

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 DECISIONS NO: DEC-S2002-023/024/025

Catherine Dooley, Bridget Dooley & Margaret Dooley

V

The Cutting Crew Hairdressing Salon, Cork

File No. ES/2001/501-503

Date of Issue 25/3/2002

Table of Contents	Page No.
Summary	4
Dispute	6
Summary of Complainant's Case	6
Summary of Respondent's Case	7
Evidence Provided by Parties	7
Matters for Consideration	15
Conclusions of the Equality Officer	18
Decision	22

Equal Status Act 2000

Summary of Decision DEC-S2002-023/024/025

Catherine Dooley, Bridget Dooley and Margaret Dooley

(represented by Eamonn Murray & Co., Solicitors)

V

**The Cutting Crew Hairdressing Salon, Cork
(represented by P.J.O'Driscoll & Sons., Solicitors)**

Headnotes

Equal Status Act, 2000 - Direct discrimination, Section 3(1)(a) - Traveller community ground by association, section 3(1)(b) - Traveller community ground, Section 3(2)(i) - Disposal of goods and supply of services, Section 5(1) - Refusal of service in a hairdressing salon - prima facie case - refused because of previous conduct - Activities not discrimination, Section 15 (1).

Background

This dispute concerns a claim by the complainants (a) that they were discriminated against by the proprietor of the Cutting Crew hairdressing salon, contrary to the Equal Status Act, 2000, on the grounds that they are members of the Traveller community or (b) that they were discriminated against because they were associated by the respondent with members of the Traveller community who had previously caused trouble on the respondent's premises. The complainants allege that they were discriminated against by the respondent when they were refused service in the salon on 29 May, 2001. The respondent denies that the complainants were discriminated against and states that neither Bridget nor Margaret Dooley sought service on the date in question and the only reason service was refused to Catherine Dooley on 29 May, 2001 was because of previous unacceptable behaviour on her part, in the salon.

Conclusions of the Equality Officer

The Equality Officer found that two of the complainants, Bridget and Margaret Dooley had not sought service on the date in question and were not, therefore, discriminated against. She also found that the third complainant, Catherine Dooley was not discriminated against by association with other members of the Traveller community. The Equality Officer was satisfied that she, Catherine Dooley, had in fact, been the one who had caused trouble previously in the salon by behaving in an

unacceptable manner. The Equality Officer also found that, for the same reason, Catherine Dooley had not established a prima facie case of direct discrimination that she was refused service because she was a member of the Traveller community.

Decision

The Equality Officer found that the complainants were not discriminated against on the Traveller community ground, either directly or by association, contrary to Section 3(1)(a), 3(1)(b) and 3(2)(i) of the Equal Status Act 2000 and in terms of Section 5(1) of that Act.

Complaint under the Equal Status Act 2000
DEC-S2002-023/024/025

Catherine Dooley, Bridget Dooley and Margaret Dooley
(represented by Eamonn Murray & Co., Solicitors)

V

The Cutting Crew Hairdressing Salon, Cork
(represented by P.J.O'Driscoll & Sons., Solicitors)

1. Dispute

1.1 This dispute concerns a claim by Catherine Dooley, Bridget Dooley and Margaret Dooley that they were discriminated against by the proprietor of the Cutting Crew hairdressing salon, Cork, contrary to the Equal Status Act, 2000, in that, on 29 May, 2001, they were refused service in the salon either (a) on the grounds that they are members of the Traveller community or (b) by association with members of the Traveller community who had caused trouble in the salon previously. The respondent denies that discrimination occurred. The complainants referred a claim to the Director of Equality Investigations on 29 August, 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 me for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part III of the Equal Status Act.

2 Summary of Complainants' Case.

2.1 The complainants state that they went to the Cutting Crew salon between noon and 12.30 p.m. on 29 May, 2001. Catherine Dooley asked to have her hair highlighted and was refused service by the proprietor. She asked for a future appointment and was again refused. When she asked why she could not have her hair done she was asked to leave the premises. It is the complainants' contention that they were not served because they themselves are Travellers or because the respondent associates them with Travellers who had previously caused trouble in his premises.

