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**Equal Status Act 2000**

**Equality Officer Decision  
DEC-S2002- 021 - 022**

**Mr. Andrew Cash**

**Mrs. Kay Cash**

(represented by John M Foley & Co., Solicitors)

**V.**

**Mr. Rory Deane, Deane's Pub**

(Represented by Peter G. Crean & Co., Solicitors)

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**Summary of Decision DEC-S2002-021 - 022**

**Mr. Andrew Cash & Mrs. Kay Cash**

**((represented by John M Foley & Co., Solicitors))**

**V.**

**Mr. Rory Deane, Deane's Pub**

**(Represented by Peter G. Crean & 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 pubs, prima facie case - Risk of criminal or disorderly conduct, Section 15(1), - Action taken in good faith, Section 15(2), Section 3(2)(j) - victimisation

**Dispute**

The dispute concerns a claim by Mr. Andrew Cash and Mrs. Kay Cash that they were discriminated against by Mr. Rory Deane, Proprietor of Deane's Pub, on the Traveller community ground in terms of Sections 3(1)(a), and 3(2)(i) of the Equal Status Act, 2000, in that they were not provided with a service which is generally available to the public, contrary to Section 5(1) of that Act.

**Background**

The complainants case is that they were refused service in the respondent's bar on the 2 December, 2000 and asked to leave the pub. The complainants contend this occurred because they are members of the Traveller community. Mr. Cash was a regular in the pub for about six months and he contends that the respondent did not want other Travellers including his wife and sons in the pub. On 2 December, 2000 when his wife came into the pub, he was asked to leave and to take his wife with him. The respondents case is that Mr. Andrew Cash had too much to drink when he came into the premises on 2 December, 2000. He was asked to leave the pub which he did and his wife Mrs. Kay Cash also left. Mr. Cash had been regularly served in the pub, but on occasions had too much to drink and was a nuisance to other customers.

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

The Equality Officer found that the complainants did establish a prima facie case of discrimination. She also found that Mr. Cash was not asked to leave because he was drunk, but on the balance of probabilities that Mr. Cash was asked to leave and to take Mrs. Cash with him because the respondent operated a restriction on the number of Travellers allowed in the pub. The Equality Officer held that the respondent did not succeed in rebutting the inference of discrimination raised by the complainants, and concluded that the only reason the complainants were refused service and asked to leave the pub was because they are members of the Traveller community.

### **Decision**

The Equality Officer concluded that the complainants were unlawfully discriminated against, contrary to the provisions of Section 3(1) and 3(2)(i) of the Equal Status Act, 2000 and in terms of section 5(1) of that Act, and they were not discriminated against contrary to Section 3(2)(j) of that Act. She awarded Mrs. Cash €1,200 for the distress and embarrassment suffered by her as well as the loss of amenity to her on the night in question and €400 to Mr. Cash for the loss of amenity to him that night. The Equality Officer also ordered the respondent to put in place a code of practice which should include the rules which apply to all customers seeking service, the code of behaviour expected from customers, and the sanctions which may apply in the event of a breach of the code.

## **1 Dispute**

- 1.1** This dispute concerns a claim by Mr. Andy Cash and Mrs. Kay Cash that they were discriminated against by Mr. Rory Deane, Deane's Pub contrary to the Equal Status Act, 2000, on the grounds that they are members of the Traveller community. The complainants alleges that the respondent discriminated against them in terms of Section 3(1)(a), 3(2)(i) and 3(2)(j) and of the Equal Status Act, 2000.

## **2 Background**

- 2.1** The complainants case is that they were refused service in the respondent's bar on the 2 December, 2000 and asked to leave the pub. The complainants contends this occurred because they are members of the Traveller community. Mr. Cash was a regular in the pub for about six months. He contends that the respondent did not want other Travellers, including his wife and sons in the pub. The respondents case is that Mr. Andrew Cash had too much to drink when he came into the premises on 2 December, 2000. He was asked to leave the pub which he did and his wife Mrs. Kay Cash also left. Mr. Cash had been served in the pub but on occasions had too much to drink and was a nuisance to other customers.

