

## **Equal Status Act, 2002**

### **Summary of Decision DEC-S2002-137**

**Ms. Mary Delaney**

**(represented by O'Carroll & Co. Solicitors)**

**V**

**The Lisheen Bar & Restaurant**

**(represented by Lewis C Doyle & Co. Solicitors)**

#### **Key words**

Equal Status Act, 2000 - Direct discrimination, section 3(1) - Membership of the Traveller community, Section 3(2)(i) - Supply of goods and services, Section 5(1) - service in a licensed restaurant, proof of age, prima facie case.

#### **Dispute**

The dispute concerns a claim by the above named complainant that she was discriminated against on the Traveller community ground by The Lisheen Bar and Restaurant, in terms of Sections 2 and 5 of the Equal Status Act, 2000 and contrary to Section 3 of that Act, when she was refused entry to the respondent's restaurant.

On the date in question the complainant and her father decided to go into the restaurant to have a meal. As she was about to enter she was approached by a security person and was refused entry. She said that she was asked for proof of her age which she did not have available. She said that she couldn't understand why she needed proof of her age to have a meal in a restaurant and in any event she was over 18 years. She believes that the refusal of access to service in the restaurant was due to the fact that she is a member of the Traveller community.

The respondent submitted that the complainant was not discriminated against on the grounds that she is a Traveller. However she was refused entry to the restaurant because she had no proof to establish that she was over 18 years. The respondent submitted that the restaurant and bar are licensed premises within the meaning of the Liquor Licensing Laws. Under the Intoxicating Liquor Act, 2000 he is obliged to ensure that persons are over 18 before being admitted to the premises.

### **Decision of the Equality Officer**

The Equality Officer found that the complainant did not establish that she was treated less favourably than non-Travellers customers would have been treated in a similar situation, in that the requirement to have proof that a person is over 18 before being allowed into the licensed restaurant, is applied to all customers who are suspected of being under 18, and accordingly the complainant did not succeed in establishing a prima facie case of discrimination.

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**1. Dispute**

- 1.1** The dispute concerns a claim by Ms. Mary Delaney that she was discriminated against by the Lisheen Bar & Restaurant on the grounds that she is a member of the Traveller Community. The complainant alleges that the respondent discriminated against her in terms of Sections 3(1)(a), and 3(2)(i) of the Equal Status Act, 2000, contrary to Section 5(1) of that Act.

**2 Background**

- 2.1** The complainant's case is that she and her father were refused entry to the respondent's restaurant at about 9.30 p.m. on 26 October 2000. On the date in question the complainant and her father decided to go into the restaurant to have a meal. As she was about to enter she was approached by a security person and was refused entry. She said that she was asked for proof of her age which she did not have available. She said that she couldn't understand why she needed proof of her age to have a meal in a restaurant and in any event she was over 18 years. She believes that the refusal of access to service in the restaurant was due to the fact that she is a member of the Traveller community.
- 2.2** The respondent submitted that the complainant was not discriminated against on the grounds that she is a Traveller. However she was refused entry to the restaurant because she had no proof to establish that she was over 18 years. The respondent submitted that the restaurant and bar are licensed premises within the

meaning of the Liquor Licensing Laws. Under the Intoxicating Liquor Act, 2000 he is obliged to ensure that persons are over 18 before being admitted to the premises.

### **3 Summary of the Complainant's Case**

#### **3.1** The complainant stated the following

- that she is a member of the Traveller community living in a halting site in Salthill in Galway for 6 years. On 26 October, 2000 she went with her father to the respondent's premises with the intention of having a meal. She was at the door of the restaurant, and about to enter when a security man approached, and he refused to allow both the complainant and her father into the restaurant.
- The complainant asked for a reason for the refusal of entry whereupon the security man asked her for proof of her age. The complainant hadn't any identification on her, but she informed the security man she was over 18 and did not think she needed identification as she was only going to have a meal in the restaurant. She did not intend to enter the bar or consume alcohol with her meal. The complainant submitted that she was 18 years since January 2000.
- She asked to speak to the manager, but the security man refused to call him. The complainant then asked a waitress to call a manager, but the security man instructed the waitress not to call the manager.
- The complainant said that she was deeply upset and embarrassed by the incident as she had never experienced such treatment before. She reported the incident to the Gardaí that evening.
- The complainant called to the respondent's premises the following day and spoke to the manager Mr. John O' Brien. He told her he was not aware of the incident.
- The complainant believes she was refused service because she is a member of the Traveller community.
- The complainant said that she couldn't understand why she and her father were refused entry to the restaurant, given that she had been there before with her father, and at other times with her aunts and she did not require identification on those occasions.

