

Equal Status Act 2000
Equality Officer Decisions
DEC-S2002-116/117

Two Complainants

V

A Public House

Date Of Issue **23/10/2002**

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'S DECISION NOs: DEC-S2002- 116/117

Two Complainants

V

A Public House

Date of Issue 23/10/2002

Table of Contents

Summary	4
Dispute	5
Summary of Complainant's Case	5
Summary of Respondent's Case	5
Delegation under the Equal Status Act 2000	5
Evidence Provided by Parties	6
Matters for Consideration	8
Conclusions of the Equality Officer	9
Decision	12

Equal Status Act 2000

Summary of Decisions DEC-S2002-116/117

Two Complainants

V

A Public House

Key words

Equal Status Act 2000 - Direct discrimination, section 3(1)(a) - Membership of the Traveller community, section 3(2)(i) - Supply of goods and services, section 5(1) - Refusal of admission to pub - risk of disorderly behaviour, section 15 (1) - Non-attendance of complainants at Hearing

Dispute

This dispute concerns a complaint by Mr and Mrs A that they were discriminated against, contrary to the Equal Status Act 2000, by the management of a pub in Killarney.

The complainants maintain that they were discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

The complainants state that they were refused admission to the pub on 16 December 2000 on the grounds of their membership of the Traveller community.

The respondents totally reject that they operated a discriminatory policy against Travellers. They maintain that the complainants were refused access because one of them was known to have caused trouble in other establishments previously.

The complainants did not attend at the Hearing. Their solicitor, who expected them to be present and could not explain their absence, attended on their behalf. He agreed that the Hearing should proceed and the complaint considered, based on the written evidence already supplied by the complainants during the course of the investigation.

In view of the complainants' absence, the Equality Officer decided, in the interests of natural justice, that it would not be appropriate to identify the complainants in the Decision. The Equality Officer also decided that, in fairness to the respondents, they should also not be identified.

Decision

The Equality Officer found that a prima facie case of discrimination had not been made by the complainants in establishing that they were discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

Accordingly, he found in favour of the respondents in the matter.

Two Complainants

V

A Public House

1. Dispute

1.1 This dispute concerns a complaint by Mr and Mrs A that they were discriminated against, contrary to the Equal Status Act 2000, by the management of a pub in Killarney.

The complainants maintain that they were discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

2. Summary of the Complainant's Case

2.1 The complainants state that they were refused admission to the pub on 16 December 2000 on the grounds of their membership of the Traveller community.

3.. Summary of Respondent's Case

3.1 The respondents totally reject that they operated a discriminatory policy against Travellers. They maintain that the complainants were refused access because one of them was known to have caused trouble in other establishments previously.

4 Delegation under the Equal Status Act, 2000

4.1 These complaints were referred 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 has delegated these complaints to myself, Brian O'Byrne, 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.

5.1 Complainants' Case

The complainants themselves did not appear at the Hearing on 2 October 2002. However, they were represented by their solicitor, who expressed surprise over the non-appearance of his clients. The solicitor confirmed, at the outset of the Hearing, that he had met with the complainants the day before the Hearing and, had explored with them the circumstances of their case and had arranged that they would meet in the appointed hotel before the Hearing the next morning.

The solicitor also confirmed that the complainants had been made fully aware of the time and venue of the Hearing but could not explain why they had failed to attend the Hearing. In an

effort to establish the whereabouts of the complainants prior to the Hearing, their solicitor rang the mobile phone number they had given him but found that all calls were being diverted.

In the circumstances, all parties agreed that the Hearing should proceed without the complainants and that the matter should be considered on the basis of the written evidence already supplied by the complainants.

5.2 Complainants' Written Evidence

- The complainants visited the pub at 9pm on 16 December 2000.
- They were stopped at the door by a security man.
- The security man refused them access and no reason was given
- The complainants felt deeply upset as they believed that the refusal was solely down to their membership of the Traveller community

5.3 At the outset of the Hearing on 2 October 2002, the complainants' solicitor explained that he understood from the complainants that, on the night they were refused admission, the only explanation they were given for their non-admittance was "You know the score". The solicitor said that the complainants took this remark to mean that they were being refused because they were known to be members of the Traveller community and that this constituted an act of discrimination against them. It was, therefore, the lack of a proper explanation for their refusal, that led to them lodging a complaint under the Equal Status Act 2000, he said.

The solicitor also said that, around the same time, the complainants were refused admission to four other pubs in Killarney and claimed that this was evidence that security staff in Killarney operated a general policy of discrimination against Travellers.

5.4 Respondents' Evidence

- The pub has been under the same management for nine years
- The pub has a capacity of around 800 people
- About 80% of its customers are regulars while many tourists visit the premises during the holiday season
- The same seven security staff have been employed on the main door for the past number of years
- Doorstaff have been instructed that the only circumstances under which they can refuse admission are where someone appears drunk, is a known trouble-maker or appears to be under-age.
- The pub does not have a written policy for doorstaff advising them of the provisions of the Equal Status Act 2000. This was not considered necessary as the pub does not condone any form of discrimination.

