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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NO: DEC-S2001-022

**Michael McDonagh
(Represented by the Equality Authority)**

V

The Castle Inn, Birr

File No. ES/2001/122

Date of Issue 19/12/2001

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Equal Status Act 2000

Summary of Decision DEC-S2001-022

Mr Michael McDonagh

(Represented by the Equality Authority)

v

The Castle Inn, Birr

Key words

Equal Status Act 2000 - Direct discrimination, section 3(1) - Membership of the Traveller community, section 3(2)(i) - Supply of goods and services, section 5(1) - Service in pubs - Establishment of a prima facie case - Risk of disorderly conduct, section 15(1)

Dispute

This dispute concerns a complaint by Mr Michael McDonagh that he was discriminated against, contrary to the Equal Status Act 2000, by the proprietors of the Castle Inn, Birr.

The complainant maintains that he 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.

Background

The complainant states that around lunchtime on Tuesday 7 November 2000, he and his brother entered the Castle Inn, Birr for a drink but were refused service by the lady serving behind the counter.

The respondents totally reject that they operate a discriminatory policy against Travellers and deny the allegations made by the complainant. The respondents state that the complainant appeared to have drink taken and that this was the reason service was refused.

Decision

In evidence, the proprietor of the pub openly admitted that he treated Travellers less favourably than non-Travellers and described how he operated a "quota system" whereby no more than 5 Travellers are served in his pub at any given time. With regard to the incident in question, the Equality Officer did not accept that the complainant was refused service because he had drink taken and concluded that the real reason for the refusal was the proprietors' bias against members of the Traveller community.

The Equality Officer ordered that the publican pay the complainant the sum of £1000 (Euro 1270) for the humiliation and distress caused.

Complaint under the Equal Status Act 2000

DEC-S2001-022

**Mr Michael McDonagh
(Represented by the Equality Authority)**

v

The Castle Inn, Birr

1 Dispute

1.1 This dispute concerns a complaint by Mr Michael McDonagh that he was discriminated against, contrary to the Equal Status Act 2000, by the proprietors of the Castle Inn, Birr.

The complainant maintains that he 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. Background

2.1 The complainant states that around lunchtime on Tuesday 7 November 2000, he and his brother entered the Castle Inn, Birr for a drink but were refused service by the lady serving behind the counter. The respondents deny that the men were refused service on the grounds of their membership of the Traveller community.

3. Summary of the Complainant's Case

3.1 The complainant states that, having being refused service in the Castle Inn on the previous night by a barman, he and his brother called to the pub again the next day at lunchtime. On asking for a drink, the complainant states that he and his brother were refused service by a lady serving behind the counter. He says that no reason was given to them and that they were told to leave or the Gardai would be called.

4. Summary of Respondent's Case

4.1 The respondents totally reject that they operate a discriminatory policy against Travellers and deny the allegations made by the complainants. The respondents state that on both occasions the complainant appeared to have drink taken and that this was the reason service was refused.

5 Evidence of Parties

5.1 At the Hearing on 11 September 2001, Mr Patrick Coffey, the Manager of the Castle Inn explained how he has managed the pub for 23 years. He described his clientele as a mixture of locals, outsiders, regulars, settled people and Travellers.

Mr Coffey said that he had two golden rules for keeping a good house and they were not to serve under age drinkers and not to serve people who appeared to be under the influence. He said that this second rule was often acknowledged by regulars who thanked him the next day for not serving them any more drink the previous night.

5.2 Mr McDonagh described himself as a settled Traveller living in Banagher. He said that his wife was from Birr which explained why he was often in the town. He described how he had visited the Castle Inn on 3 or 4 occasions over the years but says that, on each occasion, he was refused service.

5.3 Mr McDonagh firstly referred to an incident on Monday 6 November 2000 when he says that he came over to Birr at around 9 pm. He said that his plans were to go for a drink with his brother, Oliver, in Birr and stay over in a caravan that night. He recalls that between 9 pm and 10 pm he and his brother went to the Fighting Cocks in Birr where they had three drinks each. He says that, at around 10.30 pm, they decided to visit the Castle Inn, in order to avail of the pool table there.

Mr McDonagh states that he and his brother went into the Castle Inn together around 10.30 pm. He says that when he approached Mr Coffey at the bar and asked for two drinks, Mr Coffey said to them "Sorry Lads, I can't serve you. There's the door." Mr McDonagh says that he then asked whether it was because he was a Traveller, to which he says Mr Coffey replied "that's part of it". The complainant then states that he asked Mr Coffey for his name, to which he replied "Billy Bagnell". Mr McDonagh states that he then asked Mr Coffey to write this on a piece of paper, which he did. When asked whether he had retained this piece of paper, the complainant stated that he no longer had it. Mr McDonagh states that he and his brother were very embarrassed by the incident and left the Castle Inn around 11 pm.

