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## **Equal Status Act 2000**

**EQUALITY OFFICER DECISION NO: DEC - S2002-012**

**Mr Robert O'Brien  
(Represented by Liam F. Coghlan & Co., Solicitors)**

**-v-**

**Scruffys Bar, Killarney Towers Hotel  
(Represented by Mr Pdraig J. O'Connell, Solicitor)**

**File Ref: ES/2001/27  
Date of Issue: 8th March, 2002**

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## **Summary of Decision DEC-S2002-012**

**Mr Robert O'Brien**  
**(Represented by Liam F. Coghlan & Co., Solicitors)**

**-v-**

**Scruffys Bar, Killarney Towers Hotel**  
**(Represented by Mr Pdraig J. O'Connell, Solicitor)**

### **Headnotes**

Equal Status Act 2000 - direct discrimination - section 3(1)(a) - membership of the Traveller community ground - section 5(1) - refusal of service in the bar of a hotel - burden of proof on complainant to present prima facie evidence - no prima facie evidence presented.

### **Background**

Mr Robert O'Brien claimed that he was discriminated against contrary to the Equal Status Act, 2000, on the basis of his membership of the Traveller community when he was asked to leave Scruffys Bar, Killarney Towers Hotel, on 25th November, 2000.

The respondent claimed that the complainant was not discriminated against on the basis of his membership of the Traveller community. It claimed that the reason the complainant was asked to leave the bar was because his previous behaviour warranted it. 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 complainant was asked to leave on this basis. The respondent also claimed that the incident occurred on 18th November, 2000, and not 25th November, 2000, as claimed by the complainant.

### **Conclusions of Equality Officer**

The Equality Officer found that the complainant did not succeed in establishing prima facie evidence of discrimination on the membership of the Traveller community ground. Consequently the burden of proof did not shift to the respondent to rebut an inference of discrimination

### **Decision**

The Equality Officer decided that the respondent did not discriminate against the complainant contrary to the Act on 18th November, 2000.

## **Equality Officer Decision DEC-S2002-012**

### **Complaint under the Equal Status Act 2000**

**Mr Robert O'Brien**  
**(Represented by Liam F. Coghlan & Company, Solicitors)**

-v-

**Scruffys Bar, Killarney Towers Hotel**  
**(Represented by Mr Pdraig J. O'Connell, Solicitor)**

#### **DISPUTE AND BACKGROUND**

1. Mr Robert O'Brien claimed that he was discriminated against contrary to the Equal Status Act, 2000, on the basis of his membership of the Traveller community when he was asked to leave Scruffys Bar, Killarney Towers Hotel, on 25th November, 2000.

The respondent claimed that the complainant was not discriminated against on the basis of his membership of the Traveller community. It claimed that the reason the complainant was asked to leave the bar was because his previous behaviour warranted it. 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 complainant was asked to leave on this basis. The respondent also claimed that the incident occurred on 18th November, 2000, and not 25th November, 2000, as claimed by the complainant.

The complainant referred his claim to the Director of Equality Investigations on 29th January, 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.

#### **NEED FOR TWO HEARINGS**

2. Two hearings were held into this complaint. The first hearing took place on 15th May, 2001, and the second hearing took place on 16th January, 2002. The reason there was a need for two hearings was because the respondent did not bring its incident book or duty roster to the first hearing and I asked that they be supplied to me after the hearing. When I received these documents I copied them to the complainant with some other information which the respondent supplied after the first hearing. The complainant had some questions in relation to this information and I considered that a second hearing was the most appropriate way of progressing the complaint.

## **SUMMARY OF COMPLAINANT'S EVIDENCE**

### **3. Evidence of Mr O'Brien**

Mr O'Brien claimed that:

- He is a member of the Traveller community as are the rest of his family. He is settled but his parents used to live a nomadic lifestyle in the past.
- He went into Scruffy's Bar on 25th November 2000 between 8.00 p.m. to 9.00 p.m. He is certain that this is the date the incident occurred because it was fresh in his mind when he made the complaint. His wife, sister, and cousin, who are all Travellers, and two non Travellers were also in the bar with him that evening.
- He had one or two pints when after about half an hour to an hour Mr Con Murphy, one of the doormen on duty that night, asked him to leave. None of the other people he was with were asked to leave.
- He was not given any reason why Mr Murphy wanted him to leave and when he asked for one he was told "you know".
- He told Mr Murphy he would leave when he finished his drink but Mr Murphy and another doorman took his glass off him and physically made him leave the bar. Mr Danny McGough was not the other doorman who assisted Mr Murphy, as claimed by the respondent, and Mr McGough was not on duty that evening.
- The reason he was asked to leave and treated in the manner described was because he is a member of the Traveller community.
- Mr Murphy knew he was a Traveller. They are around the same age and lived near to each when they were growing up.
- He was never abusive in any way to any member of the respondent's staff, as claimed by the respondent.
- He was not involved in any assaults on people as described by Mr Murphy and Mr Danjo Nagle. Mr Nagle is the head of Danjo Nagle Security Services, the security company which has the contract for the bar's security.
- He was not involved in any of the incidents claimed by Mr McCarthy, the Group Manager of the chain in which the Killarney Towers Hotel is part of. When he was in the Killarney Avenue Hotel on 1st December, 2001, Mr McCarthy did not speak to him and ask him not to return as claimed by Mr McCarthy.
- He was never in trouble with the Gardai.
- He had been in the bar a couple of times a year before the incident on 25th November, 2000, but he could not remember the last time he was there before that date. Sometimes when Mr Murphy and Mr Nagle were on duty at the door of the pub they let him in but other times they would not let him in.
- There is a quota system in operation at the bar whereby no more than 8 Traveller couples are allowed in the bar at any one time.
- Before Travellers can be admitted to the bar they have to approach Mr Nagle in a store where he also works to get his permission. Only Travellers have to go through this special procedure before they can be served.

### **Evidence of Mrs O'Brien**

3.1 Mrs O'Brien claimed that:

- Her husband's account of the events of 25th November 2000 is correct.
- She had problems getting into the bar before. She had to ask Mr Nagle in the store where he also works if she could be admitted to the bar. Another Traveller also had to go through this procedure.
- Other Travellers have also made complaints under the Equal Status Act, 2000, about Mr Nagle.

## **SUMMARY OF RESPONDENT'S EVIDENCE**

### **Evidence of Mr Frank McCarthy**

Mr McCarthy is the Group Manager of the chain in which the Killarney Towers Hotel is part of. He claimed that:

- The incident described by Mr O'Brien occurred on 18th November, 2001, and not 25th November, 2000. Mr O'Brien had an ulterior motive in alleging that the incident occurred on 25th November, 2000, in that he would have known that the respondent would not have had any records in relation to an incident on that date. The duty roster for 18th November, 2000, confirms that Mr McGough was on duty that night.
- Mr O'Brien was not discriminated against on the basis of his membership of the Traveller community when he was asked to leave the bar. He was asked to leave because he was barred due to his previous conduct.
- It was not appropriate to give a reason for the refusal on the night as it would have added fuel to the fire. The practice of not giving reasons for refusals is common in the bar trade.
- The respondent's policy is to serve anyone who is over 18 years old, not drunk and well behaved. The respondent does not have a policy to exclude Travellers.
- The respondent is under an obligation under the health and safety legislation to protect its staff and patrons.
- The Gardai put pressure on the respondent to ensure that there are no breaches of public order in the bar.
- It is not necessary for a respondent to know for certain that someone has a criminal conviction before they can refuse service. 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. Mr O'Brien was refused on this basis.
- He saw Mr O'Brien in a group of 8 Travellers on 1st December, 2001, in the Kenmare Rooms of the Killarney Avenue Hotel, which is a sister hotel of the Killarney Towers Hotel. He let him stay there because he did not want to embarrass him. One other person in Mr O'Brien's group was asked to leave. When Mr O'Brien was leaving he was asked not to return.
- On 26th December, 2001, he counted 70 people in the Kenmare Rooms and he estimated that 32 of these were Travellers. He claimed that this shows the respondent does not have a discriminatory policy towards serving Travellers. The reason he was counting the number of customers in the hotel at that time was for insurance and security reasons.

### **Evidence of Mr Con Murphy**

4.1 Mr Murphy claimed that:

- He was employed by Danjo Nagle Security Services as a doorman for Scruffy's Bar on the night in question. He started working for the security firm in 1998 and first worked in Scruffy's Bar at that time
- He did not see the complainant entering the bar but he saw him there later on.
- He approached the complainant and asked him to leave the bar because he considered that there was a risk of violence when he had alcohol consumed. The reason he thought this was because about three and a half years previously he saw the complainant hitting people outside a restaurant in the town. He thought the complainant was drunk on that occasion by the way he was walking.
- The complainant did not want to leave. He became aggressive and raised a glass to him. Mr Danny McGough, another doorman, then came to his assistance and the two of them took the glass off the complainant and escorted him off the premises.
- Mr Nagle told him in March, 2000, that the complainant was barred from the premises because he had been abusive after he was refused admission.
- He did not know the complainant was a member of the Traveller community.
- He could not remember the last time the complainant was in the pub before the incident on 18th November, 2000.