3. Summary of Respondent's Case

3.1 The respondent states that Catherine Dooley had first visited the salon approximately two years ago, and asked to have her hair done. The proprietor could not see to her at that time and offered her an appointment. He states that she then became abusive towards him and began shouting obscene comments at him in front of staff and clients. He asked her to leave the premises. On a number of occasions from that date Catherine Dooley and some associates of hers had abused him and members of his staff. He refused Catherine Dooley service as a result of her unacceptable behaviour and for no other reason. He had fully stated his reasons to her for refusing her service on 29 May, 2001 and she and her companions had immediately become aggressive and abusive.

4. Evidence of the Parties

4.1. Complainant's Evidence

Written evidence submitted prior to hearing

The representative for the complainants submitted written statements on behalf of the complainants to the effect that;-

Catherine Dooley;-

- Attended at the Cutting Crew on 29 May 2001 to obtain hairdressing services
- She asked to have her hair highlighted or to make an appointment to have this done
- A gentleman came out of a back room. He appeared to be angry but said nothing.
- When she asked him about having her hair done he told her that they were booked out
- She asked to make an appointment for the following week or as soon as possible
- She was told that the salon was for “regulars only”
- She asked the man for his name, but he did not reply
- Bridget Dooley asked a member of staff for the man’s name
- Eventually he gave them his name and asked them to leave which they did

that Bridget Dooley;-

- confirms Catherine Dooley’s written evidence

and that Margaret Dooley

- also confirms Catherine Dooley's written evidence

Oral evidence given by the complainants at the Hearing

Catherine Dooley stated that:-

- she is a Traveller. Her family have historically been nomadic and they now live on a local authority Traveller site in Ballincollig, Carrigrohan, Cork. They have been settled there for 10 years. They have a distinctive accent and style of dress, particularly in relation to jewellery.
- she has never caused trouble anywhere, including in the Cutting Crew salon.
- she was never told by the respondent that she had caused trouble previously.
- there were only 2 clients in the salon on 29 May, 2001, and there was capacity for more clients.
- she was not abusive on the date in question.
- the respondent told them to leave the premises.
- she had gone to Peter Marks, Midleton, earlier that day but they could not fit her in for an appointment for 3 days and she could not wait as she was in a hurry to have her hair done so she decided to try the Cutting Crew.
- She was in the vicinity of the Cutting Crew salon on 29 May, 2001 because her father, who had driven her to Midleton and back, had stopped to get chips from the chip shop adjacent to the salon.
- she normally gets her hair done in Peter Marks, Midleton, by appointment, and from time to time in "Una's" a salon which is some distance away from her home.
- she has had her hair done (highlighted) 4 times in 4 years (average of once a year)
- she was in a hurry to have her hair done on the day in question as she was going to attend an engagement celebration, of a "friend of a friend" in a "few weeks" from the 29 May. She was having her hair done early in case there were any problems with it and she could have them sorted out in time for the celebration.
- she recalled being in the salon approx. 3 years ago with her now sister-in-law who then wished to have her hair done for her wedding. They did not have an appointment. They were refused service and they were both shocked and horrified at the time that they were refused for no apparent reason.
- she confirmed that her sister-in-law, who was refused service some three years ago, uses the salon nowadays, as does her brother (who is married to the sister-in-law in

question) and their child. The latter was in the salon with his father to have his hair done two days before Christmas, 2001.

- she often passes by the salon as it is located in an area which must be passed in order to get to and from the halting site where she lives. Relatives of hers had worked in the chip shop adjacent to the salon until recently and she had visited them in the chip shop regularly.
- she was shocked, horrified and embarrassed when she was refused service.
- the incident related by the two staff members of the Cutting Crew, whereby she had allegedly mocked and jeered them when they were returning to the salon from lunch, had never happened.