5.4 Mr McDonagh's brother, Oliver, also attended the Hearing and gave evidence that both Michael and himself entered the Castle Inn together. He said that he was beside his brother when Mr Coffey refused them service. He stated that the facts as described by his brother were correct.

5.5 Mr Coffey then described the incident which occurred on Monday 6 November 2000. He says that he was serving behind the bar when Mr Michael McDonagh came into the pub around 10.30 pm. He says that it is his custom to always keep an eye on the door and to immediately focus his attention on anyone coming in, in order to ascertain what condition they were in. Mr Coffey says

that he is certain that Mr McDonagh was on his own when he entered on 6 November. The respondent said that he did not recognise Mr McDonagh nor did he recognise him as a Traveller. He recalls that his immediate impression of Mr McDonagh was that he was unsure on his feet. As a result, when Mr McDonagh approached the bar and asked for a drink, he says that he informed him that he was not serving him.

Mr Coffey recalls Mr McDonagh asking whether it was because he was a Traveller but insists that he did not reply to this question. He says that Mr McDonagh then left the pub but returned some minutes later with some paper. He says Mr McDonagh asked for his name to which he replied "Billy Bagnell". Mr Coffey also states that, at Mr McDonagh's request, he wrote that name down on a piece of paper for him. When asked at the Hearing why he gave a false name, Mr Coffey replied that it was not his custom to give his name to strangers.

5.6 Mr McDonagh then described how he and his brother decided to return to the Castle Inn early the next day, when they had no drink taken, to see how they would be treated. Mr McDonagh stated that he and his brother went into the Castle Inn around 1.00 pm. He says that he approached a lady behind the bar and asked for two drinks. He said that she replied that she was not serving them. He says that when he sought a reason, she said that she did not have to give a reason and that she would call the Gardai if they did not leave.

Michael McDonagh said that he then went directly to the Garda Station in Birr where he spoke to Garda John O' Grady. He says that Garda O'Grady informed him that he could only go down to the pub if a disturbance had been reported. The complainant states that Garda O'Grady did take a statement from him about the incidents of 6 and 7 November 2000.

5.7 When asked about the incident on lunch-time on Tuesday 7 November, Mr Coffey confirmed that his wife was on duty that day while he was on his lunch hour. He said that his wife had not been in the pub the previous night and, therefore, had not witnessed the incident on Monday 6 November with Mr McDonagh. Mr Coffey recalled how his wife informed him about the Tuesday incident on his return from lunch that day. He said that she told him that she had refused two gentlemen who appeared to have drink taken and whom she had never seen before. He confirmed that it was normal practice for his wife to threaten to call the Gardai in such circumstances.

In reply, Michael McDonagh made the point that it would have been foolish of him to have gone to the Garda Station with drink on him, as it would have been obvious to the Gardai that he had drink taken, which would have supported Ms McDonagh's stance that she was entitled to refuse him service. On the contrary, the complainant stated that, by attending the Garda Station and making a statement, this proved that he was sober and that discrimination was the real reason for service being refused.

5.8 Because neither Mr Coffey nor his wife had witnessed the other's incident with Mr McDonagh, the respondent was asked when it was that he first became aware that Mr McDonagh had been involved in both incidents. At the Hearing the respondent gave conflicting answers to this question.

Mr Coffey stated that the first time he realised that Mr McDonagh was associated with both incidents was when the Equality Authority wrote to him on 6 March 2001. He later admitted that, a few days after the incidents, a local Garda, whose name he cannot recall, mentioned to him on the street that Mr McDonagh had made a complaint about two incidents on 6 and 7 November 2000 in the Castle Inn. Later at the Hearing, when the discussion returned to the incident on 7 November, Mr Coffey said that when his wife described the two gentlemen to him after lunch on 7 November 2000, that it was then that he associated them with the previous night's incident.

5.9 When asked at the Hearing whether he had met the complainant or his brother prior to 6 November 2000, Mr Coffey stated that, on having recently learned their names, he believed that he did remember them from years ago, when they frequented his pub with their father. Mr Coffey explained that, up to a few years before, his pub was one of a number of Offaly pubs involved in a Darts League. Mr Coffey recalled how the complainant's father represented Ferbane in the Darts League and how he had often played matches in the Castle Inn. The respondent stated that Mr McDonagh senior often had his sons with him and he referred to a particular son who now lived in Ferbane.

