

Equal Status Act 2000
Equality Officer Decision
DEC-S2002-007

Nora Barrett

V

**Victoria Hotel,
Galway
(Represented by V.P. Shields & Son,
Solicitors)**

File Ref *ES/2001/102*

Date Of Issue *28/02/2002*

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

3 Clonmel Street
Dublin 2.

Phone: 353 -1- 4774100
Fax: 353-1- 4774150

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

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Summary of Decision DEC-S2002-007

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Victoria Hotel, Galway

(Represented by V.P. Shields & Son, Solicitors)

Key words

Equal Status Act 2000 - Direct discrimination, section 3(1)(a) - Membership of the Traveller community, section 3(2)(i) - Supply of goods and services, section 5(1) - Tickets bought for hotel function - Refusal of admission - ID sought prior to admission

Dispute

This dispute concerns a complaint by Ms Nora Barrett that she was discriminated against, contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act 2000, by the Victoria Hotel, Galway on the grounds of her membership of the Traveller community.

The complainant maintains that she was discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in that she was denied a service which is generally available to the public contrary to Section 5(1) of the Act.

Background

The complainant maintains that, having queued for over an hour outside the Victoria Hotel on 31 December 2000, she was refused admission to a New Year's Eve function for which she held tickets. The complainant claims that the Hotel took this action on recognising her as a Traveller and that this constituted discrimination under the Equal Status Act 2000.

The respondents totally reject that they operate a discriminatory policy against Travellers. They say that it is their policy to seek ID from all customers on big occasions and that the complainant was refused admission because she did not produce ID. The respondents state that they do not discriminate against Travellers.

Decision

The Equality Officer found that the complainant suffered discrimination on the night and ordered that the respondents pay the complainant the sum of €1200 for the embarrassment, humiliation and loss of amenity suffered by her.

**Equal Status Act 2000
DEC-S-2002-007**

Nora Barrett
v
Victoria Hotel
(Represented by V.P. Shields & Son, Solicitors)

1. Dispute

1.1 This dispute concerns a complaint by Ms Nora Barrett that the Victoria Hotel refused her admission to a New Years Eve function for which she held tickets on the grounds of her membership of the Traveller community.

The complainant maintains that she was discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

2. Summary of Complainant's Case

2.1 The complainant maintains that, having queued for over an hour outside the Victoria Hotel on 31 December 2000, she was refused admission to a New Year's Eve function for which she held tickets. The complainant claims that the Hotel took this action on recognising her as a Traveller and that this constituted discrimination under the Equal Status Act 2000.

3. Summary of Respondent's Case

3.1 The respondents totally reject that they operate a discriminatory policy against Travellers. They say that it is their policy to seek ID from all customers on big occasions and that the complainant was refused admission because she did not produce ID. The respondents state that they do not discriminate against Travellers.

4 Evidence of Parties

Agreed Facts

- Function held in Queen Street Nightclub, which is part of the Victoria Hotel.
- Receptionist did not inform ticket purchasers that ID would be required on the night.
- Tickets stated 8.30 pm as commencement time.
- Tickets did not state that ID would be required.
- Complainant's group of 5/6 Travellers were at top of queue.
- A second group of Travellers were further down the queue.

- One of the doormen admitted that, before the doors were opened, he recognised one of the complainant's witnesses, another Traveller, standing halfway down the queue.
- Doors were not opened until after 9.35 pm.
- A queue of about 100 had gathered by 9.35 pm.
- On a number of occasions, Hotel staff looked out the window at those in the queue.
- Hotel staff gave no explanation for the delay to people in queue.
- Hotel staff did not take the opportunity to advise people in the queue that ID would be sought.
- On opening the doors, the doorman announced "IDs only".
- Following discussions with complainant's group, doorman closed doors and went back inside.
- At complainant's request, the Assistant Manager provided a hand-written note outlining Hotel policy on ID.