#### **Evidence of Mr Danny McGough**

4.2 Mr McGough claimed that:

- He was on duty as a doorman on the night in question.
- He assisted in escorting the complainant off the premise as described by Mr Murphy.

#### **Evidence of Mr Daniel Nagle**

4.3 Mr Nagle claimed that:

- He is the head of Danjo Nagle Security Services, the company which provides security at the bar.
- He meets the bar's management every week to discuss any issues which arise in relation to the security service.
- He refused the complainant admission to the bar previously because he considered that he had too much to drink. On that occasion the complainant became abusive and he told him that he was barred.
- He knew the complainant is a member of the Traveller community.
- The complainant is a nice person when he is sober but he becomes abusive when he consumes alcohol.
- It is policy to refuse admission to anyone who is under 18 years old, drunk or abusive - regardless of whether they are Travellers or non Travellers.
- About 20 -25 Travellers are served in the bar that he knows of.
- About 300 people are barred from the respondent's premises.
- It is not practical to keep records of every refusal of service which occurs.
- An incident book is kept which records significant incidents which occur. The refusal of the complainant on the night in question, would be recorded in the incident book.
- He is aware that the complainant and another person were previously involved in an assault on someone. The Gardai investigated the incident.
- Mrs O'Brien and another Traveller did approach him in the store where he works to see if they could be admitted to the bar. No non Travellers have ever done this but he does not know why. There is no prior approval system or probationary periods before Travellers can be admitted to the bar.

### **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 Scruffys Bar, Killarney Towers Hotel, discriminated against Mr Robert O’Brien 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.

### **ADMISSIBLE EVIDENCE**

6. In making my decision in this case I have taken into account all of the evidence provided, both written and oral, with the exception of the extracts from the respondent’s incident book which were supplied. The reason I am not taking the extracts into account is because the respondent was unwilling to supply the whole incident book. It claimed that in addition to the extracts about the complainant which were supplied that the incident book also contains sensitive information which is not relevant to this complaint. The complainant claimed that he needed to examine the incident book in full and not just the extracts provided to assess its veracity.

I agreed with the complainant’s view and I informed the respondent on 29th January, 2002, that if the whole incident book was not supplied before close of business on 12th February, 2002, that I would not take any of the extracts into account. The respondent failed to reply to my notification in this regard and, therefore, I am not taking into account any of the extracts provided for the purposes of my decision. The parties were notified of this on 19th February, 2002.



## **PRIMA FACIE EVIDENCE**

7. For the complainant's claim to be upheld he has to establish prima facie evidence of discrimination on the membership of the Traveller community ground. This means he has to show that he was treated less favourably than a non Traveller in the same circumstances. If he succeeds in establishing prima facie evidence, the burden of proof then shifts to the respondent to rebut the inference of discrimination.
- 7.1 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.
- 7.2 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 seems 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.
- 7.3 To establish what a prima facie case is I have examined definitions from sources which are persuasive. In *Dublin Corporation v Gibney* 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."
- 7.4 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".
- 7.5 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. "*

- 7.6 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.
- 7.7 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.
- 7.8 I now have to 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 membership of the Traveller community ground. In other words the complainant has to show that a non Traveller would have received more favourable treatment in the same circumstances. If he has 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 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 it did not act in a discriminatory manner.

### **CONCLUSIONS OF EQUALITY OFFICER**

8. The parties disagree about the date on which the alleged discriminatory treatment occurred and who was involved in escorting the complainant off the premises with Mr Murphy. The complainant claimed that it occurred on 25th November, 2000, and that Mr McGough was not involved but the respondent claimed that it occurred on 18th November, 2000, and that Mr McGough was involved. The respondent also claimed that the complainant had an ulterior motive in alleging that the incident occurred on 25th November, 2000. The respondent claimed that the complainant would have known that it would not have any records in relation to an incident on that date and that consequently its defence of the allegations would be more difficult.

