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Equal Status Act 2000

EQUALITY OFFICER DECISION NO: DEC - S2002-014

Mr Michael Collins

(Represented by Hughes Murphy Walsh & Co., Solicitors)

-v-

Owner, Club Sarah

(Represented by Malone & Martin, Solicitors)

File Ref: ES/2001/38
Date of Issue: 8th March, 2002

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(Represented by Hughes Murphy Walsh & Co., Solicitors)
-v-
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Background

Mr Michael Collins claimed that at 9.55 p.m. approximately on 26th December, 2000, he sought admission to Club Sarah with his brother and two friends. He claimed that he and his companions are all members of the Traveller community and that all four of them were refused admission. He claimed that he was discriminated against by the respondent contrary to the Equal Status Act, 2000, because the reason for his refusal was based on his membership of the Traveller community.

The respondent claimed that the complainant was not discriminated against contrary to the Equal Status Act, 2000. It claimed that the reason the complainant and the other people he was with were not admitted was because they had no ID, they were not known to the doorman who refused them and they were abusive. The respondent claimed that the complainant was not treated differently because of his membership of the Traveller community. The respondent also claimed that it was acting in good faith for the sole purpose of ensuring compliance with the Licensing Acts when the complainant was refused.

Conclusions of Equality Officer

The Equality Officer found that the complainant established prima facie evidence of discrimination on the membership of the Traveller community ground and that the respondent failed to rebut the inference of discrimination.

Decision

The Equality Officer decided that the respondent discriminated against the complainant on the basis of his membership of the Traveller community and awarded 250 Euro compensation.

Equality Officer Decision DEC-S2002-014

Complaint under the Equal Status Act 2000

Mr Michael Collins
(Represented by Hughes Murphy Walsh & Co., Solicitors)
-v-
Owner, Club Sarah
(Represented by Malone & Martin, Solicitors)

DISPUTE AND BACKGROUND

1. Mr Michael Collins (aged 34 years old and hereafter referred to as "the complainant") claimed that at 9.55 p.m. approximately on 26th December, 2000, he sought admission to Club Sarah with his brother, Mr Ciaran Collins (aged 33), and two friends of his - Mr Martin Collins (aged 33) and another man also named Mr Michael Collins (aged 28). The complainant claimed that he and his companions are all members of the Traveller community and that all four of them were refused admission. The complainant was the only one of the four men refused who made a complaint against the respondent under the Equal Status Act, 2000. He claimed that he was discriminated against by the respondent contrary to the Equal Status Act, 2000, because the reason for his refusal was based on his membership of the Traveller community.

The respondent claimed that the complainant was not discriminated against contrary to the Equal Status Act, 2000. It claimed that the reason the complainant and the other people he was with were not admitted was because they had no ID, they were not known to the doorman who refused them and they were abusive. The respondent claimed that the complainant was not treated differently because of his membership of the Traveller community. The respondent also claimed that it was acting in good faith for the sole purpose of ensuring compliance with the Licensing Acts when the complainant was refused.

The complainant referred his complaint to the Director of Equality Investigations on 16th February, 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 complaint on 7th September, 2001.