## **3 Summary of the complainants case**

- 3.1** The complainants stated that they are Travellers living in Bunclody with their family for the past 4 years.

They stated the following in evidence to support their case:

- Mr. Andy Cash said he was a regular in Deane's pub for about 6 months. He went there 3 or 4 times per week. Mr. Rory Deane, the Publican, told him, shortly after he started drinking there, that if any other of "your people" come in he would not be allowed in again. Mr. Cash asked if his sons or wife could drink in the pub and Mr. Deane told him they would not be allowed.
- Subsequent to this conversation the complainants two sons were refused service in the pub even though they do not drink. One son used to regularly collect Mr. Cash from the pub, but he never came into the pub because he knew he wouldn't be served.
- On one occasion Mr. Deane mentioned to Mr. Cash that two of "your people" broke something in the toilet of the pub. Mr. Cash believes that because of the manner in

which Mr. Deane mentioned the broken toilet basin to him that Mr. Deane was prejudiced against all Travellers.

- Mr. Cash said that there was a large Traveller population in Bunclody, but apart from one other regular Traveller customer, he saw very few Travellers in the respondent's pub, except on one occasion when he saw three or four Travellers there.
- On 2 December Mr. Cash went to the pub at about 9 p.m. His wife, Mrs. Kay Cash came in about half an hour later with a non-Traveller local woman. This woman went to the counter and ordered drink for both herself and his wife. They did not join Mr. Cash's company in the bar.
- Mr. Cash stated that immediately after Mrs. Cash's arrival in the pub Mr. Deane came over to Mr. Cash and said "you know the story, you have to leave". He said that Mr. Deane asked him to leave and to take his wife with him. Mr. Cash said that he knew he would be asked to leave once his wife came into the pub. Mr. Deane did not make him aware of the reasons, but Mr. Cash said it was the first time he and his wife were in the pub and he believes this was the reason he was asked to leave.
- Mrs. Cash said she was in the pub for the first time on Thursday 30 November with two non-Traveller friends. They arranged to meet there again on 2 December, 2000. At about 9:30 she came into the pub with her friend. She was having a drink when her husband came over to her and said they had to leave. Mrs. Cash denied that Mr. Cash had any drink taken before he came into the pub.
- After the complainants left the pub they drove to Kildavin and were served in a pub there.
- Mr. Cash denied that he was drunk in the respondent's premises on a regular basis. He said at the week-ends he would drink about seven or eight pints and some shorts but he was never drunk. Mr. Deane never asked him to leave the pub early, but he usually left before closing time.
- The complainants representative submitted that the respondent operated a limit on the number of Travellers he was prepared to serve and for this reason he didn't want Mrs. Cash or her sons in the pub, and the fact that Mr. Cash was asked to leave on the first occasion that both were in the pub supports the complainants' contention that a discriminatory policy in relation to the number of Travellers admitted to the pub was operated by the respondent.

## 4 Respondents Case

4.1 The respondent stated the following in evidence:

- Mr. Rory Deane said that his father owned the pub up to last year when the ownership was transferred to him. He knows Mr. Cash as a Traveller as he had been a regular in the pub for about 6 months.
- The first night Mr. Deane saw Mr. Cash in the pub he told him he was welcome provided he behaved himself like other customers. He knew Mr. Cash was not served in other pubs in the town, but he didn't know the reason.
- He said that Mr. Cash tended to drink too much as he drinks very fast. When he drinks too much he is unsteady on his feet, talks a bit loud and is a nuisance to other customers. Mr. Cash always had a pint and short together and because of his drinking habit he got drunk quickly. The customers in his company who were non-Travellers encouraged him to drink because they liked to see him get drunk.
- About 2 nights before 2 December, 2000 Mr. Cash was drunk on the premises. He didn't cause a disturbance nor was there any trouble getting him to leave the premises at closing time.
- On 2 December, 2000 Mr. Deane said that he saw Mr. Cash coming into the premises. He was served drink by Lorna, the barperson, he is not sure how many drinks were served to him. Shortly after Mr. Cash coming in Mr. Deane noticed that he had too much to drink and he called him aside asked him to leave. He believed that Mr. Cash had consumed alcohol before he came into the premises. He said that in fairness to Mr. Cash he caused no problem on the night and he left immediately without finishing his drink. He knew Mrs. Cash was in the pub but he didn't mention anything about her having to leave. He assumed she would also leave with Mr. Cash.
- Mr. Deane said that he saw Mrs. Kay Cash in the pub a couple of nights previously and he inquired from the barman if he knew her. The barman identified her. He said that he was not prone to making judgments about people, but when he saw a strange person in the pub he asked about their identity.
- In relation to the broken sink in the toilet, he said three young Travellers were responsible and it happened during a festival in June or July. The complainant was not on the premises when it happened. People enquired about it and that is how Mr. Cash became aware of what happened.