- The complainant said that she could understand that she could be asked for proof of age if she attempted to gain entry to the bar. She believes that security only controlled access at the door to the bar. She also believed that the only reason she was asked for proof of her age at the restaurant door was because she and her father were recognised as Travellers by security.
- The complainant stated that she never required age identification to access any other restaurant. She worked as a chef in a hotel for two years and no age identification was required to get into the restaurant there.
- In response to the respondent's case the complainant denied that the security man told her she would be admitted if she produced evidence of her age. She could have produced her passport, and this would have shown she was over 18 years old.
- The complainant's representative submitted that it was not unlawful for a person under 18 to be in a licensed premises if they are in the company of their parents or guardian. In this case, the complainant was over 18, but she was in the company of her father and was entitled to access the premises without proof of her age.
- The complainant's representative contended that the lack of age identification did not justify the refusal of service in the restaurant. The complainant's father was also refused access without justification. If the respondent operated such a strict policy in relation to proof of age it should have been mentioned on the code of conduct for security.
- She submitted that the complainant's membership of the Traveller community was the only reason service was refused.

#### **4 Summary of the Respondent's Case**

**4.1** The respondent submitted that the complainant was not discriminated against on the Traveller community ground. They submitted that she had been denied access to the restaurant because she was unable to provide proof to security that she was over 18 years. The respondent submitted the following evidence:

- The respondent has a bar and restaurant both with separate entrances. The bar can also be accessed directly from the restaurant. Both the bar and restaurant are licensed under the Licensing Acts..

- The complainant and her father came to the restaurant at about 9 p.m. The security man (Mr. Shane Miller) on duty requested from the complainant proof of her age as he suspected the complainant was under 18 years. The complainant told him she was in fact 18 years of age. Mr Miller then advised her that because of the provisions of the new Intoxicating Liquor Act he must have sight of proof of her age prior to permitting her to enter the premises. Mr. Miller advised her that if she returned with acceptable proof of her age she would then be permitted to enter the premises.
- Mr. Miller contended that at this stage the complainant and her father became agitated and abusive towards him. As a direct result of this behaviour the complainant's father was also refused entry to the premises.
- Mr. Miller agreed that the complainant had sought to speak with the manager. As the complainant had acted in an abusive manner, together with her father, he believed that access to the manager was unnecessary in the circumstances. In any case he had full permission of the management to refuse entry to anyone who could not provide adequate proof they are over 18.
- Mr. Miller stated that it is usual practice to have a security person at the entrance to both the restaurant and bar after 8:30 p.m., but on the night in question the premises was not busy, and he was at the bar door talking to another security man when he saw the complainant at the restaurant door.
- Mr. Miller said that he was working with the Lisheen Bar and Restaurant for 4 to 5 months at the time of the incident. He was given a code of conduct when he started work. The code of conduct provides that no customer should be discriminated against on the grounds of race, creed, colour or ethnic background. Mr. Miller said that he ensures that such customers are not discriminated against. Likewise, Travellers are not discriminated against and are regularly served on the premises.
- Mr. Gareth Dowling senior security person was on duty that night and overheard Mr. Miller's conversation with the complainant. He said that Mr. Miller was correct in seeking proof of age from the complainant.
- Mr. Dowling had assisted in drawing up a code of conduct for security employees, which is in operation for 3 years. He was satisfied that Mr. Miller had acted in accordance with the code of conduct. As far as security is concerned there is no

distinction between the restaurant and bar. Food and alcohol are served in both places. Customers can order drink from the bar while in the restaurant.

- Mr. Dowling also submitted that there is no discriminatory policy in operation against Travellers. He did not recall seeing the complainant or her father in the premises before, but Travellers are regularly served. .
- It was submitted on behalf of the respondent that the restaurant and bar area are fully licensed premises within the meaning of the Licensing Acts. Consequently the respondent must ensure full compliance with the terms of the Intoxicating Liquor Act, 2000 at all times. The licensing laws prohibits the sale of intoxicating liquor to persons under eighteen years old, and it is for this reason that proof of age is sought from customers of either the bar or the restaurant, if they are suspected of being under 18.
- In this case the respondent was justified in refusing entry to the complainant in circumstances where she could not prove she was over eighteen years old.

## **5 Conclusions of the Equality Officer**

- 5.1** The matter referred for investigation turns upon whether or not the complainant was discriminated against contrary to Section 3(1)(a) and 3(2)(i) of the Equal Status Act and in terms of Section 5 (1) 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.