SUMMARY OF COMPLAINANT'S EVIDENCE

2. The complainant claimed that:

- On 26th December, 2000, at 9.55 pm approximately, himself, Mr Martin Collins, Mr Ciaran Collins and Mr Michael Collins, who are all members of the Traveller community, arrived outside Club Sarah. Immediately beforehand they had all been in the Goat Pub for 5 hours or so where they had four or five pints each. After about the third pint in the Goat Pub they also had a meal there. While they were in the Goat Pub they picked up flyers advertising Club Sarah's event for St. Stephen's night.
- Mr Collins had never been at Club Sarah before. When he arrived people were queueing in two's outside and there was a queue of about 17 people, all of whom were non Travellers. He joined the queue with Mr Martin Collins. Some other people joined the queue directly behind them and Mr Michael Collins and Mr Ciaran Collins were behind these other people in the queue. Nobody in the queue in front of him was refused admission and he did not see any of these people, or anyone else that night, showing ID to the doormen.
- When he got to the top of the queue the doormen asked him and Mr Martin Collins to stand to one side. The people who were behind him, who were all non Travellers, were admitted and Mr Ciaran Collins and Mr Michael Collins were then also asked to stand to one side.
- The doormen seemed to discuss their admission and then told them that they would not be admitted. When he and his friends asked why they were being refused they were told that it was regulars only that night. He and his friends then presented flyers for Club Sarah which were given out in the Goat Pub earlier that night but they still did not gain entry. He thought he was guaranteed admission to the club because he had one of the flyers. One of the doormen suggested that they had printed the flyers themselves. At no stage were they aggressive or abusive.
- A queue of about 30 non Travellers had built up behind them when they were discussing their entry with the doormen. They were being verbally abused by the other patrons who they were holding up from being admitted. Some of these other people were brought into the club through a door in the lounge of Sarah Curran's pub, which is under the same management as Club Sarah and is located in a separate part of the same building.
- After he was about 10 minutes standing at the door he and Mr Michael Collins then went to Rathfarnham Garda station, which is very close to the club, to make a complaint about the matter to the Gardai. After they made the complaint they went back outside the club where their two other friends had been waiting. A Garda van arrived and they were advised by a Garda to leave. They then left the area outside the Club between 10.30 pm to 10.45 pm approximately.

2.1 The complainant's account of events was supported by Mr Martin Collins, Mr Michael Collins and Mr Ciaran Collins.

2.2 The complainant claimed that he was born into the Traveller community and that he was brought up in that community. He said that he lives in a housing scheme which is specifically for Travellers.

SUMMARY OF RESPONDENT'S EVIDENCE

3. The respondent claimed that the reason the complainant and the other men in his party were refused admission was because they were not known to Mr Noel Curtin, the doorman who refused them, they had no ID, and they were abusive.

3.1 The respondent also claimed that in refusing the complainant it was acting in good faith for the sole purpose of ensuring compliance with the Licensing Acts.

The respondent claimed that the statutory and common law duties which it owes to its patrons and staff are:

- Section 12 Licensing Act, 1872, - the duty to prevent drunkenness and disorderly conduct in any public place.
- Section 13 of the Licensing Act, 1872, - the duty to prevent violent conduct in licensed premises.
- Section 6 Licensing (Ireland) Act, 1836, the duty to prevent drunkenness on licensed premises.
- Section 6 Criminal Justice (Public Order) Act, 1994 - the duty to prevent words or behaviour that may provoke a breach of the peace.
- Section 59 Road Traffic Act. 1968, - the duty to prevent a person being under the influence in a public place so as to be a danger to traffic or to himself.

The respondent also claimed that section 2(2) of the Public Dance Halls Act, 1935, and judicial decisions interpreting the law were also contributory factors which obliged it to be exacting and properly discriminating in the conduct of its premises.

3.2 The respondent also claimed that under common law the respondent and its staff are under a duty to:

- Manage the premises in a safe and proper manner.
- Ensure that the premises and the patrons in the premises are properly supervised.
- Not admit persons whom they believe may, with the further consumption of alcohol, be a source or risk of injury, damage or danger either to themselves or to other patrons attending.
- Anticipate incidents that could result in such injury/damage and/or danger.
- Have sufficient regard for the safety and welfare of their patrons
- Provide its staff with a safe place to work and to protect them from injury, damage and/or danger.

A number of witnesses gave evidence on behalf of the respondent:

Evidence of Mr Seamus Nolan

3.3 Mr Nolan claimed that:

- He is the operations manager for the club and the other pubs/clubs in the chain which Club Sarah is part of.
- Club Sarah had been criticised by the Courts before because of trouble in its vicinity. In October 1999 the club applied to have its licence renewed but it was held back until April, 2000, because of the trouble which had occurred. Against this background he had to give an undertaking to the Courts to review the security arrangements both inside and outside the club. In this regard he engaged extra staff and appointed people to monitor events in the club and also in its vicinity. He had gone

back to the Courts since then and the arrangements he made had been found to be satisfactory. The licence was renewed on the basis that any breach or non observance of the conditions and restrictions of the licence shall constitute grounds for revoking it.