- It is the management's policy that customers are dealt with politely and given a reason for their refusal on the night
- The pub does not operate a policy of discrimination against anyone.
- The pub has approximately 16 regular Traveller customers
- The pub has employed six Travellers on a full or part-time basis for the past four years
- Approximately 100 individuals have been barred from the pub, the vast majority of whom come from the settled community
- A doorman, who has worked in the pub for many years, said that he has known Mr A for a long time, from living in the same housing estate.
- The doorman said that he had no recollection of Mr and Mrs A having been in the pub before
- Mr A is known among security staff in Killarney as a trouble-maker and has been barred from many pubs
- The doorman recalled an incident some years previously, when he was on duty in another pub, when Mr A was barred for abusive and threatening behaviour towards staff.
- The Bar Manager gave evidence that he recalled an incident in 1999 when he first encountered Mr A. On that occasion, he was called to the front door when Mr A had become abusive to doorstaff. The manager said that Mr A was very drunk and was gesturing in a threatening manner towards door staff. Mr A was identified to the manager by name on that occasion.
- On 16 December 2000, the date of the alleged act of discrimination, the manager was again called to the front door. On his arrival he recognised Mr A. He was standing in the street and making threatening gestures towards his staff.
- Neither of the doormen who were on duty on 16 December 2000 were available to attend the hearing. Both, the respondents claim, were aware that Mr A had been involved in altercations previously in other premises and outside the pub.
- The manager believes that in all likelihood, Mr A was told on the night that he was being refused because of previous incidents elsewhere.
- If the phrase "You know the score" was used, it was used in reference to Mr A's reputation as a trouble-maker and to his previous aggressive behaviour outside the pub and not to his membership of the Traveller community.

6 Matters for Consideration

6.1 Section 3(1) of the Equal Status Act 2000 states that discrimination shall be taken to occur where, on any of the grounds specified in the Act, a person is treated less favourably than another person is, has been or would be treated. Section 3(2)(i) of the Act specifies the Traveller community ground as one of the grounds covered by the Act. Under Section 5(1) of the Act it is unlawful to discriminate against an individual in the provision of a service which is generally available to the public.

In this particular instance, the complainants claim that they were discriminated against on the grounds of their membership of the Traveller community contrary to Sections 3(1), 3(2)(i) and 5(1) of the Equal Status Act, 2000 in being refused admission to the pub on 16 December 2000.

6.2 In cases such as this, the burden of proof lies with the complainant who is required to demonstrate that a prima facie case of discrimination exists. If established, the burden of proof then shifts to the respondent who, in order to successfully defend his case, must show that his actions were driven by factors which were non-discriminatory.

6.3 In considering the approach to be taken with regard to the shifting of the burden of proof, I have been guided by the manner in which this issue has been dealt with previously at High Court and Supreme Court level and I can see no obvious reason why the principle of shifting the burden of proof should be limited to employment discrimination or to the gender ground (see references in **Collins, Dinneegan & McDonagh V Drogheda Lodge Pub DEC-S2002-097/100**)

7 Conclusions of the Equality Officer

7.1 In considering this case, I am particularly cognisant of the evidential weaknesses therein, and I have taken into account, in weighing up the evidence in this case, that the only direct evidence from the complainants was written evidence. In addition, while the respondent's witnesses were there and gave relevant evidence, I have also taken account of the fact that they were unable to produce as witnesses the two doormen who actually refused admission. Accordingly, neither party has had the benefit of being able to question the other on crucial pieces of evidence.

In light of the absence of the complainants (which still remains unexplained) and the doormen, I gave full consideration on how best to proceed with the investigation. In deciding to proceed with the issuing of a decision, I was persuaded by the following factors:

- The complainants were represented by their solicitor, who expressed surprise over the non-appearance of his clients.
- The solicitor confirmed that the complainants were fully aware of the time and venue of the Hearing and that they had arranged the previous day that they would meet him in the appointed hotel before the Hearing the next morning.
- A full written description of the alleged act of discrimination had been provided by the complainants at the time the complaint was submitted.

- The solicitor confirmed, at the outset of the Hearing, that he had explored with the complainants the full circumstances of their case and that their complaint revolved solely around the fact that no clear reason was given to them for their refusal.
- The solicitor said that his instructions were that the only remark made to the complainants was “You know the score” which they took to mean that they were being refused because they were known to be members of the Traveller community, and that they considered that this constituted an act of discrimination
- In an effort to establish the whereabouts of the complainants prior to the Hearing, their solicitor rang the mobile phone number they had given him but found that all calls were being diverted.
- On the day of the Hearing, no message was conveyed to the complainants’ solicitor or to the Equality Officer at the Hotel, as to why the complainants had failed to appear. The Equality Officer was contactable on the premises until 2.30 pm (the Hearing commenced at 10 am).
- In the absence of the complainants, their solicitor agreed to proceed with the Hearing.

