

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

3 Clonmel Street
Dublin 2.

Phone: 353 -1- 4173300
Fax: 353-1- 4173399

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

Equal Status Act 2000

EQUALITY OFFICER DECISION NO: DEC - S2002-015/016

**Mr Michael Dooley and Mr Gavin Boyne
(Represented by Liam F. Coghlan & Co., Solicitors)**

-v-

**The Grand Hotel
(Represented by Terence F. Casey & Co., Solicitors)**

**File Refs: ES/2001/186
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Summary of Decision DEC-S2002-015/016

**Mr Michael Dooley and Mr Gavin Boyne
(Represented by Liam F. Coghlan & Co., Solicitors)**

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Headnotes

Equal Status Act 2000 - direct discrimination - section 3(1)(a) and section 3(1)(b)
discrimination by association - membership of the Traveller community ground - section
5(1) - refusal of service in the bar of a hotel - prima facie evidence - allegations of previous
misconduct - section 15 defence.

Background

Mr Gavin Boyne and Mr Michael Dooley claimed that they and their wives were refused admission to The Grand Hotel, Killarney, between 8.30 p.m. and 9.15 p.m. on 3rd March, 2001. Mr Dooley claimed that he was discriminated against contrary to the Equal Status Act, 2000, because the reason for his refusal was based on his membership of the Traveller community. Mr Boyne also claimed that he was discriminated against contrary to the Equal Status Act, 2000. He claimed that although he is not a member of the Traveller community that the reason for his refusal was based on his association with the people he was with, who are all members of that community.

The respondent claimed that the complainants were not discriminated against on the membership of the Traveller community ground. It claimed that the reason the complainants were refused service was that they were, or may have been, previously involved in an incident at the hotel. It claimed under section 15 of the Equal Status Act, 2000, the holder of an authorisation which permits the sale of intoxicating liquor is permitted to refuse service where there are grounds for believing that someone may cause trouble and that the complainants were refused on this basis.

Conclusions of Equality Officer

The Equality Officer found that the complainants had established prima facie evidence of discrimination and that the respondent did not rebut the inference of discrimination.

Decision

The Equality Officer awarded 1,500 Euro compensation to Mr Dooley and 750 Euro compensation to Mr Boyne. The Equality Officer also ordered that the respondent place a sign in its premises stating that it is committed to treating people equally in accordance with the Equal Status Act, 2000.

Complaint under the Equal Status Act 2000

**Mr Michael Dooley and Mr Gavin Boyne
(Represented by Liam F. Coghlan & Company, Solicitors)**

-v-

**The Grand Hotel
(Represented by Terence F. Casey & Co., Solicitors)**

DISPUTE AND BACKGROUND

1. Mr Gavin Boyne and Mr Michael Dooley claimed that they and their wives were refused admission to The Grand Hotel, Killarney, between 8.30 p.m. and 9.15 p.m. on 3rd March, 2001. Mr Dooley claimed that he was discriminated against contrary to the Equal Status Act, 2000, because the reason for his refusal was based on his membership of the Traveller community. Mr Boyne also claimed that he was discriminated against contrary to the Equal Status Act, 2000. He claimed that although he is not a member of the Traveller community that the reason for his refusal was based on his association with the people he was with, who are all members of that community.

The respondent claimed that the complainants were not discriminated against on the membership of the Traveller community ground. It claimed that the reason the complainants were refused service was that they were, or may have been, previously involved in an incident at the hotel. It claimed under section 15 of the Equal Status Act, 2000, the holder of an authorisation which permits the sale of intoxicating liquor is permitted to refuse service where there are grounds for believing that someone may cause trouble and that the complainants were refused on this basis.

The complainants referred their claims to the Director of Equality Investigations on 23rd May, 2001, under the Equal Status Act 2000. In accordance with her powers under section 75 of the Employment Equality Act 1998 and under the Equal Status Act 2000, the Director then delegated the case to myself, an Equality Officer, for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part III of the Equal Status Act.