- Another club in the area was closed by the Gardai because a number of troublemakers used to frequent it and some incidents had occurred in its vicinity. The Gardai told him in September/October 2000 that the troublemakers from the other club would be looking for somewhere else to frequent and that they were not to be allowed to become regulars at Club Sarah. The Gardai also told him that if the public order offences continued in the club's vicinity that the Gardai would have to consider using their powers to object to the license being renewed.
- Against this background he introduced a membership scheme for the Club. Before anyone can become a member they have to produce a passport. Membership cards are sent to the home addresses of applicants to ensure they can trace who is frequenting the club. It had also become the Club's policy to ask anyone seeking admission to have a membership card or to produce ID so that they would know who was coming into the Club.
- The club's admission policy is not written down but basically anyone who is aggressive, has had too much alcohol, who doesn't comply with its dress code and who doesn't have ID or a membership card will not be served. Even locals who don't have ID may not be served. On St. Stephen's night the policy would have been applied more strictly than normal because people tend to go out earlier than usual and consume more alcohol.
- The Club does not have a policy to exclude Travellers. The Club serves some Travellers and he knows this because he recognises them from a local campsite where Travellers live and he has seen them there. He would not be able to identify Travellers just by seeing them outside of this situation.
- Sometime before Christmas 2000, there was a meeting of all the club's staff and security personnel. He told all the staff at the meeting that they had to be strict on who they served. He brought the Equal Status Act to the attention of all staff at the meeting but there were no written records of this. Mr Richard Greene, the club's manager, and Mr Noel Curtin, the doorman who refused the complainant, were at the meeting.
- He had checked with Mr Curtin and that Mr Curtin maintains the reasons the complainant's party were refused were because they had no ID, he didn't know them and they were abusive. When the refusal occurred Mr Curtin was employed by SK Security. This company no longer has the contract for security at the club and Mr Curtin was unable to attend the hearing.
- Before he sent the reply to the ODEI5 he checked with Mr Curtin and Mr Greene and got verbal reports from them as to why the complainant was refused. He accepts that the reply to the ODEI5 which he issued is inaccurate and that it does not describe the circumstances which led to the complainant's refusal which were referred to at the oral hearing. The reply to the ODEI5 refers to another incident which occurred later on 26th December, 2000, which the complainant was also involved in. He did not know when he became aware that the reply to the ODEI5 was not accurate.

- **<u>Evidence of Mr Richard Greene</u>**

3.4 Mr Greene claimed that:

- He is the manager of the club and was on duty on the night of the refusal. St. Stephen's night is a difficult night in the club trade because people tend to have

consume more alcohol than normal when they seek service. For this reason the club had more security staff on duty than usual.