The respondent supplied a copy of what it claimed was the duty roster for 18th November, 2000, confirming that Mr McGough was on duty that night. I have examined this document and it is not clear that it is for the 18th November, 2000, because the date is partly illegible. The date has clearly been changed and it could be the duty roster for any one of a number of dates in November, 2000. However, I accept the respondent's word that it was altered at the time it was drawn up and not for the purpose of defending the complaint. In reaching my conclusion on this point I am conscious that the question of whether Mr McGough was on duty that night essentially boils down to the word of the complainant and his wife against that of Mr Murphy and Mr McGough. As Mr McGough gave evidence to the effect that he

was involved, on the balance of probabilities I believe him. Consequently I am also satisfied that the incident complained of occurred on 18th November, 2000, but I do not believe that the complainant had any ulterior motive in suggesting that the incident occurred on 25th November, 2000, because the respondent had no evidence to support this claim. In my view the mix up over the date of the incident was an honest mistake on the complainant's part.

- 8.1 The complainant claimed that the reason he was asked to leave the bar was based on his membership of the Traveller community. The respondent denied discriminating against the complainant on this basis and claimed that in asking him to leave it was treating him the same as anyone else in the same circumstances.
- 8.2 Mr Murphy was the doorman who asked the complainant to leave the bar and his evidence is very important in this case. At the first oral hearing Mr Murphy claimed that he asked the complainant to leave because he considered that there was a risk of violence when the complainant had consumed alcohol. He claimed that the reason he thought this was because he saw the complainant hitting people about three and a half years previously outside a restaurant in the town. He thought the complainant was drunk on that occasion by the way he was walking.
- At the second oral hearing Mr Murphy claimed that Mr Nagle had told him in March, 2000, that the complainant was barred from Scruffys Bar because he had been abusive to him when he was refused service there previously. Mr Murphy claimed that this was also a contributory factor in his decision to ask the complainant to leave the bar.
- 8.3 At the first oral hearing Mr Nagle claimed that the complainant was abusive to him when he sought admission to Scruffys Bar previously. Mr Nagle claimed he told the complainant that he was barred on that occasion.
- 8.4 The complainant denied the claims made by Mr Murphy and Mr Nagle. He claimed that at the time of the incident described by Mr Murphy he would have been aged less than eighteen years old and that he was too young to have consumed alcohol at that time.
- 8.5 In considering the question of whether the allegations made by the respondent's witnesses are correct I believe that Mr Murphy's evidence was not entirely convincing. This is because at the first oral hearing when I asked him why he asked the complainant to leave he did not mention the fact that Mr Nagle had previously told him that the complainant was barred. Also Mr Murphy claimed that he did not know the complainant was a member of the Traveller community. I find this difficult to believe in view of the complainant's claim that they had known each other for years and lived close to each other and Mr Nagle's claim that he knew the complainant was a Traveller.
- 8.6 I have noted that the respondent also claimed that the complainant was abusive to security personnel on 18th March, 2000, 19th March, 2000, 3rd June, 2000, and 10th February, 2001, but no evidence was provided to support these claims as I cannot take into account the extracts from the incident book which were supplied. The complainant denied the respondent's claims and I have noted that the date of incident alleged to have occurred on 10th February, 2001, was after the date of the incident on 18th November, 2000, so it could not have been a material factor in the decision to ask the complainant to leave at that time.