An oral hearing was held into the complaints on 15th January, 2002, in the Killarney Court Hotel. The hearing commenced at 2.15 p.m. and adjourned at 4.45 p.m. so that the respondent's incident book could be inspected at the respondent's premises at 8.00 p.m. approximately.

SUMMARY OF COMPLAINANTS' EVIDENCE

Evidence of Mr Gavin Boyne

2. Mr Boyne claimed that:

- On 3rd March, 2001, between 8.30 p.m. and 9.15 p.m. he, Mr Dooley and their wives had one drink each in a pub beside the Grand Hotel. Mrs Dooley is Mrs Boyne's aunt. While the other 3 people are members of the Traveller community he is from Dublin and is not a Traveller.
- All four decided to leave the pub together to go to the Grand Hotel. He and his wife sought admission first but they were told by a doorman "not tonight". When he asked for a reason he was told by the doorman "you know why". The discussion went on for about 2-3 minutes and he told the doorman that he was going to get a solicitor. The doorman then asked him to step into a lane way beside the hotel to fight him. At this point he was afraid the doorman would attack him. Mrs Dooley told him to leave and he and his wife then left. His wife was pregnant at the time.
- At 11.00 a.m. on 4th March, 2001, he returned to the pub and complained to one of the owners, Mrs Eileen Sheehan. He was anxious to get the matter resolved because he sells bar equipment for a living and if he cannot go into pubs it can have a negative effect on his job with his employer. He had met her before but he did not know her well. She told him she would look into it. He returned to the pub that evening. Mrs Sheehan said she was still looking into it but he did not hear from her again.
- On 10th March, 2001, he and his wife returned to the hotel to seek admission but they were refused again.
- He was never involved in any trouble before in the hotel. He considers that the reason for his refusal was because of his association with members of the Traveller community. He frequented the hotel every two to three weeks for about 5 years before the refusal on 3rd March, 2001, occurred, often in the company of Mr Dooley and their wives.

Evidence of Mr Michael Dooley

2.1 Mr Dooley claimed that:

- On 3rd March, 2001, between 8.30 p.m. and 9.15 p.m. he, Mr Boyne and their wives had one drink each in a pub beside the Grand Hotel. They then decided to leave together to go to the Grand Hotel.
- He knew by the look of the doormen that they were not going to be admitted. Mr Boyne and his wife sought entry together first but they were refused admission. He witnessed the discussion described above by Mr Boyne.
- When Mr Boyne left the doorway he (Mr Dooley) and his wife were then refused also. When he asked for a reason he was told by the doorman that he did not have to give him one. He tried to discuss the matter with the doormen and told them that he had been in the hotel a short time previously and left the pub as he found it. He was still not admitted and then left.
- He was never involved in any trouble before in the hotel. He considers that the reason for his refusal was because of his membership of the Traveller community. He frequented the hotel every two to three weeks before then for about 20 years, often in the company of Mr Boyne and his wife, although for much of this time the hotel was not under the management of the current owners, Mr Pat Sheehan and Mrs Eileen Sheehan.
- On a number of occasions when he was in the hotel before he was told by the doormen that he was not to sit with other Travellers. His wife could confirm that the doormen said this to him. The doormen told him that this was the management's rules.

- Groups of Travellers are not admitted to the pub but groups of settled people are admitted.
- When he was in the pub shortly before Christmas, 2000, Mr Frank Harrington, a former doorman at the hotel, told him that neither he nor any other Travellers would be served there any more on the instructions of Mrs Sheehan. When he subsequently sought admission on 26th December, 2000, he was refused by Mr Harrington.
- He made an appointment with Mrs Sheehan shortly after he was refused on 26th December, 2000, to discuss the matter and she told him that his refusal was a case of mistaken identity and that he would be served in future. Two weeks later he went back to the hotel and was served. On that occasion Mrs Sheehan was also there and he bought her a glass of whisky as a way of saying thank you. However, he was not served there again after that occasion although he sought admission two or three other times before the incident on 3rd March, 2001, occurred.