Bridget Dooley (Catherine Dooley's sister) stated that;-

- she is also a Traveller (for the same reasons given by her sister) and is living with her family on the local authority Traveller site in Ballincollig.
- she did not speak on the day in question, 29 May, 2001 except to ask one of the staff members in the salon for the name of the man at the desk when he refused her sister, Catherine Dooley, service.
- she had not asked for service, she had not had a chance to do so.
- she never has her hair done in a salon, she does it herself at home, but decided on the day in question that she would like a change (coppertones and layering).
- she has not had her hair done since the 29 May, 2001 as she does it herself.
- she was with her sister in Middleton on the morning of 29 May, 2001. She had not gone to Peter Marks in Middleton but had decided to go to the Cutting Crew with her sister when her father stopped for chips at the chip shop adjacent to the Cutting Crew salon.
- Frank Walsh, the proprietor of the Cutting Crew salon was not in the shop when they entered but was "out the back".
- some relatives of the complainants worked in the chip shop beside the salon so they had often visited the chip shop. The relatives no longer worked there.
- she had been shocked, embarrassed and upset when they were refused service in the Cutting Crew.

Margaret Dooley (cousin to Catherine and Bridget Dooley) stated that;-

- she did not speak at all on the day in question, 29 May, 2001.

- she couldn't understand why her hair couldn't be done.
- she wanted highlights done on the day in question.
- she had been to Una's salon earlier that day.
- she normally goes to Una's salon.
- she could not remember how she met up with her cousins on the day in question, but they live close together.

4.2 Respondent's Evidence

Written evidence submitted prior to the Hearing:-

The representative for the respondent submitted a written statement by Frank Walsh, proprietor of the Cutting Crew salon to the effect that:-

- Approximately two years ago Catherine Dooley went into the salon and asked to have her hair done.
- She did not have an appointment and the salon was very busy.
- She was offered an appointment for a later date and she insisted on having it done there and then.
- She verbally abused Mr. Walsh and in a raised voice used foul language to him.
- He asked her to leave, escorted her to the door and she left.
- The staff of the salon and customers had heard the commotion caused by Catherine Dooley.
- Catherine Dooley returned to the salon about six months later and was refused service because of her previous unacceptable behaviour.
- On another occasion two staff members were returning to the salon from lunch when Catherine Dooley, who was seated near the salon began to shout insults at them.
- On 29 May 2001 Catherine Dooley and the other two complainants entered the salon. Mr. Walsh, who was attending to a client at the time, went to the counter to deal with them.
- Catherine Dooley asked to have her hair highlighted and he refused her service because of her previous unacceptable behaviour. Neither of the other two

complainants asked for service of any kind. All three became angry and abusive. As Mr. Walsh escorted them to the door they shouted that he “would pay for this”.

- On 11 July, 2001 two girls entered the salon and asked to have their hair done. Mr. Walsh was busy at the time and asked them to ring him in half an hour and he would set up an appointment for them. The girls stated that they could not ring him as they had no credit in their mobile phones. One of the girls scrunched up the business card which Mr. Walsh had given to her and threw it on the counter stating “I know all about your problems”. The girls in question were “giggling, laughing and messing” throughout.
- On 7 August, 2001 one of the girls who had been in the salon on 11 July returned to the salon and asked to have her hair permed. When Mr. Walsh said that he did not want “a repeat performance of her last visit” she started to shout that she had never been in the salon before and that “we’ll be back”.
- Mr. Walsh recognised the girls from 11 July and 7 August as being associates of Catherine Dooley’s as he had seen them together with her on several occasions when she passed by the salon.

