act.

Nominal Cost

Section 4(2) of the Equal Status Act provides:

(2) A refusal or failure to provide the special treatment or facilities to which subsection (1) refers shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question”.

The question of nominal cost was not in dispute and no evidence was presented to suggest that allowing a guide dog into a pub would involve any additional costs for the respondent. I am satisfied that allowing the complainant to bring his guide dog into the pub would not give rise to any cost.

Prohibition of dogs in Food Premises

- 5.8** The respondent submitted that he relied on the Food Hygiene Regulations and that the Regulations take precedent over the Equal Status Act. Mr. Keogh said that he believed he was complying with the legislation in relation to food hygiene and that his advisors Central Health & Safety Services Ltd., advised him that dogs were not allowed on food premises. The following is an extract from a letter produced by the respondent in evidence:

“It is therefore our clear opinion that you are correct in your policy of discouraging the presence of domestic animals in your premises and that this policy is consistent with standards of best practice in the food industry”

I am now going to examine the Food Hygiene Regulations on which the respondent relied to prevent the dog access to the pub. I am also going to examine if the Food Hygiene Regulations are exempted from the application of the Equal Status Act, 2000 under Section 14. This Section provides that :

“Nothing in this Act shall be construed as prohibiting-
(a) the taking of any action that is required by or under-
(i) any enactment or order of a court, ”

I have to consider if the respondent would have been in breach of an enactment if he allowed a dog into a premises which serves food. The relevant legislative controls issued by the Department of Health are the Food Hygiene Regulations 1950 -1989 (S.I. 205 of 1950)

Article 25 paragraph 22 of the Regulations issued by the Department of Health states:

“Dogs shall not be kept on food premises save with the consent of the local chief medical officer and in accordance with any conditions he may impose and reasonable precautions shall be taken to exclude dogs which are not leashed from food premises.”

While these regulations pre date the existence of guide dogs they do not however, specifically exclude dogs which are leashed from a food premises. The complainants guide dog was on a leash and therefore his presence on the premises would not have been in contravention of these Regulations. The guide dog in this case was not being “kept” on the premises, the dog was visiting the premises with its owner. In my opinion “kept” would imply that a dog owner is prohibited from permanently keeping a dog on a food premises except with consent of the Chief Medical Officer. In my view the Regulations do not apply to dogs visiting food premises with its owner. For the respondent’s action to come within Section 14 of the Act, the action must be required by the enactment. The Food Hygiene Regulations are not sufficiently clear in relation to guide dogs to constitute a requirement for their exclusion under Section 14 of the Act. I am therefore satisfied that the respondent is not required by an enactment to exclude dogs which are leashed from his premises. While it is very good hygiene practice to keep dogs in general out of food premises, I am satisfied that the respondent would not have been acting in contravention of the Food Hygiene Regulations if he let the complainant’s guide dog into the pub.

- 5.9** The Department of Health subsequently has issued two circular letters dated 7 June 1991 and Circular 15/2000 dated 28 November, 2000 titled **Blind persons who use Guide Dogs**. (attached at Appendix 1) Both these circulars state that “*bona fide guide dogs for the use of the blind can be exempted from the Food Hygiene Regulations.*” The circulars also outline the high standard of care and grooming given to guide dogs and emphasise that a guide dog is essential to its blind owner. I find that the Food Hygiene Regulations 1950 on which the respondent relied upon to prevent the complainant gaining access to a service in his premises did not apply to the complainant’s guide dog, as the dog was on a leash. The two later circulars from the Department of Health clarified the Regulations and clearly states that guide dogs can be exempted from the Regulations. I find therefore that the Food Hygiene Regulations on which the respondent relied upon to prevent the complainant gaining access to the pub with his dog provide that a guide dog can be exempted from their application. While it could be argued that the relevant circulars give the respondent a level of discretion in relation to admitting guide dogs to

their premises, the Equal Status Act, 2000, which prohibits discrimination on grounds of disability, is primary legislation and takes precedent over any discretion contained in the circulars.

5.10 In relation to the respondents case that the complainant's dog would present a threat to food hygiene I find that this could not have been the case. The respondent's evidence was that the food carvery was open until 3pm and then wrapped sandwiches were served until closing time. The complainant attempted to gain access at 9pm. I note the complainant stated that he generally has no difficulty in bringing his dog into pubs and restaurants and he had a meal in a restaurant prior to arriving at the respondent's pub. Given the guide dogs behavioural training and grooming I find that the dog would not present a hygiene risk on the premises at a time when wrapped sandwiches were served.

5.11 I find for the foregoing reasons that the respondent did unlawfully discriminate against the complainant contrary to the Equal Status Act, 2000 when he refused to allow him into his pub with his guide dog.

6. Decision

6.1 Under section 27(1) of the Equal Status Act, 2000 redress may be ordered where a finding is in favour of the complainant. 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.”

Under the above Section the maximum amount of compensation I can award is €6,349 (£5,000). In considering the amount of compensation which I should award I have taken

into account the fact that a guide dog is an essential mobility aid for a visually impaired person and the difficulties a visually impaired person would encounter without the dog's assistance. I order Alabaster Associates Limited, to pay to the complainant the sum of €3,000 to compensate him for the distress, embarrassment and inconvenience suffered by him as well as the loss of the amenity to him.

Under Section 27(1)(b) of the Act I order the respondent to display a clearly visible notice at the entrance to his premises stating that people with disabilities including people with guide dogs are welcome to the premises. This notice should be displayed within 4 weeks of this Decision. All staff should be trained in relation to the provisions of the Equal Status Act, 2000 and be made aware of the relevant Regulations and circulars in relation to food hygiene and guide dogs.

Marian Duffy
Equality Officer
1 August, 2002