Evidence of Mrs Boyne

- 2.2 Mrs Boyne described the refusals along the same lines as her husband and Mr Dooley. She claimed that she and Mrs Dooley were in the hotel the week before the hearing but were asked to leave.

Evidence of Mrs Dooley

- 2.3 Mrs Dooley described the refusals along the same lines as her husband and Mr Boyne. She did not confirm that her husband had been told by the doormen in the past not to sit with other Travellers in the hotel. She claimed that she and Mrs Boyne were in the hotel the week before the hearing but were asked to leave.

Evidence of Mr Frank Harrington

- 2.4 Mr Harrington claimed that:
- He used to be employed as a doorman in the hotel.
 - A few days before Christmas, 2000, he heard Mrs Sheehan tell the head doorman not to let Travellers into the hotel any more because other customers do not want them on the premises and neither does she.
 - Mr Dooley was in the hotel at the time and the head doorman asked whether the ban on Travellers applied to him also.
 - Mrs Sheehan confirmed to the head doorman that she did not want Mr Dooley let in any more either.
 - When Mr Dooley sought admission on 26th December, 2000, he refused him because of Mrs Sheehan's instructions.
 - He ceased working in the hotel shortly afterwards.

SUMMARY OF RESPONDENT'S EVIDENCE

Evidence of Mr Pat Sheehan

3. Mr Pat Sheehan claimed that he and his wife, Mrs Eileen Sheehan, have owned the hotel since 1995. Mrs Sheehan did not attend the oral hearing. Mr Sheehan claimed that that the reason the complainants were refused service was because they were, or may have been, previously involved in a fight at the hotel. He claimed that under section 15 of the Equal Status Act, 2000, it is not discriminatory where the holder of an authorisation which permits the sale of intoxicating liquor refuses service to

someone when there are grounds for believing that they may cause trouble and that the complainants were refused on this basis.

He claimed that since the hotel opened anyone will be served alcohol in the premises as long as they over 18 years old, are not drunk and are not troublemakers. He also claimed that the hotel does not have a discriminatory policy towards Travellers. He claimed the fact that the complainants were served in the hotel for a number of years proves this. He claimed that the complainants were not discriminated against on the Traveller community ground when they were refused admission on 3rd March, 2001.

Mr Sheehan claimed that his wife could not have made the comments claimed by Mr Harrington because they always go to the UK for Christmas and she was not in Ireland on 26th December, 2000.

Evidence of Mr Dan Crowley

3.1 Mr Crowley claimed that:

- He was on duty when the refusals occurred on 3rd March, 2001. At the time he was employed as a doorman by Deadlock Security, the company which had the contract for security at the hotel at the time. He is now employed as a doorman by TNT Security and it now has the contract for the hotel's security.
- The head of security and another doorman were also on duty when the complainants were refused.
- When the complainants approached the door they were refused and told that they were barred.
- The reason they were barred was because they were involved in a row at the hotel with another man on a previous occasion. Mr Crowley was at the door when the incident occurred but he clearly saw the complainants and the other man involved in the row fighting among themselves and some glasses were broken. When the other two doormen on duty that night intervened, they were asked by the complainants and the other man whether they wanted to fight. He and the other two doormen did not think they would be able to get the complainants and the other man off the premises so they let them stay for the rest of the night. However, they decided that night that the three men were barred from the hotel from then on. The hotel has an incident book to record incidents of trouble at the hotel, but not refusals of service. The incident described would be recorded in it.
- Mr Boyne became very abusive when he was refused admission but Mr Dooley was not in any way abusive when he was refused admission.
- The hotel does not have a discriminatory policy towards Travellers and he did not know the complainants were Travellers.