Written evidence submitted at the Hearing

Mr. Walsh submitted a letter written by one of the clients, Ms. Kennedy, who was one of the two clients who were present in his salon on 29 May, 2001 when the three complainants entered the premises. The letter states that Mr. Walsh and his wife were tending to the clients when the complainants entered the salon and that “suddenly there was a lot of commotion at the front door”, that “there was shouting and abusive language” and that a young girl had shouted at Mr. Walsh “you’ll pay for this”. The letter states that Mr. Walsh dealt with the situation very professionally and that he apologised to the clients for the noise and commotion.

Oral evidence given by the respondent and witnesses for the respondent at the Hearing

Frank Walsh, proprietor of the Cutting Crew salon confirmed the evidence given in his written statement and also stated that:-

- He had never had problems with any client prior to meeting Ms. Catherine Dooley, and has only ever had problems with her and certain of her associates.
- On 29 May 2001 he was attending a client, Ms. Kennedy, in the salon, near the desk when Catherine Dooley and the other complainants had entered the salon.
- He immediately went to speak with them as, based on previous experience, he did not want a scene to be created by Catherine Dooley.
- following the incident he contacted his solicitor as he was very unnerved by Catherine Dooley's statement i.e. "we'll be back". He did not know what she meant by this but regarded it as a threat of some sort.
- neither of the other two complainants had asked for any service and had left the premises with Catherine Dooley.
- The two girls who called to his salon on 11 July, per his written evidence, are associated with Catherine Dooley. He explained that "associated" as per his written statement means that he had seen them in her company on several occasions as they passed the salon.
- He only became aware that Catherine Dooley was a Traveller in the course of her first visit to the salon as, when she began shouting and verbally abusing him, her accent became very pronounced, as a result of which he then recognised her as a Traveller.
- He does not have a policy of refusing service to any client or group of clients and his only reason for refusing service to Catherine Dooley was because of her previous bad behaviour.
- He has served Travellers in the past and has, in fact, served members of Catherine Dooley's family i.e. her sister (not Bridget Dooley), brother, nephew and sister-in-law. He recognises her sister because they are very alike. (This was confirmed by Catherine Dooley).
- He served Catherine Dooley's brother and his son a few days before Christmas, 2001
- He recognises Travellers occasionally because of their accent or dress. Otherwise he would not know them from other clients. He has never refused service to any client because they were members of the Traveller community.
- Mr. Walsh produced an appointment book showing that the two clients named in his written statement were booked in to be dealt with at the time of the incident on 29 May, 2001.

Ms. Paula Collins, employee, The Cutting Crew Salon

Ms. Collins stated that,

- on 29 May, 2001 she was down towards the back of the salon, dealing with towels etc. when she heard a commotion (shouting and roaring) coming from the counter area.
- When she looked towards the counter area she could see that Catherine Dooley was shouting but she couldn't clearly hear what was being said. She returned to what she was doing.
- Frank, the owner, knew Catherine Dooley from previous visits that she had made to the salon when she had been abusive towards him.
- She had not clearly seen the other two girls on 29 May, 2001
- On previous occasions she, Paula, had seen Catherine Dooley in the salon and had heard her being abusive to Frank, the owner. On the first such occasion, about two years ago when Catherine Dooley had become abusive (using foul language), she had tried to distract the customers to take away from the tension created.
- Catherine Dooley, following her first visit had called again some six months later and when refused service had become very abusive and was shouting and roaring at Frank. The latter had politely asked her to leave.
- On another occasion she, Paula, and another employee of the salon, Noreen, were returning to the salon from lunch. Catherine Dooley was seated near the chip shop adjacent to the salon and began shouting at them and insulting them in a sarcastic tone of voice.

Ms. Noreen O'Shea, employee, Cutting Crew Salon

Ms. O'Shea stated that:-

- She was tidying up around the salon on 29 May, 2001 when the three complainants entered the salon.
- Catherine Dooley asked to have her hair highlighted.
- Frank the owner was tending to a client near the front of the salon. He went to the counter area. When he refused service to Catherine Dooley she started roaring at him. Bridget Dooley asked her for Frank's name. Frank told Ms. O'Shea to give Bridget Dooley one of his business cards.
- As the complainants left, Catherine Dooley was still shouting
- Ms. O'Shea recalled that Catherine Dooley had been in the salon on two occasions prior to 29 May, 2001. On each occasion she had been shouting and swearing at the

owner in a very loud voice. On each occasion Frank, the owner had remained calm and professional, and had not raised his voice.