Complainant's Evidence

- Complainant was never before in the Victoria Hotel.
- Brother-in-law bought 10 tickets from Hotel reception on New Year's Eve.
- Complainant and husband got a taxi to function from Ballybrit, 5 miles away.
- Complainant arrived at Hotel at 8.20 pm for 8.30 start of function.
- Complainant was at top of queue with other family members.
- A second doorman, who knew the complainant to be a Traveller, saw her at the top of the queue on his arrival at 9pm. He is now living abroad.
- Complainant saw staff regularly looking at her group from inside Hotel.
- Complainant's witnesses, who were half-way down the queue, also state that they saw staff looking at them.
- Approximately 16 Travellers did not gain admission on 31/12/2000.
- An estimated 7 Travellers in the queue could not produce the required ID.
- Some Travellers with the required ID, would not go in because of treatment afforded other family members.

- Witnesses for complainants maintain that not all non-Travellers were asked for ID.
- At 10 pm, non-Travellers in the queue were ushered in quickly without proper ID checks.
- Complainant and husband did not accept offer of refund as they believed they were being discriminated against.
- Complainant totally unaware that the nightclub had an ID policy - she claims that she is married with 10 children and does not frequent nightclubs.
- Complainant denies that she or her husband became abusive that night.
- Complainant was not asked for ID on New Years Eve 2001 in the Salthill Hotel (Murrays).
- The Salthill Hotel is under the same management as the Victoria Hotel.
- The complainant did state, however, that she had to provide her name and address to the Salthill Hotel before they would sell her tickets.
- 50/60 Travellers were in the Salthill Hotel on New Year's Eve 2001 and there was no trouble.

Respondents Evidence

- Victoria Hotel built 8 years previously.
- New Year Eve functions are held annually.
- Hotel has a capacity of 400.
- While most tickets for 31/12/2000 were presold, some were still available on the night.
- Hotel does not have regular Traveller custom.
- Hotel staff have no recollection of having seen Mr and Mrs Barrett before on the premises.
- Hotel has occasionally hosted Traveller weddings .
- Nightclub has only one regular Traveller customer.
- Nightclub always insists on ID (passport, driver's licence, age card) on "high risk" occasions such as Patrick's Day, Christmas etc.
- ID is sought to check age or as a means of determining a person's demeanour.
- Doors not opened on time on New Year's Eve due to technical hitch with sound system.

- Respondents accept that all people in queue were treated equally badly.
- Complainants got abusive after ID was sought.
- Apart from Travellers, only 6/7 other people were refused admission.
- More than 370 non-Traveller customers were all asked for, and produced, valid ID.
- Hotel Manager heard a commotion outside door and was considering calling Gardai.
- The Salthill Hotel does not have a nightclub and, therefore, would have different rules re admission.

5 Matters for Consideration

5.1 Section 3(1) of the Equal Status Act 2000 states that discrimination shall be taken to occur where, on any of the grounds specified in the Act, a person is treated less favourably than another person is, has been or would be treated. Section 3(2)(i) of the Act specifies the Traveller community ground as one of the grounds covered by the Act.

In this particular instance, the complainant claims that she was discriminated against on the grounds of her membership of the Traveller community contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act, 2000 in being denied access to the Victoria Hotel Night Club on 31 December 2000.

5.2 In cases such as this, the burden of proof lies with the complainant who is required to demonstrate that a prima facie case of discrimination exists. If established, the burden of proof then shifts to the respondent who, in order to successfully defend his case, must show that his actions were driven by factors which were non-discriminatory.

6 Conclusions of the Equality Officer

6.1 At the outset, I must first consider whether the existence of a prima facie case has been established by the complainant. In considering what constitutes a prima facie case, I have followed the same approach here as that laid down in another of my previous decisions **Mongon v Angler's Rest - DEC-S2001-004**.

There are three key elements which need to be established to show that a prima facie case exists. These are:

- (a) Membership of a discriminatory ground (e.g. the Traveller community ground)
- (b) Evidence of specific treatment by the respondent
- (c) Evidence that the treatment received by the complainant was less favourable than the treatment someone, not covered by that ground, would have received in similar circumstances.

If and when those elements are established, the burden of proof shifts, meaning that the difference in treatment is assumed to be discriminatory on the relevant ground. In such cases

the claimant does not need to prove that there is a link between the difference and the membership of the ground, instead the respondent has to prove that there is not.