Evidence of Mr Donal O'Riordan

3.2 Mr O'Riordan claimed that:

- He is the manager of TNT Security, the company which has had the contract for security at the hotel since mid 2001, which was after the refusals occurred
- The hotel's policy is to serve anyone over 18 years old, who is not drunk and who is not a troublemaker.
- The hotel does not have a policy to exclude Travellers.

Evidence of Mr Declan Roche

3.3 Mr Roche claimed that:

- He is employed as a doorman by TNT Security.
- The hotel's policy is to serve anyone over 18 years old, who is not drunk and who is not a troublemaker.
- The hotel does not have a policy to exclude Travellers.

ISSUES FOR CONSIDERATION

4. Section 3(1)(a) of the Equal Status Act, 2000, provides, inter alia, that discrimination shall be taken to occur where -
“on any of the grounds specified in subsection (2) A person is treated less favourably than another person is, has been or would be treated”.

Section 3(1)(b) of the Equal Status Act, 2000, provides, inter alia, that discrimination shall be taken to occur where -
 (i) *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*
 (ii) *similar treatment of that other person on any of the discriminatory grounds would, by virtue paragraph (a), constitute discrimination.*

Section 3(2) of the Equal Status Act, 2000, provides that the discriminatory grounds include the membership of the Traveller community ground.

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”.

The issues for consideration in these complaints are:

- whether or not The Grand Hotel discriminated against Mr Michael Dooley on the basis of his membership of the Traveller community, in terms of section 3(1)(a) and contrary to section 5(1) of the Equal Status Act, 2000, on 3rd March, 2001.
- whether or not The Grand Hotel discriminated against Mr Gavin Boyne on the basis of his association with members of the Traveller community, in terms of section 3(1)(b) and contrary to section 5(1) of the Equal Status Act, 2000, on 3rd March, 2001.

In reaching my decision I have taken account of all of the submissions, both oral and written, made to me by both parties.

PRIMA FACIE EVIDENCE

5. For the complainants' claims to be upheld they have to establish prima facie evidence of discrimination on the membership of the Traveller community ground. For Mr Dooley's claim to be successful he has to show that he was treated less favourably than a non Traveller in the same circumstances. For Mr Boyne's claim to be successful he has to show that he was treated less favourably than someone who is not associated with members of the Traveller community. If they succeed in establishing prima facie evidence, the burden of proof then shifts to the respondent to rebut the inference of discrimination.

- 5.1 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 in *Bailieborough Community School v Carroll*, DEE 4/1983 Labour Court, and in 1986 in *Dublin Corporation v Gibney*, Equality Officer EE5/1986), and that this was a consistent practice across a spectrum of cases (see Curtin, Irish Employment Equality Law, 1989, p. 222 et seq.). 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 cases of *Handels-Og Kontorfunktionaerernes Forbund i Danmark v Dansk Arbejdsgiverforening (Danfoss)* (case no. C-109/88) and *Enderby v Frenchay Health Authority and Secretary of State for Health* (case no. C-127/92) in 1989 and 1993 respectively, 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.
- 5.2 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* (1998 2 IR 162) and by the High Court in *Conlon v University of Limerick* (1999 2 ILRM 131). While these were both indirect discrimination cases, it seem that the principle should by logical extension apply to direct discrimination cases if it applies to indirect discrimination cases. It was also very clearly stated by the Northern Ireland Court of Appeal, again as a matter of first principles in discrimination cases, in *Wallace v SE Education and Library Board*, 1980, NI 38, as far back as 1980.
- 5.3 To establish what a prima facie case is I have examined definitions from sources which are persuasive. 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 has probably occurred."
- 5.4 In article 4 of the EC Burden of Proof Directive itself 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".
- 5.5 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. "