7.2 Section 15(1) of the Equal Status Act 2000 provides that nothing in the Act prohibiting discrimination, shall be construed as requiring a person to provide services to another person in circumstances which would lead a reasonable individual, having the responsibility, knowledge and experience of the person, to the belief, on grounds other than discriminatory grounds, that the provision of services to the customer **would produce a substantial risk of criminal or disorderly conduct or behaviour or damage to property** at or in the vicinity of the place in which the services are sought.

In this particular case, the respondents claim that Mr A was a known trouble-maker and, therefore, they were entitled, under Section 15(1), to refuse him admission to the premises.

7.3 Prima facie case

At the outset, I must first consider whether the existence of a prima facie case has been established by the complainant.

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 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.

7.4 What constitutes “prima facie evidence” and how a “prima facie case” is established has been documented and considered in previous cases such as **Sweeney v Equinox Nightclub DEC-S2002-031**.

7.5 With regard to (a) above, the complainants have satisfied me that they are members of the Traveller community. In relation to (b), the respondents accept that the complainants were refused service on 16 December 2000. To determine whether a prima facie case exists, I must, therefore, consider whether the treatment afforded the complainants on 16 December 2000 was less favourable than the treatment non-Travellers would have received, in similar circumstances.

In this regard, based on the available evidence from both parties I am prepared to accept that "You know the score" was the only explanation given to them at the time of their refusal and I propose to concentrate on the use of this phrase in considering whether a prima facie case of discrimination has been established.

Key Points and Factors

7.6 In deliberating on the case before me, I consider the following factors to be the most important and persuasive:

- The complainants’ case centres on the fact that they say that they received no specific explanation for their refusal. The only remark they recall is “You know the score”.
- The complainants maintain that this phrase referred to their membership of the Traveller community and, therefore, constituted less favourable treatment than a non-Traveller would have received.
- In contrast, the respondents state that a reason is always given but, if that phrase was used, it was used in reference to previous unacceptable behaviour on Mr A’s part.
- The respondents have produced two witnesses who gave evidence of two separate occasions, both prior to the date of the alleged act of discrimination, where they personally saw Mr A acting in a disorderly and threatening manner.
- On account of his behaviour on those previous occasions and on reports from other security personnel in the Killarney area, the respondents say that a decision had been taken, prior to 16 December 2000, not to allow Mr A into the premises.
- The complainants have not appeared at the hearing to dispute the respondent's allegation that the first named complainant had a reputation as a troublemaker, nor to dispute the evidence of two witnesses that Mr A had been disorderly and aggressive at the respondent's premises on previous occasions. Based on the evidence before me, I must accept, on the balance of probabilities, that these allegations are most likely true.

- The complainant's solicitor has not produced any evidence to indicate that security staff in Killarney operate a general policy of discrimination against Travellers. While the complainants' evidence that they had been refused admission to four other premises could be interpreted as such, equally it could be argued that the refusal was because Mr A was widely recognised as a trouble-maker.

7.7 Having considered the evidence before me and, having taken into account the key points and factors outlined above, I consider that Mr A had, prior to 16 December 2000, been involved in several unsavoury incidents involving licensed premises, resulting in him being barred from a number of such establishments and classed as a trouble-maker. I also consider that the doorstaff on the night of 16 December 2000 would have had knowledge of these incidents and, in using the "You know the score" phrase, would have been referring to Mr A's reputation as a trouble-maker rather than his Traveller identity.

7.8 As stated earlier, in order to establish that a prima facie has been established, it is necessary for the complainant to show that he or she received less favourable treatment than a non-Traveller would have received *in similar circumstances*.

I, therefore, must consider, in this instance, whether a non-Traveller with a reputation as a trouble-maker, would have been treated more favourably than Mr A was treated on 16 December 2000 by the doorstaff of the pub.

7.9 Having considered the totality of the evidence before me, I consider that Mr A was treated in the same way as anyone else, who had a reputation as a trouble-maker, would have been treated by the staff of the pub on 16 December 2000. I, therefore, find that Mr A was not less favourably treated on 16 December 2000 on account of his membership of the Traveller community and, consequently, has failed to establish a prima facie case of discrimination.

Similarly, I consider that Mrs A did not receive less favourable treatment on 16 December 2000 but instead was treated the same as anyone else would have been treated in arriving at the pub in the company of a known troublemaker.

8 Decision

8.1 I find that a prima facie case of discrimination has not been made by the complainants in establishing that they were discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act

Accordingly, I find in favour of the respondents in the matter.

Brian O'Byrne
Equality Officer
23 October 2002