- 8.7 However, I can take into account the verbal evidence of Mr Nagle in relation to an incident which he alleged to have occurred on a previous unspecified date before the incident on 18th November, 2000. Mr Nagle claimed that he refused the complainant admission on that occasion because he considered that he had too much to drink. Mr Nagle claimed that the complainant became abusive and that he barred him because of the abuse which he received. The complainant denied the claims made by Mr Nagle about this but I found Mr Nagle's evidence to be convincing and on the balance of probabilities I am satisfied that his version of events is correct.
- 8.8 Mr Nagle also claimed that the complainant and another man assaulted someone and that the Gardai investigated the incident. The complainant denied this allegation and asked why had he not been prosecuted if the Gardai were involved. I have considered this allegation and I am satisfied that it is based on hearsay.
- 8.9 The complainant also claimed that the respondent has a discriminatory policy towards Travellers. He claimed that Travellers have to go through special procedures before they can gain admission to the bar and that there seemed to be a quota of no more than 8 Traveller couples at any one time in the bar. Mrs O'Brien claimed that she had problems getting into the bar before and that she had to ask Mr Nagle in the store where he also works during the day if she could be admitted. Mrs O'Brien also claimed that another Traveller had to go through this procedure. I have noted that that the complainant did not provide any hard evidence to support his claim in relation to a quota system.
- 8.10 The respondent denied having a discriminatory policy towards Travellers and claimed that it serves anyone who is over 18 years old, who is not drunk and who is well behaved. Mr Nagle accepted that Mrs O'Brien and another Traveller approached him in the store where he works and asked him whether they could be admitted to Scruffys Bar. Mr Nagle also accepted that non Travellers had never approached him in this way. In considering the issue as to whether the respondent had special procedures which Travellers had to comply with I have noted that Mrs O'Brien claimed that she decided to approach Mr Nagle and I consider the fact that she made the approach is the important point here. No evidence was presented to convince me that Mr Nagle or the respondent put special procedures in place before Travellers could be admitted. Mrs O'Brien approached Mr Nagle herself and not at the request of Mr Nagle. I do not believe that Mr Nagle should be blamed if someone approaches him uninvited in his day job in respect of an issue associated with the respondent's premises. I consider the fact that non Travellers have not approached him in this way is not significant in the context of this complaint.
- 8.11 I have also noted that the complainant claimed that other Travellers have made complaints against Mr Nagle under the Equal Status Act, 2000. However, I cannot attach any significance to this point for the purposes of this investigation. This is because no hard evidence was presented to prove that any complaints against Mr Nagle have been substantiated. If there are any other complaints against Mr Nagle they are unproven allegations of discrimination at this stage.
- 8.12 I have also noted Mr McCarthy's claims that he saw Mr O'Brien in a group of Travellers on 1st December, 2001, in one of the respondent's sister hotels. The complainant confirmed that he was there. Mr McCarthy also claimed that on 26th December, 2001, he counted 70 people in the respondent's sister hotel and he estimated that 32 of these were Travellers. Mr

McCarthy claimed that this evidence shows the respondent does not have a discriminatory policy towards serving Travellers.

In considering the points made by Mr McCarthy I am conscious of the fact that the respondent's policies at the time of the incident on 18th November, 2000, are at issue in this complaint, not the policies in place over one year later. I also think it is inconsistent for Mr McCarthy to claim that the reason the complainant was asked to leave Scruffy's Bar on 18th November, 2001, was that there was a risk of trouble based on his previous behaviour, while over one year later on 1st December, 2001, he let the complainant stay in the respondent's sister hotel because he did not want to embarrass him.

- 8.13 Both parties in this case agree that when the complainant was asked to leave the bar that he was accompanied by his wife, his sister and his cousin, who are all Travellers, and two non Travellers. Both parties also agree that none of the other people in the complainant's company were also asked to leave the bar. I believe this to be a crucial point in this complaint. While I recognise that two non Travellers were allowed to stay in the bar while the complainant was asked to leave, I consider that it is very significant that none of the other Travellers in the complainant's company were asked to leave either. I consider that this supports the argument that the complainant was not treated less favourably because of his membership of the Traveller community when compared to a non Traveller. I consider that this fact also supports the argument that the respondent did not have a discriminatory policy towards members of the Traveller community at that time. In my opinion the fact that the complainant was admitted to Scruffys Bar a couple of times a year before the incident complained of further supports the argument that the respondent did not have a discriminatory policy towards members of the Traveller community.
- 8.14 I have noted that the respondent did not reply to the notification under section 21(2)(a) of the Act which the complainant sent on 13th December, 2000. I have also noted that I can draw such inferences, if any, as seem appropriate, under section 26 of the Act because of the respondents failure to reply to the notification. Although I consider that the respondent's failure to reply to the notification was not helpful in this case, having considered fully the evidence provided by the parties, including any inferences of discrimination which can be drawn from the circumstances of the case, I do not consider it appropriate to draw any inferences from the respondent's failure to reply to the notification.
- 8.15 Having fully considered the admissible evidence in this complaint, including any inferences which can be drawn from the circumstances of the case, I am satisfied that the complainant has not established prima facie evidence of discrimination on the membership of the Traveller community ground. Consequently the question of the respondent rebutting an inference of discrimination does not arise.

### **DECISION**

9. I find on the basis of the evidence presented that Scruffys Bar, Killarney Towers Hotel, did not discriminate against Mr Robert O'Brien, contrary to the Equal Status Act, 2000, on the basis of his membership of the Traveller community on 18th November, 2000.

Anthony Cummins  
Equality Officer  
8th March 2002