- 5.6 In some equality cases in the past, complainants have found it difficult to produce convincing proof that a prima facie case existed, primarily because independent corroboration was not available. The question then arose as to whether the circumstances of the case gave rise to any inference of discrimination or whether discrimination could be presumed, and whether these inferences constituted evidence of a prima facie case.
- 5.7 In *Gleeson v The Rotunda Hospital and Mater Hospital (DEE003/2000)*, the Labour Court decided that a prima facie case existed only after considering all of the hard evidence and combining it with the inferences of discrimination that could be drawn from the circumstances of the case.
- 5.8 I now have to establish whether the complainants have produced sufficient hard evidence which, in the absence of convincing contradictory evidence, would lead a reasonable person to believe that the respondent discriminated against them on the membership of the Traveller community ground. If they have succeeded in producing sufficient hard evidence then the burden of proof shifts to the respondent to show that it did not act in a discriminatory manner. In the absence of sufficient hard evidence any inferences of discrimination which might in themselves contribute to a prima facie case also have to be considered. However, if the complainants fail to produce sufficient hard evidence or inferences of discrimination to establish prima facie evidence, the burden does not shift to the respondent to show that it did not act in a discriminatory manner.
- 5.9 The complainants claimed that when they sought entry to the hotel they were refused admission. In considering whether the complainants have established prima facie evidence of discrimination I consider that under normal circumstances a hotel bar is a place where most people, whether they are Travellers or non Travellers would expect to be admitted in normal circumstances. I am also taking Mr Harrington's evidence into account whereby he claimed that Mrs Sheehan had told the head doorman shortly before Christmas 2000, not to let Travellers into the hotel any more.
- 5.10 I have also noted that Mr Dooley and Mr Boyne notified the respondent in writing on 22nd March, 2001, as required by section 21(2) of the Act, of the fact that they considered they had been discriminated against. The complainants' solicitor produced documents which he claimed were the respondent's replies to the notifications. However, I have also noted that the respondent denied any knowledge of these documents and claimed that no replies issued to the complainants' notifications. As the complainants have not shown any further evidence to prove that the alleged replies to the notifications were sent by the respondent I am taking it that the respondent did not reply to the notifications.
- 5.11 Section 26 of the Act states:
"If in the course of an investigation under Section 25, it appears to the Director-

(a) that the respondent did not reply to a notification under section 21(2)(a) or to any question asked by a complainant under section 21(2)(b),

(b) that the information supplied by the respondent in response to the notification or any such question was false or misleading, or

(c) that the information supplied in response to any such question was not such as would assist the complainant in deciding whether to refer the case to the Director,

the Director may draw such inferences, if any, as seem appropriate from the failure to reply or, as the case may be, the supply of information as mentioned in paragraph (b) or (c).”

The Director’s functions under this section of the Act have been delegated to me as an Equality Officer appointed by the Director in accordance with section 75(4)(a) of the Employment Equality Act, 1998.

- 5.12 In view of the respondent’s failure to reply to the notification which the complainants sent to him under section 21(2)(a) of the Act I have decided to draw inferences as I am entitled to do under section 26 of the Act. I consider it is appropriate to draw the following inferences:
- the reason for the refusal of service to Mr Michael Dooley was because of his membership of the Traveller community.
 - the reason for the refusal of service to Mr Gavin Boyne was because of his association with members of the Traveller community.
- 5.13 I am satisfied that the complainants have established prima facie evidence of discrimination on the Traveller community ground. Accordingly, the burden of proof shifts to the respondent to rebut the inference of discrimination.