- He denied that he discriminated against the complainants because they are Travellers. He serves Travellers. One Traveller comes in 5 to 6 nights per week and at the weekend there would be 10 to 12 Travellers in the pub. He has no limit imposed on the number of Travellers allowed into the pub.
- The only reason Mr. Cash was asked to leave was because he was drunk and he is not barred from the premises. He said that he would have treated non-Traveller customers in the same way if they were drunk. He treats all customers equally.
- If customers are drunk, loud or falling up against other customers they are refused service and asked to leave. If the misbehaviour is a once-off occurrence the customer would be allowed back in for service. If the misbehaviour is a regular occurrence, or if the customer is obnoxious he would not be served again. He has ten to twelve non-Traveller customers barred since he took over the running of the pub. The three Travellers who broke the sink in the toilet are also barred.

## **5 Conclusions of Equality Officer**

**5.1** The matter referred for investigation turns upon whether or not the complainants were directly discriminated against contrary to Section 3(1)(a) and 3(2)(i) of the Equal Status Act 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.*

Section 5(1) of the Act provides 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 Prima Facie Case

A person making an allegation of discrimination under the Equal Status Act, 2000 must first demonstrate that a *prima facie* case of discrimination exists. I have identified the three key elements the complainants must show in order to establish a prima facie case:

**- are the complainants covered by the ground? ( in this case are they members of the Traveller community?)**

**-in what circumstances were the complainants refused service by the respondent on 2 December, 2000.**

**-evidence that the treatment received by the complainants 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.

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 complaints 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 case law 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*), and that this was a consistent practice across a spectrum of cases<sup>1</sup>. The 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*<sup>2</sup> and *Enderby*<sup>3</sup> cases so this was not a practice operated purely to

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<sup>1</sup> *Curtin, Deirdre, Irish Employment Equality Law, 1989, P. 222 et seq.*

<sup>2</sup> *Danfoss Case no. C-109/88*

<sup>3</sup> *Enderby v Frenchay Health Authority and Secretary of State for Health C-127/92*

implement 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.

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*<sup>4</sup> and referred to by the High Court in *Conlon v University of Limerick*.<sup>5</sup> In *Nathan v Bailey Gibson* the Supreme Court stated:

*“In such a case the worker is not required, in the first instance, to prove a causal connection between the practice complained of and the sex of the complainant. It is sufficient for him or her to show that the practice complained of bears significantly more heavily on members of the complainant's sex than on members of the other sex. At that stage the complainant has established a prima facie case of discrimination and the onus of proof shifts to the employer to show that the practice complained of is based on objectively verifiable factors which have no relation to the complainant's sex.”*

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.

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.”*

The Northern Ireland Court of Appeal, in an employment discrimination case, stated that:

*“Once the evidential burden has shifted ....., the question then is whether there is any evidence to justify the conclusion that the evidential burden has been discharged by the respondent.”*<sup>6</sup>

In article 4 of the *EC Burden of Proof Directive (Council Directive 97/80/EC)* the

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<sup>4</sup> *Nathan v. Bailey Gibson* [1998] 2 I.R. 162

<sup>5</sup> *Conlon v. University of Limerick* [1999] ILRM 131

<sup>6</sup> *Wallace v. South Eastern Education and Library Board (NI Court of Appeal)* 1980 IRLR 193

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. "*

I am now going to examine the issues I have identified above and consider whether the complainants have established a *prima facie* case.