- He came on duty about 5.00 p.m. that day and spent some time in Sarah Curran's pub assessing the atmosphere of the night. All of the security staff were at the club at 8.15 p.m. approximately. The security service for the club that night was provided by SK Security who provided the service for the club from Mid 1999 to January 2000 when its contract expired.
- The club opened at 8.45 p.m. approximately. The age profile of the clientele is normally early 20's and 100 people approximately were refused service that night.
- When the club opened he was standing in front of a patio area which is before the door of the club with Mr Noel Curtin, who was the head of security that night. The reason they were standing in front of the patio area was to screen patrons who sought service as they did not want people queueing up at the door and being refused there. In other words the patrons had to get past him and Mr Curtin before they could be admitted at the door where they had to queue to pay the admission fee.
- He remembers the complainant's party arriving. They went to the door of Sarah Curran's pub first by mistake and then made their way to the door of the Club. He was aware they were not regulars and that they were older than the usual clientele. He asked them for ID, not because he doubted they were younger than 18, but for two reasons:
    - To engage them in conversation as this is a standard procedure for doormen who wish to assess the suitability of potential customers.
    - The clubs policy was to look for ID - 99% of the people admitted that night had ID.
- Mr Martin Collins replied in an aggressive and dismissive tone that he was old enough to drink and that he was over from Manchester for Christmas. He said that this caused alarm bells to ring in his mind and that he told the party it would be up to Mr Curtin to decide whether they would be admitted. He did this because Mr Curtin was the head of security and was better than himself at assessing the suitability of potential patrons.
- He heard the complainant's party using bad language to Mr Curtin and their tone was aggressive. Mr Curtin refused to admit them and they argued the point with him for about 15 - 20 minutes. Although as manager of the club he could overturn Mr Curtin's decisions he would very rarely do so. As far as he was concerned Mr Curtin was in charge of security that night and it was his decision to refuse admission to the complainant's party.
- He did not know the complainant or the other men were Travellers but he remembered the group well from the other 100 people who were refused that night because they were the only ones who argued the point with Mr Curtin for so long. He wasn't sure if there would be trouble if they were admitted but he didn't want to take any chances. When people are refused admission from the club it is generally because they are drunk, abusive, too young or have no ID or membership card.
- He was aware of the Equal Status Act and the obligations it places on publicans when the refusal occurred.
- He gave a verbal report about the refusal to Mr Nolan. He did not see Mr Nolan's reply to the ODEI5 before it issued and he did not know when he became aware that it was inaccurate.
- He keeps an incident book but he did not keep any record of the complainant's party being refused in it. This may have been a mistake.

Evidence of Mr Jerry Dunne

3.5 Mr Jerry Dunne claimed that:

- He is the managing director of PR Security, which now has the contract for security at Club Sarah. He is also the Managing Director of the Irish Security Training Authority (ISTA). ISTA trains doormen to City and Guilds standard.
- Mr Noel Curtin was trained by ISTA.
- In October/November 2000 he got booklets from the Equality Authority on the Equal Status Act, and distributed them to his clients, including Club Sarah. He also received information from the Vintners Federation of Ireland about the Act and this was also distributed to his clients.
- He was aware that another club in the area was closed due to some very serious trouble which occurred in its vicinity involving some people who used to frequent it. He said that every security company in Dublin was asked to tell the Gardai if they knew what pub or club the people involved had moved on to.

Evidence of Mr Martin Tarmey

3.6 Mr Tarmey claimed that:

- He was in Sarah Curran's pub on St Stephen's night 2000 and was due to meet the owner of the pub there.
- The owner rang him and told him that he would not be able to make it.
- He then decided to leave and on his way out at 11.00 pm approximately a lounge boy told him that there was trouble outside and advised him to wait until it was over.
- He did not want to wait and when he left he saw a number of people outside, including the complainant, Mr Martin Collins and Mr Ciaran Collins, among others.
- He saw Mr Martin Collins running at the door of the club and kicking it.

The respondent claimed that Mr Tarmey's evidence was supportive of its contention that the complainant's party were abusive that night. The respondent claimed that Mr Tarmey's evidence also linked the complainant with the incident at 11.00 p.m. which was described in the reply to the ODEI5 in that the complainant was one of the people who were involved in the trouble. The respondent claimed that this casts doubts about the complainant's credibility.

PROCEDURAL ISSUE

4. The respondent claimed that under section 25 of the Act that the Director of Equality Investigations is required to hold oral hearings into complaints herself. The respondent claimed that the Director is not empowered to delegate this function to an Equality Officer.

I am satisfied that I was empowered to hold the oral hearing. This is because, as stated earlier, this complaint was assigned to me and 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, which states, inter alia:

> *"From among the Director's staff the Director may-*
>
> *(a) appoint persons to be equality officers, ...*
>
> *and the Director may delegate any function conferred on the Director by or under this Act or any other enactment to an equality officer or equality mediation officer".*

ISSUES FOR CONSIDERATION

5. 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(2) of the Equal Status Act, 2000, provides that the discriminatory grounds include the membership of the Traveller community ground and I am satisfied that the complainant is covered by this 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 Club Sarah discriminated against Mr Michael Collins 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.