CONCLUSIONS OF EQUALITY OFFICER

Reason for Refusals

6. Mr Dan Crowley was one of the doormen who refused the complainants admission to the hotel. He claimed at the oral hearing in the Killarney Court Hotel that the reason the complainants were refused on 3rd March, 2001, was because they were barred as a result of a row at the hotel in which they were involved with another man on a previous occasion. He claimed that although he was at the door when this incident occurred he clearly saw the complainants and the other man fighting among themselves and some glasses being broken.
- 6.1 Mr Crowley claimed that he could not remember exactly when this incident occurred but that it would have been recorded in the hotel's incident book. The oral hearing adjourned at 4.45 p.m. approximately and reconvened at 8.00 p.m. so that the incident book could be inspected. However, when I inspected the incident book at the Grand Hotel the incident alleged by Mr Crowley was not recorded in it. The respondent then said that it wanted to speak off the record but I stated that all comments in my presence were on the record. The respondent then claimed that in the hours since the hearing had adjourned it had come to understand that the complainants may have been in the hotel when an incident involving other people took place, as opposed to having been involved in a row themselves. The respondent did not state how it had come to understand this but claimed if a mistake had been made that it was regretted and that the door was now open to the complainants to be served in the hotel provided they abide by the hotel's rules.
- 6.2 The complainants claimed that they never fought among themselves in the hotel with another man and that the incident described by Mr Crowley did not happen. In view of the respondent's comments at the Grand Hotel I consider that the reliability of Mr Crowley's evidence has to be questioned. In cases like this where conflicting evidence is presented the credibility of the witnesses and their evidence is a very important factor. I consider that the respondent's inconsistency in offering two different reasons at different times for refusing the complainants is not helpful to its defence of the allegations made. I am satisfied on the balance of probabilities that the complainants were not involved in the incident described by Mr Crowley.

Section 15(1) Defence

- 6.3 Section 15(1) provides that the Act does not require a person to provide a service in circumstances which would lead "*a reasonable individual having the responsibility, knowledge and experience of the person to the belief 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*".
- 6.4 For this section of the Act to be successfully invoked as a defence the respondent would have to show that there was a substantial risk of criminal or disorderly conduct if the complainants were served. This is quite a strong test and I don't believe it was passed in this case. This is because the complainants had been drinking in the hotel every two to three weeks for at least five years and apart from Mr Crowley's evidence, which I have to weigh appropriately, no evidence was provided of any other criminal or disorderly behaviour from them, either inside or outside the hotel. I do

not believe on the balance of probabilities that a reasonable person would believe that there was a substantial risk of criminal or disorderly conduct by the complainants gaining admission to the Grand Hotel on 3rd March, 2001.

Section 15(2) Defence - Mr Dooley

- 6.5 I now have to consider whether the respondent can successfully invoke the defence provided for in section 15(2) of the Equal Status Act, 2000, which states:
“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”.
- 6.6 The respondent did not state which provisions of the Licensing Acts it was trying to ensure compliance with when the complainant was refused but I am aware that the Licensing Acts require that hoteliers do not serve under 18 year olds alcohol on their premises. However, in view of the age of the complainants and their wives I do not consider that the respondent could have been acting in good faith by refusing them on this basis. This is because I consider that it would have been obvious that they were all aged over 18 years old.
- 6.7 I am also aware that the Licensing Acts require hoteliers, inter alia, to run orderly houses and I will now consider whether the respondent was acting in good faith in refusing the complainants admission for the sole purpose of ensuring compliance with the Licensing Acts. The test under section 15(2) does not require a substantial risk so it is less severe than the section 15(1) test. I have found earlier that the complainants were not involved in a fight among themselves and that this could not have been the reason for their refusal on 3rd March, 2001. No other evidence was presented to suggest that they have a propensity for disorderly behaviour. Accordingly, the respondent could not have been acting in good faith in refusing the complainants on the basis that they were involved in this incident.
- 6.8 However, I now have to consider whether the respondent was acting in good faith in refusing the complainants on the basis that there could have been a breach of its obligations under the Licensing Acts if they were admitted, in circumstances where the respondent may not have been sure whether they were involved in a row in the hotel but had suspicions that they were. I consider that in genuine cases of mistaken identity or where respondents are genuinely not sure whether someone was involved in an incident that they may be able to successfully invoke the section 15(2) defence.
- 6.9 In the complaints in hand I consider that some significant evidence must be taken into account when deciding whether the respondent was acting in good faith. In particular, I consider that the evidence provided by Mr Harrington has to be taken into account on this point. His evidence has been summarised earlier and gives the impression that Mrs Sheehan introduced a no Travellers policy shortly before Christmas 2000. Mr Harrington claimed that Mrs Sheehan specifically included Mr Dooley in the no Travellers policy and that he refused him for this reason on 26th December, 2000.
- 6.10 Mr Sheehan claimed that the hotel does not have a discriminatory policy towards Travellers. I have also noted that Mr Crowley, Mr O’Riordan and Mr Roche, who are