### **5.3 Issue of Traveller Identity**

The Traveller community *"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 complainants are Travellers as defined by the Equal Status Act, 2000. I am also satisfied that the respondent identified the complainants as Travellers.

### **5.4 Circumstances of Refusal of Service**

I am now going to examine the circumstance in which service was refused. It was agreed that Mr. Cash was asked to leave the pub, but there is a conflict in relation to the reason. Mr Cash's case is that he was asked to leave the pub and to take Mrs Cash with him. He submits that this occurred because he had been warned in the past by the respondent not to bring Mrs. Cash , or other Travellers, including his sons, into the pub. He said this was the first time that both he and his wife were in the pub at the one

time. The respondents case is that Mr Cash has been regularly drunk on the premises, but on this occasion he came into the pub with too much to drink and he was entitled to refuse service to him. I am puzzled as to why the respondent chose a night when Mrs. Cash was present in the pub to ask Mr. Cash to leave because he was drunk. From the respondent's own evidence it would appear that Mr. Cash had been drunk on the premises on a number of occasions, but despite his evidence that Mr. Cash had been a nuisance to other customers he never asked him to leave on these occasions.

I note that Mrs Cash was not asked directly by Mr. Deane to leave. He stated in evidence that he expected her to leave with her husband. I note that Mr. Deane stated in response to the notification of the complaint under Section 21 of the Equal Status Act, in answer to a question from Mrs. Cash concerning why she was treated in such a manner, Mr. Deane stated that she was treated in this manner because she was in the company of her husband who had too much to drink. Mrs. Cash's evidence is that even though she did not come into the pub with her husband, and was not in his company, she also had to leave. I also note from the evidence presented by the complainants, and which was not contradicted by the respondent, that Mr. Cash was in the pub about half an hour before Mrs. Cash came in. It was only shortly after her arrival that Mr. Cash was asked to leave. I believe it is significant that Mr. Deane had established Mrs. Cash's identity about two nights previous to 2 December, and on the only other occasion Mrs. Cash had been in the pub. From the evidence it would appear that there is a connection between Mrs. Cash's presence on the premises and the request for Mr. Cash to leave. The evidence would appear to support Mr. Cash's contention that he was not allowed to bring other Travellers, including his wife, into the premises. I find on the balance of probabilities that Mr Cash was asked to leave the pub and to take his wife with him and this occurred because Mrs. Cash came into the pub.

- 5.5** I am now going to examine if the complainants were treated less favourably than a non-Traveller would have been treated in similar circumstances. Mrs. Cash's evidence was that she was in the company of non-Traveller friends and there was no evidence that these customers were asked to leave. I am satisfied therefore that the complainants were treated less favourably than non-Traveller customers in similar

circumstances when they were asked to leave the respondent's pub. I am satisfied that the circumstances in which Mr. and Mrs. Cash were asked to leave the pub on 2 December, 2000 raises an inference of discriminatory treatment. Having considered all of the above factors I am satisfied, that the complainants have established a *prima facie* case of discrimination.

## **5.6 Rebuttal of Prima Facie Case by Respondent**

As I have stated above once a *prima facie* case has been established the burden of proof falls to the respondent to rebut the presumption of discrimination. I am now going to examine if the respondent has produced sufficient evidence to show that the treatment of the complainants was not connected with their membership of the Traveller community but with some other non-discriminatory reason. Mr Deane submitted the following:

- 1) He was entitled to ask Mr. Cash to leave because he had too much to drink.
- 2) He serves Travellers and doesn't discriminate against them.

I note that Mr. Deane has produced no corroborative evidence such as witnesses or witness statements to support his contention that Mr. Cash was drunk, and therefore was entitled to ask him to leave. In the absence of any corroborative evidence I can only draw conclusions from the evidence presented by the parties. Mr. Cash said that he had no drink taken as he had been out selling from his van all day. The respondents evidence was that Mr Cash was drunk when he came into the pub. I note Mr. Cash had been served two drinks by the bar person, before Mr. Deane asked him to leave because he was drunk. If the complainant was drunk as stated by the respondent, why was he served drink when he came into the pub? I note Mr. Deane's evidence was that he saw Mr Cash coming into the pub, however it would appear at that stage he didn't notice he was drunk. I also note Mr. Deane's evidence was that when Mr Cash was drunk he was loud and unsteady on his feet, and a nuisance to other customers, but on the 2 December he stated Mr. Cash caused no problem, and he left immediately without finishing his drink when he was requested to do so. I am of the view that Mr. Deane's evidence concerning Mr. Cash's behaviour on 2 December does not support his earlier evidence concerning the behaviour of the complainant when he is drunk. Given the circumstances that prevailed on 2 December, and the