PRIMA FACIE EVIDENCE

6. The complainant claimed that he was discriminated against on the basis of his membership of the Traveller community. For the complainant's claim to be upheld he has to establish prima facie evidence of discrimination on that ground. If he succeeds in establishing prima facie evidence, the burden of proof then shifts to the respondent to rebut the inference of discrimination.

6.1 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.

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.

6.2 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."*

6.3 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".*

6.4 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.* "

6.5 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.

6.6 In *Gleeson v The Rotunda 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.

I now have to now establish whether the complainant has produced sufficient hard evidence which, in the absence of convincing contradictory evidence, would lead a reasonable person to believe that the respondent discriminated against him on the basis of his membership of his membership of the Traveller community. 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 complainant fails 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 he did not act in a discriminatory manner.

6.7 In order for the complainant to establish prima facie evidence he has to show that he was treated less favourably by the respondent than someone who is not a member of the Traveller community in the same circumstances. The complainant claimed that he joined

the queue outside Club Sarah with Mr Martin Collins and that he saw non Travellers who were also queueing in twos being admitted. He claimed that he did not see any of these people or anyone else that night showing ID to the doormen. He claimed that when he and Mr Martin Collins got to the top of the queue that they were refused admission. He claimed that some non Travellers were then admitted to the club and that Mr Ciaran Collins and Mr Michael Collins were then refused also when they got to the top of the queue.

I am conscious that the complainant's party had four or five pints each earlier over about 5 hours that evening so the comparator for the complainant is a non Traveller seeking admission who had consumed the same amount of alcohol over the same period. However, I am also conscious that although the respondent's solicitor claimed at the hearing that the level of alcohol was a contributory factor in the refusal, that Mr Greene did not mention this and Mr Nolan did not claim that Mr Curtin made the refusal because of the level of alcohol consumed either. Therefore, I consider that the level of alcohol which the complainant and his party had consumed is not a factor in deciding whether the complainant has established prima facie evidence.

I am satisfied that the complainant has established prima facie evidence of discrimination on the membership of the Traveller community ground. Accordingly, the burden of proof shifts to the respondent to rebut the inference of discrimination.

CONCLUSIONS OF EQUALITY OFFICER

7. In reaching my conclusions in this case I have taken into account all of the evidence, both written and oral, which was presented. I am conscious that there is a major conflict in the evidence of the two parties. In my opinion the first issue to be determined is whether the complainant's version of the refusal or the respondent's version is correct. I consider that this is a key issue because it has a major impact on the credibility of the parties. I consider that although both sides had witnesses to support their evidence that none of these could be considered to be totally independent. In these circumstances I have to judge whose account I consider to be the most credible in the light of all the evidence presented. At the oral hearing both parties came across as being very convincing but because their versions of the refusal are not the same it is clear that one of the parties has put forward evidence which is not correct.

7.1 The complainant claimed that he joined the queue with Mr Martin Collins outside the club and that when they got to the top of the queue, which was at the door of the club itself, that they were asked to stand to one side. He claimed that when Mr Michael Collins and Mr Ciaran Collins got to the top of the queue that they were also asked to stand to one side. The complainant claimed that the reason he and his friends were asked to stand to one side was because the doormen thought they were members of the Traveller community. The complainant claimed that the doormen did not ask them for ID and that they seemed to discuss their admission. He also claimed that they were then told that they would not be admitted because it was regulars only. He claimed that they then produced a flyer for the club which he thought guaranteed admission but that they were still not admitted and the doorman suggested that they had printed the flyer themselves.

7.2 According to Mr Greene's evidence for the respondent on the other hand it was claimed that there was no queue when the complainant's party arrived outside the club and that the four men sought admission together. Mr Greene also claimed that the men were stopped by himself and Mr Curtin in front of a patio area a short distance before the door of the club

and not at the door of the club as claimed by the complainant. Mr Greene also claimed that he asked the 4 men whether they had ID and that Mr Martin Collins replied in an aggressive and dismissive tone that he was old enough to drink and that he was over from Manchester for Christmas. Mr Greene claimed that he then told the 4 men that Mr Curtin would decide whether they would be admitted or not and that Mr Curtin refused them admission. Mr Nolan claimed that Mr Curtin decided to refuse admission to the complainant's party because they had no ID, they were not known to him and they became abusive.