In reply, both Michael and Oliver said that they had no recollection of having been in the Castle Inn with their father before. They agreed that their father had played darts for Ferbane but that he had finished playing in 1989. They also denied that they had a brother living in Ferbane and said that they did not know who the person Mr Coffey referred to was. Mr Coffey acknowledged that he was not certain of his facts and said that as McDonaghs were involved, he had presumed that they were the same family.

5.10 When asked about his attitude towards serving Travellers, Mr Coffey stated that Travellers regularly drank in his pub. He said that he had a small group of mostly local Travellers who regularly drank in the Castle Inn at weekends. He said that he did not, however, know them by name.

Mr Coffey referred to an incident 12 years before when, he says, the Castle Inn was "wrecked" by a group of 30 to 40 Travellers. He said that the Gardai had to be called on that occasion to clear the premises and that, afterwards he found 3 surgical knives on the floor. He said, however, that he was not aware of the identities of those involved nor did he know whether any convictions arose from that incident. He says that both his wife and himself were badly shaken by the event and that since then they agreed that they would restrict access to Travellers for reasons of staff safety. He stated that since that incident he had not experienced any more trouble from Travellers.

5.11 When asked how these restrictions applied, the respondent explained that he has made it known to local Travellers that he will not cater for groups of them. He says that normally he will only permit a maximum of five on his premises at any one time but, on occasion, he has allowed one or two more in. On being asked what he would do in a situation where five Travellers were already drinking in his pub and members of their extended family arrived in, the respondent stated that he would refuse to serve the new arrivals. When asked by the complainant whether any Travellers were present on 6 November, the respondent said that he did not think so.

He also said at the Hearing that if a group of ten Travellers arrived together, that he would refuse them all outright on the basis that he had "told them what to expect and they accept it".

In reply, the complainant's representative asked Mr Coffey whether he applied the same rules to groups of settled people whose family members arrived after them. In reply, the respondent remarked that you just have to read the newspapers to see the trouble that groups of Travellers can cause.

5.12 On being asked why he only lodged a complaint of discrimination relating to the incident on 7 November and not both days, the complainant replied that he had not expected proceedings to go as far as an investigation. He explained that he had sent the Form ODEI 5 in good faith expecting to get a conciliatory reply from Mr Coffey but, instead, he got no reply whatsoever.

When asked why he did not respond to the ODEI 5, the respondent said "Why should I? ... I have enough to do". Mr Coffey then went on to say that the Gardai would verify that he had "one of the best run pubs in Birr". Then, referring to the incident 12 years beforehand, he said that "if you went through what I went through, you'd serve none of them". Then, referring to his current Traveller customers, he said "the ones I serve conduct themselves ... they know the set-up" .

5.13 The complainant's representative concluded by making references to a number of cases where inferences were drawn by the decision-maker from the evidence provided. In each case, she claimed that the decision-maker found that the respondent's evidence was insufficient to convince the decision maker that there were other reasons for the treatment involved. As a result, the decision-maker drew an inference in each case that the treatment must have been for a discriminatory reason. The cases referred to were

- 1 Conroy v Carney DEC-S2001-002 (Equal Status Act 2000)
- 2 Chattopadhyay v Holloway School (1982 ICR 132) (UK Race Relations Act 1976)
- 3 King v Great Britain China Centre (1991 ICR 516) (UK Race Relations Act 1976)
- 4 Khanna v Ministry for Defence (1981 ICR 653) (UK Race Relations Act 1976)

5.14 The Equality Officer concluded the Hearing by indicating that he would request a copy of Garda O'Grady's statement from the local Garda Superintendent (the Equality Authority stated that they had already done so but with no success).

Copies of all precedent cases referred to by the complainants were subsequently submitted and passed to the respondent for observations. No observations were received subsequently from the respondent.

6 Matters for Consideration

6.1 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 he was discriminated against on the grounds of his membership of the Traveller community contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act, 2000 in being denied service in the Castle Inn on 7 November 2000.

6.2 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.

7 Conclusions of the Equality Officer

7.1 As mentioned earlier, I agreed at the Hearing to seek a copy from the Gardai of any report they had of an incident on 7 November 2000 involving Mr McDonagh and the Castle Inn. I have since received a report which indicates that Mr McDonagh called to the Garda Station in Birr at 2pm on 7 November 2000 to lodge a complaint of discrimination against the Castle Inn.

7.2 At the outset, I must first consider whether the existence of a prima facie case has been established by the complainant.

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.