respondents own evidence concerning the events of that night, I am of the view that Mr. Cash was not drunk and other reasons influenced the respondent's decision to ask the complainants to leave.

- 5.7** I am conscious that Mr. Deane stated that Mr Cash was drunk on the premises on previous occasions and of the respondent's obligation to run an orderly house. Section 13 of the 1872 Licensing Act, states:

*“If any licensed person permits drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds. Any conviction for an offence under this section shall be recorded on the license of the person convicted unless the convicting magistrate or justices shall otherwise direct”.*

If Mr. Cash was drunk on the premises Mr. Deane is entitled to ask him to leave, having regard to his obligations under the Licensing Acts. In this case the respondents own evidence is that Mr. Cash had been drunk on the premises about 2 nights prior to the of 2 December, but he did not argue or produce any evidence to establish that Mr Cash was being punished for his previous conduct when he was asked to leave the pub on 2 December. The respondents evidence is that persistent misbehaviour is punished and offending customers are not allowed back into the pub. However there is no evidence that Mr. Deane was enforcing this policy against Mr. Cash on the night of 2 December.

- 5.8** I am now going to look at Section 15(1) and Section 15(2) of the Equal Status Act, 2000, to see if the respondent was entitled to invoke either Section. I note that the respondent did not argue either of these two sections. Section 15(1) provides that:

*“nothing in this Act prohibiting discrimination shall be construed as requiring a person to provide services in circumstances which would lead a reasonable individual having the responsibility, knowledge and experience of the person to the belief, on grounds other than the discriminatory grounds, that the provision of the 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.”*

To invoke this Section the respondent must show that there was a substantial risk of criminal or disorderly conduct or behaviour if Mr. Cash was to remain on the premises and continue to be served. The respondent did not put forward any grounds regarding this and I find no evidence to support a contention that there was *substantial risk of criminal or disorderly conduct or behaviour* if Mr Cash was to remain in the respondent’s pub on 2 December, 2000 or that an entitlement to refuse service under Section 15(1) of the Equal Status Act would be justified in the circumstances.

**5.9** As I have stated above the licensing laws requires publicans to keep an orderly house and Section 15 (2) of the *Equal Status Act, 2000* provides that:

*“Action taken in good faith by or on behalf of the holder of a licence or other authorisation which permits the sale of intoxicating liquor, for the sole purpose of ensuring compliance with the provisions of the Licensing Acts, 1833 to 1999, shall not constitute discrimination.”*

This test doesn’t require a substantial degree of risk, so the test under this Section is less severe but I am of the view that the respondent has not passed it on this occasion. Mr. Deane's evidence was that he had experience of Mr. Cash’s behaviour when he was drunk. As I have found above Mr. Deane’s evidence concerning Mr. Cash’s behaviour on 2 December did not substantiate his contention that Mr. Cash was drunk. In view of Mr. Deane’s knowledge of the complainant and his personal experience of dealing with him, I am not satisfied therefore that the decision of the respondent to ask Mr. Cash to leave was taken in good faith.

**5.10** The respondent’s case also is that he has never discriminated against Travellers and That he regularly serves Travellers in his pub. There was conflicting evidence concerning the number of Travellers served in the pub. The respondent said that up to 12 Travellers could be in the pub on occasions, a contention which Mr Cash disputes. I note that the respondent spoke to Mr. Cash when he first started drinking in the pub and told him he was welcome provided he behaved in the same manner as everyone else. Mr Cash disputes this and said Mr. Deane warned him not to bring other