7.3 I have noted that the complainant notified the respondent on 11th January, 2001, as required by section 21(2) of the Act, of the fact that he considered he had been discriminated against on the basis of his membership of the Traveller community. As per the complaint form which the complainant sent to the Director of Equality Investigations I am taking it that Mr Nolan's undated reply to the section 21(2) notification (Form ODEI5) was received by the complainant on 15th February, 2001. Mr Nolan claimed at the oral hearing that the reply mistakenly did not contain any information in relation to the reason why the complainant was refused, which was summarised earlier, and that it referred to a separate incident which occurred later on that night at 11.00 p.m. approximately in which the complainant was also involved.

I find it difficult to understand how Mr Nolan's reply to the ODEI5 could have been so inaccurate. Mr Nolan claimed that Mr Greene and Mr Curtin had given him verbal reports in relation to the incident before he issued the reply. If they provided him with the reasons claimed at the oral hearing for the refusal why did the reply not reflect this ? In addition, the ODEI5 was sent by the complainant less than three weeks after the refusal occurred and the reply to the ODEI5 was sent by Mr Nolan less than two months after that date. In view of the relatively short period of time which had elapsed between the incident occurring, the ODEI5 being received, Mr Nolan's investigation into the incident and the reply, I cannot comprehend how he could get it so wrong.

I consider that the inconsistency in offering different explanations for the complainant's refusal at different times is not helpful to the credibility of the respondent's case. I also consider that it is surprising that neither Mr Nolan nor Mr Greene could give any indication as to when they became aware that the reply to the ODEI5 was inaccurate. I have noted that the respondent's solicitor claimed that it may have been after correspondence was exchanged between the parties in March 2001 but neither Mr Nolan or Mr Greene could confirm this.

7.4 I have also noted that Mr Tarmey claimed that he saw the complainant, Mr Ciaran Collins and Mr Martin Collins outside the club at 11.00 p.m. approximately and that he saw Mr Martin Collins running at the door of the club and kicking it. I have also noted the respondent's claims about the implications of Mr Tarmey's evidence which were stated earlier.

7.5 In determining the significance of Mr Tarmey's evidence I am conscious of the fact that both parties agree that the complainant was refused at 9.55 pm approximately and that Mr Tarmey's evidence is in relation to an incident which he alleged to have occurred at 11.00 p.m. approximately. Accordingly, even if the incident described by Mr Tarmey actually happened it occurred after it was decided to refuse the complainant's party admission so it was not a factor in that decision. In relation to the respondent's point about the complainant's credibility I have noted that the complainant and his witnesses denied Mr

Tarmey's allegations so the issue essentially boils down to their word against his. I have also noted that no reference was made to Mr Tarmey's evidence in the reply to the ODEI5.

7.6 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. I find that the respondent's reply to the notification which the complainant sent to him under section 21(2)(a) of the Act was misleading. The inference which I consider appropriate to draw is that the complainant's version of events leading up to his refusal is correct and that the respondent's version is incorrect.

7.7 On the balance of probabilities I do not believe that the complainant or anyone else in his party:

- were asked for ID by any of the doormen of Club Sarah before they were refused admission,
- were abusive or aggressive to any of the doormen before they were refused admission,
- were refused because they were not known to the Mr Curtin.

7.8 I noted that Mr Greene claimed that he did not know the complainant was a member of the Traveller community. On this point I have also noted that Mr Curtin was the person who made the decision to refuse admission. In my opinion it is his perception of the complainant which is important and he did not provide any evidence, either written or oral, as to whether he knew the complainant to be a member of the Traveller community.