currently employed as doormen in the hotel by TNT Security all supported this claim. Of these I understand that only Mr Crowley was working in the hotel when Deadlock Security had the security contract i.e. before mid 2001 when the refusals occurred. Mr Sheehan also claimed that his wife could not have made the comments claimed by Mr Harrington because they go to the UK for Christmas every year and she was not in Ireland on 26th December, 2000. However, I noted that Mr Harrington claimed that Mrs Sheehan made the comments shortly before Christmas, 2000, not 26th December, 2000. On the balance of probabilities I believe that the comments alleged by Mr Harrington were made by Mrs Sheehan.

- 6.11 I consider that Mr Harrington's evidence is also significant because it supports the argument that Mr Dooley was identified as a member of the Traveller community by Mrs Sheehan. This is important because Mr Sheehan claimed that it is difficult to recognise Travellers from non-Travellers and Mr Crowley, who was on duty when the refusal was made claimed that he did not know the complainants were Travellers or associated with Travellers.
- 6.12 It is clear to me on the basis of Mr Harrington's evidence that the reason Mr Dooley was refused admission to the hotel on 26th December, 2000, was because Mrs Sheehan identified him as a member of the Traveller community. Mr Harrington was the one who made the refusal and I found him to be a very credible witness. Accordingly, I have no doubt that Mr Dooley was discriminated against on 26th December, 2000, on the basis of his membership of the Traveller community contrary to the Equal Status Act, 2000.
- 6.13 As mentioned earlier Mr Dooley claimed that after he was refused admission from the hotel on 26th December, 2000, he met Mrs Sheehan and she told him that his refusal was a case of mistaken identity and that he would be served in future. Mr Dooley claimed that although he was served in the hotel on one occasion after that (he even claimed that he bought a glass of whiskey for Mrs Sheehan on that occasion) he was subsequently refused from the hotel two or three times before being refused again on 3rd March, 2001.
- 6.14 Although the respondent alleged that it had come to understand that the complainants may have been in the hotel when an incident involving other people took place, as opposed to having been involved in a row themselves, it did not provide any evidence in relation to when this incident is alleged to have occurred. On the balance of probabilities I conclude that the reasons for Mr Dooley's refusal on the two or three other times he sought admission and on the 3rd March, 2001, were also because of his membership of the Traveller community. I consider that on all of these occasions Mr Dooley was discriminated against contrary to the Equal Status Act, 2000. On the balance of probabilities I consider that the respondent has not successfully invoked the section 15(2) defence in respect of Mr Dooley's complaint.

Section 15(2) Defence - Mr Boyne

- 6.15 Mr Boyne did not provide any evidence that he was refused admission to the hotel before 3rd March, 2001. He claimed that after he was refused admission on 3rd March, 2001, that he returned to the hotel twice on 4th March, 2001, to complain about the treatment which he had received but he did not claim to have sought service on those occasions. He also claimed that he spoke to Mrs Sheehan and that she told

him she would look into his complaint but that she never got back to him about it. He claimed that when he and his wife sought admission to the hotel on 10th March, 2001, that they were refused again.