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 Traveller community ground).... A person is treated less favourably than another person is, has been or would be treated. 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.*

- 5.2** A person making an allegation of discrimination under the Equal Status Act, 2000

must first demonstrate that a *prima facie* case of discrimination exists. Prima facie evidence has been described by an Equality Officer as:

*“Evidence which in the absence of any convincing contradicting evidence by the employer would lead any reasonable person to conclude that discrimination had probably occurred.”*<sup>1</sup>

In more recent employment discrimination cases the Labour Court has applied the test and stated:

*“The first question the Court has to decide is whether the claimant has established a prima facie case of discrimination”*.<sup>2</sup>

And in another case stated:

*“...the claimant must first prove as a fact one or more of the assertions on which her complaint of discrimination is based. A prima facie case of discrimination can only arise if the claimant succeeds in discharging that evidential burden. If she does, the respondent must prove that she was not discriminated against on grounds of her sex. If she does not, her case cannot succeed.”*<sup>3</sup>

**5.3** I have identified the key issues for establishing a *prima facie* case as follows:

- (a) is the complainant covered by the discriminatory ground? ( in this case is she a member of the Traveller community?)**
- (b) in what circumstances was the complainant refused service by the respondent on 26 October, 2000.**
- (c) evidence that the treatment received by the complainant was less favourable than the treatment that someone, not covered by that ground, would have received in similar circumstances.**

**5.4** I am now going to examine the issues I have identified above and consider whether the

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<sup>1</sup> Dublin Corporation v. Gibney EE5/1986

<sup>2</sup> The Rotunda Hospital v. Noreen Gleeson DEE003/2000

<sup>3</sup> Dr. Teresa Mitchell v. Southern Health Board (Cork University Hospital) DEE011



complainant has established a *prima facie* case. If these elements are established, the burden of proof shifts to the respondent, meaning that the difference in treatment is assumed to be discriminatory on the relevant ground. In such cases it is not necessary for the complainant to prove that there is a link between the difference in treatment and the membership of the ground, instead the respondent has to prove that there is not.

## **5.5 Issue of Traveller Identity**

In the Equal Status Act, 2000 the Traveller community ground is defined as follows:

*“means the community of people who are commonly called Travellers and who are identified (both by themselves and others ) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland”.*

I am satisfied that the complainant is a Traveller as defined by the Act and satisfies **(a)** above

In relation to **(b)** above I am satisfied that service was refused but the reason for the refusal is in dispute. The next issue for consideration is point **(c)**, that is whether the complainant was treated less favourably than another person not covered by the discriminatory ground, would have been treated in similar circumstances.

- 5.6** The complainant case is that she was refused service for no good reason, and she believe this occurred because she is a member of the Traveller community. The complainant’s case is that there was no reason to refuse her access to the restaurant because she was unable to produce proof of her age. She believes that an age ID should not have been a requirement to have a meal in the restaurant with her father. She submitted that she was over 18 years old and was entitled to service in the restaurant. On the night in question she did not see anybody else being asked for an age ID. She said that she had no intention of having alcohol as she did not drink alcohol and in any event it is the custom among Traveller women not to drink alcohol before they get married. She submits that the only reason an ID was requested from her was because the security man recognised herself and her father as Travellers and didn’t want them in the premises.

- 5.7** The respondent stated that the reason the complainant was refused entry to the restaurant was because she could not produce sufficient proof of her age. The respondent's policy is to refuse entry to anyone who is under 18 years old from about 8:30 p.m. onwards and once security comes on duty. The Licensing Act, 2000 places an onus on publicans to ensure underage drinking does not occur in their licensed premises and imposes heavy penalties on publicans if such underage drinking takes place on their premises. In order to ensure compliance the respondent has introduced a policy of checking identification for persons suspected of being under 18, regardless of whether they are with people who are over 18. Any person who is under 18 is not admitted to the restaurant after 8:30 p.m. The respondent said that he applies this policy both to the restaurant and the bar as there is open access to the restaurant from the bar. Therefore a person could order drink from the bar while in the restaurant. The respondent applies this policy to ensure that persons under 18 years old do not consume alcohol in the restaurant.
- 5.8** In order for the complainant to establish a *prima facie* case of discrimination, she needs to produce evidence to convince me that the respondent did not apply a strict age identification rule to all potential customers of the restaurant whom security believes to be under 18 years old after 8:30p.m. The complainant's evidence is that she was unaware of this policy and that she saw other customers being admitted and they were not asked for proof of age. However she produced no evidence to support her contention that persons suspected of being under 18 were being admitted to the restaurant without proof of age being sought. The complainant gave evidence that she was in the restaurant on several occasions, both with her aunts and on at least 3 occasions with her father and was not asked for proof of her age on any of these occasions.
- 5.9** I am satisfied from the respondent's evidence that he has introduced a stricter control on persons, who are suspected of being under 18 years old, entering the restaurant after security came on duty at about 8:30 p.m. I am also satisfied that this control, a requirement to provide age ID, was introduced following the introduction of the Intoxicating Liquor Act, 2000, which imposes heavier penalties on publicans for allowing persons under 18 to consume alcohol on a licensed premises. I note that this

Act came into operation in July, 2000, so it is likely the complainant did not encounter the stricter rules on her previous visits to the restaurant.