7.9 Mr Greene claimed at the oral hearing that about 100 people who were not known to be Travellers were also refused admission that night. In saying this I consider that the respondent was essentially arguing that the complainant was treated the same as these other people and that he was not treated less favourably because of his membership of the Traveller community. I have considered this point and I accept that a significant number of people were refused that night. However, in my opinion when a refusal occurs there has to

be a reason for it. The reason may be of a discriminatory nature or of a non-discriminatory nature. Mr Greene claimed that the reasons for the refusals of the other people would have been that they were drunk, abusive, too young or had no ID or membership cards. The full facts surrounding the circumstances of the other refusals which occurred are not known to me and I am only investigating the incident complained of in the current case. It is not sufficient of itself to argue generally that just because non Travellers were also refused that the complainant was not discriminated against on the basis of his membership of the Traveller community although I recognise that this information may help support such an argument.

7.10 I have noted that the respondent claimed that the complainant's refusal was carried out in good faith for the sole purpose of ensuring compliance with the Licensing Acts and I am aware that the Licensing Acts require publicans, inter alia, to run orderly houses and to ensure that nobody under 18 years old is served alcohol on their premises. I have noted that Mr Greene stated he was aware the complainant's party were over 18 years old and that the respondent did not claim that it was acting in good faith by refusing them on the basis that there was any doubt about their age.

7.11 This leaves the question as to whether the respondent could have been acting in good faith in terms of endeavouring to ensure compliance with the public order aspects of the Licensing Acts. I recognise that it is difficult for doormen to make on the spot decisions as to whether admitting someone could lead to a breach in the Licensing Acts, particularly when over seven hundred people seek admission in a night, as in this case. I also recognise the difficulties faced by publicans in ensuring compliance with the Licensing Acts.

Mr Nolan outlined the difficulties which the club had in getting its licence renewed and the pressure which the Gardai exerted to ensure that the club was as trouble free as possible. In this regard I consider that in many ways the respondent should be commended for introducing a membership scheme and for having a strict admission policy. It is clear to me that the respondent was making genuine efforts to ensure that the possibility of trouble at the club or in its vicinity was minimised as far as possible.

Having said this, however, I have noted that the complainant presented at the hearing one of the club's flyers which he claimed to have picked up in the Goat Pub earlier that evening. He also claimed that he presented the flyer at the door when he was endeavouring to be admitted. I consider that it is slightly inconsistent for the respondent to argue on the one hand that it had a really strict admission policy while on the other hand it was leaving flyers advertising the club for all and sundry to pick up in a public house. In this regard I have noted that it is not clear from the flyer that patrons seeking admission would be asked for membership cards or ID before they could be admitted.

7.12 It is accepted by both sides that the complainant and his party were never in Club Sarah before and that they were not known to the doormen. Taking this fact into account in conjunction with my earlier findings that the complainant was not abusive at the time of the refusal and that he was not asked for ID, I cannot accept that the respondent was acting in good faith for the sole purpose of ensuring compliance with the Licensing Acts by refusing the complainant and his party. In my opinion insufficient evidence has been presented to show that the doormen had any reason for believing that there could have been a breach in the Licensing Acts if they were admitted. I consider that the respondent could not have successfully invoked the defence provided for in section 15(1) of the Act on this basis either.

7.13 I want to stress that the key issue for me in determining the outcome of this case was the credibility of the parties. I found that the complainant's version of events slightly more credible than the respondent's, primarily because of the inconsistencies between the respondent's evidence at the oral hearing and the reply to the ODEI5. These inconsistencies undermined the respondent's credibility in my opinion.

I believe it is important that when respondents receive ODEI5's that they deal with them appropriately. If respondents reply to an ODEI5 it is vital from their own perspective that the information contained in the reply is correct and accurate. On the balance of probabilities I am satisfied that that the respondent has not succeeded in rebutting the inference of discrimination.

DECISION

8. It is my decision that when Mr Michael Collins was refused admission to Club Sarah on 26th December, 2000, that he was discriminated against on the basis of his membership of the Traveller community, contrary to the Equal Status Act, 2000, by Owner, Club Sarah.

Under section 27(1)(a) of the Act I order that Owner, Club Sarah pay 250 Euro compensation to Mr Michael Collins.

Anthony Cummins
Equality Officer
8th March, 2002