- 6.16 Both parties agree that when Mr Boyne and his wife sought admission on 3rd March, 2001, they were accompanied by Mr Dooley and his wife. I consider that the following points are relevant in relation to Mr Boyne's claim that he was discriminated against on the basis of his association with members of the Traveller community:
- Mr Boyne and his wife regularly frequented the hotel over a five year period with Mr Dooley and his wife.
 - Mr Dooley claimed that he was told not to sit with other Travellers in the hotel.
 - My previous finding that Mrs Sheehan made comments to the effect that members of the Traveller community were not to be admitted to the hotel.
 - My previous findings that Mrs Sheehan identified Mr Dooley as a member of the Traveller community and that he was discriminated against on this basis.
 - My previous finding that the complainants were not involved in the incident described by Mr Crowley.
 - The respondent has not provided any details of the incident in which it is claimed that other people were involved when Mr Boyne was present.
 - The fact that the respondent put forward different reasons at different times for refusing Mr Boyne on 3rd March, 2001.
- 6.17 Taking the above facts into account I am satisfied that on the balance of probabilities the evidence in this case clearly points to a respondent who had a discriminatory policy to exclude members of the Traveller community and people associated with that community from the hotel, rather than to a respondent genuinely acting in good faith for the sole purpose of ensuring compliance with the Licensing Acts. I consider that when Mr Boyne sought admission to the hotel he was associated with Mr Dooley, a member of the Traveller community, and that he was discriminated against on this basis.
- 6.18 I have noted that Mr Boyne claimed that he was also refused from the hotel on 10th March, 2001. In considering whether he was also discriminated against on this occasion I have noted that Mr Crowley claimed that Mr Boyne was very abusive after he was refused on 3rd March, 2001. On this point I would like to state that if it can be proven that someone was abusive to a doorman then I would not expect such a person to be admitted. In this case the question of whether the complainant was abusive or not boils down to the word of Mr Boyne, Mr Dooley, and their wives against the word of Mr Crowley. It is obvious to me that there was a heated discussion at the door but as I found earlier that Mr Crowley's evidence was questionable on the balance of probabilities I must also find that Mr Boyne was not abusive on 3rd March, 2001. I consider that it follows on from this that the only reason for his refusal on 10th March, 2001, was also because of his known association with Mr Dooley, particularly on 3rd March, 2001, even though Mr Dooley was not with him when he sought service on 10th March, 2001. I do not consider that Mr Boyne was discriminated against because of his association with his wife on 10th March, 2001, or on 3rd March, 2001, because no evidence was presented to show that the doormen or the Sheehan's were aware that Mrs Boyne is a member of the Traveller community.

- 6.19 On the balance of probabilities I consider that the respondent has not successfully invoked the section 15(2) defence in respect of Mr Boyne's complaint.
- 6.20 I am satisfied that the respondent has not rebutted the inference of discrimination in respect of Mr Boyne or Mr Dooley.

DECISION

7. On the basis of all of the evidence presented it is my decision that the Grand Hotel, Killarney, discriminated against Mr Michael Dooley contrary to the Equal Status Act, 2000, on the basis of his membership of the Traveller community when he was refused admission to the hotel on 26th December, 2000, 3rd March 2001, and two or three other occasions in between those dates.

On the basis of all of the evidence presented it is my decision that The Grand Hotel, Killarney, discriminated against Mr Gavin Boyne contrary to the Equal Status Act, 2000, on the basis of his association with a member of the Traveller community when he was refused admission to hotel on 3rd March, 2001, and 10th March 2001.

Under section 27(1)(a) of the Act I order that The Grand Hotel, Killarney, pay 1,500 Euro compensation to Mr Michael Dooley and 750 Euro compensation to Mr Gavin Boyne.

Under section 27(1)(b) of the Act I order that The Grand Hotel, Killarney, place a sign in a prominent place behind the bar of the Grand Hotel stating that "The owners of this hotel are committed to treating people equally in accordance with the terms of the Equal Status Act, 2000". The sign should be left on display for at least three months thereafter. The letters of the words on the sign should be no less than 1 inch in height. The sign should be easily visible to anyone who seeks service there.

Anthony Cummins
Equality Officer
8th March, 2002