6.2 With regard to (a) above, the complainants have satisfied me that they are members of the Traveller community. To determine whether a prima facie case exists, I must, therefore, consider whether the treatment afforded the complainants on 31 December 2000 was less favourable than the treatment non-Travellers received or would have received, in similar circumstances

6.3 The respondents admit that all customers were treated badly on the night:

- they all expected to be let in at 8.30 pm as stated on the ticket,
- they were all left outside for over an hour without explanation,
- no one was told in advance that ID was required and
- all were asked to produce ID before being admitted.

The respondents argue, therefore, that because both Travellers and non-Travellers were treated equally as badly as one another, that no discrimination occurred. If this was what actually happened, then the respondents would probably have no case to answer under the Equal Status Act 2000.

6.4 The complainant, however, argues differently. She argues that everybody in the queue was treated less favourably because there were some Travellers in the queue and that, if there had been no Travellers in the queue, the whole queue would have been treated more favourably.

This effectively raises an argument of discrimination by association. The Equal Status Act 2000 provides at section 3(1)(b)(i) that discrimination includes treating a person less favourably because they are associated with a Traveller.

As there is no complaint before me of discrimination by association by a non-Traveller, I do not have to decide whether any such discrimination occurred in this instance. This factor does, however, persuade me that a non-Traveller member of a queue containing Travellers may be an unreliable comparator in this case. I have, therefore, formed the view that it would be preferable and more reliable to compare the treatment received by the complainant with the treatment which would have been received in similar circumstances by a non-Traveller in a queue containing no Travellers.

6.5 An important factor to me in this whole affair, is the fact that a queue was allowed to build up outside the Hotel for over an hour. This was not any ordinary night - it was in the middle of one of the country's coldest spells in decades. Yet people were left standing in freezing conditions outside the Hotel for over an hour.

The Hotel state that this was because there was a problem in setting up their sound system and that equipment was lying on the floor. This information was not, however, communicated to the people in the queue and, therefore I only have the respondent's word that that was in fact the real reason why the doors were not opened on time. I must, therefore, consider whether there was perhaps another reason for the hotel's reluctance to open the doors and whether that reason may have been discriminatory.

6.6 Of particular interest here, is that the hotel have stated that, up until then, they were only aware of one Traveller who frequented the nightclub on a regular basis. On this particular night, however, it would appear that the respondents knew, before opening the doors, that there were a number of Travellers in the queue.

In all probability, therefore, I consider that it is likely that 31 December 2000 was the first occasion that the respondents actually encountered a number of Travellers in a queue outside the nightclub. For this reason, I consider it quite plausible that the respondents, faced with an unexpected situation, may have acted in a manner in which they would not normally act.

6.7 Having considered all the evidence before me, I consider that, on the balance of probabilities, while there may have been some problems with the sound system, that the main reason the respondents delayed opening the doors was because they were undecided as to how to deal with a situation where an indeterminate number of Travellers with tickets, may have to be admitted to the function. I also consider that it was only when a decision was taken to implement the “ID only” rule that the doors were opened.

Having deliberated at length on this issue, I simply cannot accept that, on the night that was in it, the respondents would have enforced this ID rule as rigidly as they say they did, if there were no obvious members of the Traveller community in the queue. I, therefore, consider that the decision to announce an “ID only” policy on the night was a deliberate attempt to make things as difficult as possible for the Travellers in the queue to gain admission.

I am particularly persuaded towards this line of thinking by the fact that people already held tickets for the function, that it was an extremely cold night and that the doors were over an hour late in being opened. If the queue had consisted of non-Travellers only, I am of the view that, in the interests of good customer service, the respondents would have acknowledged the delay and would have endeavoured to usher customers in with the least amount of fuss. Instead, it would appear that quite the opposite happened and that the first customers were not admitted until 9.50 pm approximately, ten minutes after the doors first opened.