**5.10** I have also noted the complainant's solicitor argument that the complainant was entitled to be admitted to the restaurant as she was in the company of her father and it was not unlawful to admit persons under 18 to a licensed premises in the company of a parent or guardian. I have examined the Intoxicating Liquor Act, 1988, which states as follows:

Section 34(1) of the Intoxicating Liquor Act, 1988, states that:

*"Subject to subsection (2) of this section, the holder of a licence of any licensed premises shall not allow a child to be at any time in the bar of his licensed premises".*

Section 34(2) of the Intoxicating Liquor Act, 1988, states that:

*"It shall not be unlawful for the holder of a licence of any licensed premises to allow a child to be in the bar of his licensed premises at any time (other than a time during which the sale of intoxicating liquor is prohibited under the Act) if such child is accompanied by his parent or guardian".*

I have noted that Part 1V of the 1988 Act which defines a "child" as a person under 15 years. The complainant was clearly over 15 and on the basis of the 1988 Act, it would appear she was entitled to enter the licensed restaurant. However given the provisions of the Intoxicating Liquor Act, 2000 and the penalties which it imposes on the holder of a licensee for breaches of the Act, the licensee is entitled to check for age ID before admitting anyone suspected of being under 18.

The Equal Status Act, 2000 prohibits discrimination on nine ground including family status. The Act provides, inter alia, that:

*"Family status means being pregnant or having responsibility-*  
*(a) as a parent or as a person in loco parentis in relation to a person who has not attained the age of 18 years, or ....."*

As the complainant is not a parent, or a person in *loco parentis* in relation to a person under 18 years, she is not covered by the definition of family status under the Equal

Status Act, 2000 and cannot pursue a claim in relation to this discriminatory ground. Since the complainant is over 18 years the family status ground under the Equal Status Act does not apply to the complainant's father in these circumstances, had he taken a case under the Act.

- 5.11** In considering this case I have looked at other decisions under the Equal Status Act, 2002 in which age ID was considered. In the case of **Coffey & Others v the Blasket Public House DEC-S2001-010**, the Equality Officer held it was reasonable for a publican to insist that customers produce age cards provided the policy is applied equally to all customers including Travellers and non-Travellers. In the case of **Burke and Others v The Bar Rumba DEC-S2002-072/076** the Equality Officer found on balance that a request to an age ID was used as a device to discriminate against Travellers. In the case of **Delaney and Others v Paris Texas Bar, DEC-S2002-057/060** the Equality Officer concluded that that the respondent operated a very strict age ID policy and that the doorman in refusing admission to Travellers who could not produce such ID was acting in accordance with the policy.

Having examined all the evidence in this case, I am satisfied the respondent introduced stricter controls following the introduction of the Intoxicating Liquor Act, 2000 and applied these controls to all customers suspected of being under 18. Likewise I am satisfied that the security man, Mr. Miller, was acting in accordance with management policy when he asked the complainant for age ID. Therefore I find that the complainant has not established that she was treated less favourably than other customers in similar circumstances.

- 5.12** I also examined the respondent's policy in relation to serving Travellers. I note from the

complainant's own evidence that she was admitted to the respondent's restaurant on several occasions both in the company of her aunts and also with her father. All these persons are members of the Traveller community. I also note from the complainant's evidence that Travellers personally known to her have been regularly served in the respondent's premises. However I have not been provided with any evidence which could lead me to believe that the respondent's policy in relation to serving Travellers has changed. I am therefore satisfied from the complainant's own evidence that the respondent does not operate a discriminatory policy regarding serving Travellers.

- 5.13** Therefore I find on the balance of probabilities that the complainant was not unlawfully discriminated against. I find that she was refused access to a service because she did not produce age identification and that non Traveller customers would have been refused service in similar circumstances. Consequently I find that the complainant has not succeeded in establishing a prima facie case of discrimination.

## **6 Decision**

- 6.1** I find for the foregoing reasons that the Lisheen Bar and restaurant did not unlawfully discriminate against Ms. Mary Delaney on 26 October, 2000 on the Traveller community ground.

Marian Duffy  
Equality Officer  
23 December, 2002