- Ms. O'Shea stated that it was Catherine Dooley who had shouted insults at both herself and Ms. Collins when they were returning to the salon from lunch one day. They had clearly seen and heard her. This was prior to 29 May, 2001

Ms. Audrey Walsh, wife of proprietor of Cutting Crew Salon

Ms. Walsh stated that:-

- she was in the salon on 29 May, 2001 when the complainants entered. Both she and her husband were dealing with clients at the time.
- Frank, her husband, went to the counter. While she did not hear the initial conversation between her husband and Catherine Dooley she gathered that Catherine Dooley was refused service because she heard her shout and swear at Frank.
- She had been aware that some time before 29 May 2001 her husband had had problems with one individual who had become abusive towards him. He had told her about the person in question because he was upset by the language and abuse this person had used.
- She could not say that the person Frank had told her about and Catherine Dooley were the same person until after the incident on 29 May, 2001 when Frank told her that they were the same person.
- Her husband had remained calm and professional throughout on 29 May, 2001. He always had a calm demeanour

5 Matters for consideration

5.1 The matter referred for investigation turns upon whether or not the complainants were discriminated against contrary to Section 3 (1)(a) or 3(1)(b) 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(1)(b) of the Equal Status Act 2000 states that *"discrimination shall be taken to occur where a person who is associated with another person is treated, by*

virtue of that association, less favourably than a person who is not so associated is, has been or would be treated, and similar treatment of that other person on any of the discriminatory grounds would, by virtue of paragraph 3 (1)(a), constitute discrimination”.

5.4 Section 3 (2) provides that: *"As between any two persons , the discriminatory grounds (and the description of those grounds for the purposes of this Act) are:*

..... (i) that one is a member of the Traveller community and the other is not."

5.5 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 ".*

5.6 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 complainants claim that they were discriminated against either (a) because they are members of the Traveller community or (b) because the respondent associates them with members of the Traveller community who had caused trouble in his premises, while the respondent maintains that he acted in accordance with section 15 (1) of the Equal Status Act 2000.

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

5.8 Essentially this is the approach provided for in the Burden of Proof Directive (Council Directive 97/80/EC). In adopting this approach I am conscious that the Directive is not directly applicable to the complaint in hand under the Equal Status Act, 2000, but I consider that the Directive has persuasive effect in discrimination law. It is notable that the Labour Court and Equality Officers applied the practice of shifting the burden of proof in discrimination cases long before any European Community caselaw required them to do so (as far back as 1983 (*Bailieborough Community School v Carroll*, DEE 4/1983 Labour Court) and 1986 (Equality Officer: *Gibney*¹), and that this was a consistent practice across a spectrum of cases².

European Court of Justice caselaw did not address the issue of the shift in the burden of proof for the first time until the *Danfoss*³ and *Enderby*⁴ cases so this was not done purely in implementation of Community law. It seems to represent an indigenous development in Irish discrimination law, which was in advance of Community law. There is no reason why it should be limited to employment discrimination or to the gender ground.

¹ *Dublin Corporation v Gibney (EE5/1986)*

² *Curtin, Deirdre, Irish Employment Equality Law, 1989, P. 222 et seq.*

³ *Case no. C-109/88*

⁴ *Enderby v Frenchay Health Authority and Sec. Of State for Health, C-127/92*

The practice of shifting the burden of proof in discrimination cases was also applied in very clear terms by the Supreme Court in *Nathan v Bailey Gibson*⁵ and by the High Court in *Conlon v University of Limerick*⁶. While these were both indirect discrimination cases, it seems that the principle should by logical extension apply to direct discrimination cases if it applies to indirect discrimination cases.