6.8 I, therefore, find that the actions of the respondents on the night were dictated by the fact that they recognised that there were Travellers in the queue and, as a result, enforced more stringent conditions for admission than would have been applied to a non-Traveller queue. I consider this action to constitute discrimination on the Traveller community ground under section 3(1)(a) of the Equal Status Act 2000.

6.9 I also wish to look at the treatment afforded Travellers on the night with regard to the production of ID, compared with the treatment afforded other customers.

On announcing the “ID only” requirement, the respondents state that all customers were checked for valid ID before they were admitted. In contrast the complainants state that they saw many non-Travellers being ushered in without any proper ID check being carried out.

To me, an important question to be asked is why the doormen were insistent on the complainant and her husband producing ID. Despite the fact that the complainant states that one of the doormen knew her, and the respondents have stated that they were not aware of any previous allegations of trouble involving the complainant or her husband, ID was still

sought from them. In addition, while ID is often sought to check a person's age, this could not have been the reason in this instance as the complainant is a middle-aged woman. I, therefore, find it difficult to accept that the respondents had a genuine reason for seeking ID from the complainant and, more importantly, that the non-production of ID by the complainant was sufficient reason not to grant her admission.

6.10 Another point of note is that the respondents state that only 6 or 7 non-Travellers were refused admission that night and that the remaining 370 non-Travellers all produced valid ID. On the other hand, the complainants state that an estimated 7 of the 16 Travellers in the queue had no acceptable ID with them that night. When I consider that nobody was advised to bring ID with them, I simply cannot accept the above statistics which indicate that 44% of Travellers in the queue had no ID compared to less than 2% of non-Travellers.

The only credible conclusion I can arrive at from these statistics is that either non-Travellers were not all checked for ID (as claimed by the complainants) or that they were treated more favourably than Travellers when it came to the type of ID that was considered acceptable.

6.11 I am, therefore, satisfied, on the balance of probabilities, that the complainant was less favourably treated on the night than non-Travellers, when it came to asking for and checking ID, and that this constituted discrimination under the Equal Status Act 2000.

7 Decision

7.1 I find, on the basis of the evidence before me, that the complainant was discriminated against by the Victoria Hotel on two counts.

Firstly, I consider that the complainant received less favourable treatment on 31 December 2000 than non-Travellers would normally receive, because two groups of Travellers were spotted in the queue. I cannot accept that the respondents would have left people waiting so long or would have enforced the ID rule as rigidly as they did in a situation where only non-Traveller ticket-holders were queuing to get into a function.

7.2 Secondly, I consider that the complainant was discriminated against in being treated less favourably than non-Travellers by the respondents, in the manner in which ID was sought and checked.

7.3 Under no circumstances, should this decision be interpreted as requiring publicans and night-club owners to admit individuals without ID. I fully accept the publicans' right to seek ID from potential customers, in the course of their day-to-day business, in order to ensure compliance with the provisions of the Licensing Acts and, in no way, should this decision be seen as undermining those rights.

This particular complaint, however, revolved around a once-off special event for which tickets were sold and where the respondents had ample opportunity to advise ticket-holders of their requirements with regard to ID. The respondents did not avail of this opportunity, resulting in the complainant being discriminated against on the night of the function.

7.4 I, therefore, find that a prima facie case has been established by the complainant and that the respondents have failed to rebut the allegation of discrimination.

7.5 In considering the level of redress to award in this case, I have borne the following in mind:

- the complainant had never been in the Victoria Hotel before.
- the complainant said that she knew one of the doormen.
- no evidence was produced to show that the complainant or her husband had ever been involved in trouble of any kind.
- under no circumstances could the complainant be accused of being under-age.
- the complainant held valid tickets for the function.
- no advance warning was given that ID would be required on the night.

Yet, despite all of the above, the respondents still insisted that the complainant produce ID on the night and refused her admission when she was unable to do so.

7.6 I order that the respondents pay the complainant the sum of €1200 for the humiliation, stress and loss of amenity suffered on New Years Eve 2000.

I also order that the respondents put in place a system to ensure that, where tickets are sold for functions, that these tickets clearly indicate that I.D. will be sought from potential customers on the night.

Brian O' Byrne
Equality Officer
28 February 2002