Travellers into the pub and submitted that this was evidenced by the fact that neither his sons or wife had ever been allowed into the pub. He submitted that Mr. Deane was prejudiced against Travellers evidenced by Mr. Deane's reference to Travellers as "your people", and also his reference to the Travellers who broke the sink. As there is a conflict of evidence in relation to the service of Travellers, I can only draw inference from what occurred. Firstly I believe it is significant that Mr. Deane felt it necessary to speak to Mr. Cash about behaviour when he first stated drinking in the pub. I find that this statement is an assumption on Mr. Deane's behalf that Mr. Cash would behave differently because he is a Traveller. He provided no evidence that he warned non-Traveller customers in such a manner when they first started drinking in the pub. Secondly I believe it is significant that, on the first occasion Mr. Deane was aware that both Mr. and Mrs. Cash were in the pub, they were asked to leave. Mr. Deane's case is that Mr. Cash was drunk, but on the respondents own evidence Mr. Cash's drunkenness seems to have been tolerated by him and with his knowledge encouraged by other customers. Even if I hold that Mr Cash had too much to drink on 2 December, 2001, I then have to ask the question what was different on this occasion, to warrant action against Mr. Cash? The only difference it seems to me was that Mrs. Cash, who could now be identified by Mr. Deane, was present. This, in my view, supports Mr. Cash's contention that Mr. Deane did not want him to bring other Travellers into the pub. I find on the evidence that Mr. Deane has not disproved Mr Cash's contention that Mr. Deane did not want him to bring other Travellers into the pub. It seems to me that Mr. Deane operated a restriction on the number of Travellers he was prepared to allow Mr. Cash bring into the pub.

I find that the respondent has provided no satisfactory evidence to support his contention that he was entitled to refuse service to the complainants because of Mr. Cash's previous conduct. I therefore for the above reasons, find that the respondent has failed to rebut the prima facie case of discrimination raised by the complainants, and that he did unlawfully discriminate against them on 2 December, 2000 when they asked to leave the pub.

## **6 Victimization**

**6.1** A complaint of victimisation was also lodged on behalf of the complainants. Section



3(1)(a) provides, inter alia, that discrimination shall be taken to occur where:  
“*On any of the grounds specified... (in this case victimisation ground).... A person is treated less favourably than another person is, has been or would be treated.* Section 3(2)(j) provides that: *that one*

*(i) has in good faith applied for any determination or redress provided for in Part 11 or 111,”*

*(ii) has attended as a witness before the Authority, the Director or a court in connection with any enquiry or proceedings under this Act,*

*(iii) has given evidence in any criminal proceedings under this Act,*

*(iv) has opposed by lawful means an act which is unlawful under this Act, or*

*(v) has given notice of an intention to take any of the actions specified in subparagraphs (i) to (iv),*

*and the other has not (the “victimisation ground”).*

I find that the complainants have not provided any evidence to support a complaint of discrimination on the victimisation ground

## **7 Decision**

**7.1** I find for the foregoing reasons that the complainants were unlawfully discriminated against contrary to the provisions of Section 3(1) and 3(2)(i) of the Equal Status Act, 2000 and in terms of section 5(1) of that Act. I also find that the complainants were not discriminated against contrary to Section 3(2)(j) of the Act.

**7.2** 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. I order Mr. Rory Deane, Deane's Pub, to pay to the complainant Mrs. Kay Cash the sum of €1,000 to compensate her for the distress and embarrassment suffered by her as well as the loss of the amenity to her on the night, and to pay to Mr. Andy Cash the sum of €600 for the loss of the amenity to him on the night. I am awarding Mrs. Cash the greater amount because this was only her second time in the pub, she was in the company of friends who were not asked to leave, and there was no evidence that on this night or any other night that she had caused the slightest nuisance in the pub. I believe for the foregoing reasons she was likely to have suffered greater stress, embarrassment and inconvenience by having to leave.

- 7.3** I also order the respondent to put in place, within 2 months of the date of this decision, a clear and transparent code of practice which should apply to service to all customers. This code should include the rules which apply to all customers seeking service, the code of behaviour expected from customers, and the sanctions which may apply in the event of a breach of the code. All the staff and customers should be informed in an appropriate manner of the contents of the code.

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Marian Duffy  
Equality Officer  
March, 2002