5.9 In considering what constitutes a prima facie case, I have examined definitions from other sources. In *Dublin Corporation v Gibney (EE5/1986)* prima facie evidence is defined as: "*evidence which in the absence of any credible contradictory evidence by the employer would lead any reasonable person to conclude that discrimination had occurred.*"

In article 4 of the *EC Burden of Proof Directive (Council Directive 97/80/EC)* the following definition appears: "*when persons who consider themselves wronged..... establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination*".

In *Teresa Mitchell v Southern Health Board, (DEE011, 15.02.01)*, the Labour Court interpreted article 4 of the EC Burden of Proof Directive as follows: "*This indicates that a claimant must prove, on the balance of probabilities, the primary facts on which they rely in seeking to raise a presumption of unlawful discrimination. It is only if those primary facts are established to the satisfaction of the Court, and they are regarded by the Court as being of sufficient significance to raise a presumption of discrimination, that the onus shifts to the respondent to prove that there was no infringement of the principle of equal treatment. Applied to the present case, this approach means that the appellant must first prove as fact one or more of the assertions on which her complaint of discrimination is based.*"

6. Conclusions of the Equality Officer

6.1 In this particular case the complainants claim that they were discriminated against either (a) on the basis of their membership of the Traveller community or (b)

⁵ 1998 2IR 162

⁶ 1999 2 ILRM 131

that they are associated, by the respondent, with members of the Traveller community who had caused trouble in the respondent's premises, when they sought and were refused service on 29 May, 2001. I must now consider whether the refusal of service was such that non-Travellers or persons not associated with members of the Traveller community, in the same circumstances would be treated more favourably.

6.2 I am satisfied that each of the three complainants is a member of the Traveller community in accordance with (a) at 5.6 above. Catherine Dooley has provided written and oral evidence of specific refusal of service to her on 29 May, 2001 by the respondent, which has been confirmed by the respondent, and this fulfills (b) at 5.6 above.

6.3 In written evidence and subsequently in oral evidence the other two complainants, Bridget and Margaret Dooley, stated clearly that they did not request service from the respondent on 29 May, 2001. It was only after an intervention by their representative in the course of the Hearing, in which he indicated some confusion on the part of his clients that any mention was made of a request by Catherine Dooley on behalf of the other two complainants, to have their hair done on 29 May, 2001. I am satisfied that no such request was made. As Bridget and Margaret Dooley did not request service they could not have been refused service and they do not therefore satisfy (b) or key element (c) at 5.6 above. They have not, therefore, established a prima facie case of discrimination.

6.4 In relation to Catherine Dooley in order to establish whether key element (c) at 5.6 above has been satisfied it is necessary to examine the evidence given by Catherine Dooley.

6.5 Ms. Dooley stated in her oral evidence that both she and her sister-in-law had attended at the salon three years ago, without an appointment, to have their hair done for the sister-in-law's wedding. They had been refused service and were "shocked and horrified" at the refusal. She went on to state that the same sister-in-law now uses the salon, as do her husband and child. Given the evidence of all three complainants about the great importance placed by the Traveller community on events

such as engagements, and the great importance which they themselves placed on preparing for an event involving “a friend of a friend” several weeks into the future, I find that it stretches the bounds of credibility to accept that a bride-to-be from their community would attend at a hairdressing salon to have her hair done, for what is accepted as one of the most important events in a person’s life, without having taken the precaution of first making an appointment. Even if one were to accept that this was the situation, one would find it difficult to accept that it came as a terrible shock to the bride-to-be that she could not be attended to on demand. To expect instant service from many service providers, hairdressers in particular, is ambitious, lacking in foresight and risky for Travellers and non-Travellers alike.

6.6 I also find it difficult to accept that a person who was purportedly refused service at such an important time in their life, and who was so shocked and horrified by the experience, could or would, return to the premises in question at a later date for service, and/or have their husband and child attend at the offending premises. Also, if Catherine Dooley was implying that she and her sister-in-law were refused in the first instance because of their membership of the Traveller community, no plausible reason was put forward by her as to why the respondent is now providing service to the same lady, given that her status as a Traveller has not changed in the interim.

6.7 Ms. Dooley also states in evidence that she could not have her hair done immediately in Peter Marks on the day in question and that she could not wait three days for an appointment in Peter Marks as she was in a hurry to have her hair done, but that she requested an appointment when she attended at the Cutting Crew salon. She was, therefore, refused immediate service in Peter Marks but did not, apparently, regard the refusal on their part as discriminatory. Neither did she appear to have any difficulty waiting for an appointment in the Cutting Crew, which runs contrary to her statement that she could not wait for an appointment (in Peter Marks) as she was in a hurry to have her hair done.

6.8 Given that Ms. Dooley has her hair done once a year on average it seems odd that, once she had decided to have it done in May, 2001, there was such urgency about it on her part. I do not accept that she was unable to accept the appointment with Peter Marks for three days into the future from 29 May, 2001 for the reasons

which she stated. I am satisfied that the appointment in question would have left Ms. Dooley with ample time to deal with any difficulties arising from the treatment requested.

6.9 In summary I find that the evidence presented by Catherine Dooley is completely inconsistent and entirely lacking in credibility. In contrast I found the evidence of the respondent and the witnesses on his behalf to be consistent, credible, compelling and in relation to the behaviour of Ms. Catherine Dooley, somewhat disturbing.

6.10 I find, therefore, that, on the balance of probabilities, in relation to key element (c) at 5.6 above, the third complainant, Catherine Dooley, was refused service because of earlier, ongoing, unacceptable behaviour on her part. I am also satisfied that any person, whether a Traveller or a non-Traveller, would, or could, be refused service in the same circumstances. As the refusal of service by the respondent was due to the behaviour of Catherine Dooley alone, I find that she was not discriminated against either by association with Travellers who had previously caused trouble in the respondent's salon, or directly, because she herself is a member of the Traveller community.

6.11 I feel that it is important to point out that section 3(1)(b) of the Equal Status Act allows for situations whereby a person is discriminated against because of their association with another person, and similar treatment of that person *on any of the discriminatory grounds* would constitute discrimination under the Act. In this particular case the complainants do not claim that they were discriminated against purely by association with other Travellers, but rather with other Travellers who caused trouble for the respondent. This is not discrimination by association on the Traveller ground, but is, instead, association with unacceptable behaviour on the part of others. Section 3 (1)(b) clearly does not cover this type of situation. The complainants, in their evidence, seem to be implying that the respondent is confusing them for Travellers who caused trouble in the respondents premises. That is a different matter entirely and, for the reasons stated above, is one which I do not accept.

6.12 In conclusion, taking all of the foregoing into consideration, I am satisfied (i) that Bridget and Margaret Dooley did not seek service on 29 May, 2001 and could not, therefore, have been refused service. I find that they were not, therefore, discriminated against. I am satisfied (ii) that Catherine Dooley was refused service because of her own previous unacceptable behaviour in the respondent's premises. Any reasonable person would, or could, refuse service in similar circumstances to any person, whether they were a Traveller or a non-Traveller. I find that Catherine Dooley has not, therefore, established a prima facie case of direct discrimination, or discrimination by association. I find that the respondent acted in accordance with section 15(1) of the Equal Status Act 2000 in refusing service to Catherine Dooley.

Decision

I find that the complainants were not discriminated against either (a) on the Traveller community ground or (b) on the Traveller community ground by association contrary to Section 3(1) and 3(2)(i) of the Equal Status Act and in terms of Section 5(1) of that Act.

Dolores Kavanagh

Equality Officer

25 March, 2002