7.3 In considering what constitutes a prima facie case, I have examined definitions from other sources. In *Dublin Corporation v Gibney (EE5/1986)* prima facie evidence is defined as: "*evidence which in the absence of any convincing contradictory evidence by the employer would lead any reasonable person to conclude that discrimination had occurred.*"

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

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. "

7.4 With regard to (a) above, the complainant has identified himself as a Traveller and the respondents have not disputed this. With regard to (b) above, there is no dispute that the complainant and his brother were refused service in the pub. To determine whether a prima facie case exists, I must, therefore, consider whether the treatment afforded the complainant on 7 November 2000 was less favourable than the treatment a non-Traveller would have received, in similar circumstances.

7.5 To me the principal factors regarding this aspect of the case are as follows:

- The respondent, Mr Patrick Coffey states that Travellers are regularly served in his pub. However, because of a major incident 12 years earlier, when he states extensive damage was caused to his premises, he has introduced a "quota system" whereby he will only serve a maximum of five Travellers at any one time.
- Mr Coffey also made it quite clear that his wife is fully supportive of the restrictions he has placed on Traveller numbers.
- Mr Coffey stated at the Hearing that this "quota system" was still in place and that he does not relax this arrangement to facilitate family members of Travellers who come to join their relatives.
- The respondent has stated that he has made this rule known to local Travellers and that the Travellers he serves accept this rule.
- Mr Coffey states that he does not operate a "quota system" for settled people.
- When the complainant served a notification on the respondent, which the complainant hoped would help to resolve the matter amicably, the respondent chose to ignore it completely.

Having considered all of the above factors, I am satisfied that Travellers are treated less favourably than non-Travellers in the Castle Inn and that a prima facie case of discrimination has been demonstrated, resulting in the burden of proof shifting to the respondents.

7.6 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. In this particular case, I must, therefore, decide whether the respondents have produced sufficient evidence to show that the refusal of the complainant and his brother on 7 November 2000 was not on the grounds of their membership of the Traveller community but for some other reason altogether.

7.7 Section 15(1) of the Equal Status Act 2000 provides that nothing in the Act prohibiting discrimination, shall be construed as requiring a person to provide services to another person in circumstances which would lead a reasonable individual, having the responsibility, knowledge and experience of the person, to the belief, on grounds other than discriminatory grounds, that the provision of services to the customer **would produce a substantial risk of criminal or disorderly conduct or behaviour or damage to property** at or in the vicinity of the place in which the services are sought.

While the respondents have referred to a previous incident involving unidentified Travellers, as the reason for restricting access to Travellers generally, in this case they have failed to provide any evidence to convince me that the complainant himself had previously been involved in disorderly conduct and thus could be considered a risk on the two occasions he sought service. I, therefore, cannot accept that the respondents were entitled to refuse admission to the complainant under section 15(1) of the Act.

7.8 Reports of serious incidents in pubs, such as that described by Mr Coffey, are not uncommon and publicans are entitled to some degree of sympathy over the dangerous situations they sometimes face when their premises are subjected to violent incidents. The situation in relation to smaller pubs, where the publican and family members may be the only staff members on the premises at the time, is particularly difficult and it is understandable that Mr and Mrs Coffey might have been badly shaken by their experience.

However, the respondent has stated that he has never managed to identify the Travellers involved in that incident. Yet on foot of that incident, he has chosen to implement a "quota system" for Travellers. This action, to me, is totally contrary to the provisions of the Equal Status Act 2000. It is entirely inappropriate and unjustified for a publican to tar all members of the Traveller community, however peaceable and responsible, with the same brush, by refusing service to Travellers whom they do not know, and restricting service even to Travellers whom they do know, irrespective of any real risk of disorder.

7.9 With regard to two incidents in question, the only reason put forward by Mr Coffey and his wife for refusing service on the occasions mentioned, was that the complainant "appeared to have drink taken". While Mr McDonagh admits to having drink taken at 10.30 pm on 6 November, I cannot accept that he had sufficient drink taken to make Mr Coffey believe that he might be a threat to himself personally or to other customers. On the contrary, Mr Coffey's own evidence, that he obliged Mr McDonagh by signing a piece of paper for him, would seem to indicate that he was quite happy to deal with Mr McDonagh at close quarters on the night.

Therefore, on the basis of the respondent's own evidence, I simply cannot accept that Mr Coffey had any other reason for refusing Mr McDonagh service on 6 November 2000, other than he recognised him as a Traveller.

7.10 Similarly, on 7 November 2000, the date to which this complaint refers, I believe that the respondent's wife displayed an identical attitude to her husband, with regard to the treatment of members of the Traveller community.

I have heard evidence that the complainant entered the Castle Inn at lunchtime on 7 November 2000 and was refused service by the respondent's wife. I am satisfied, from the evidence before me, that Mrs Coffey would have recognised the two gentlemen as Travellers from their speech and appearance, despite not having met them before.

I am also satisfied from the evidence of the complainant and the Gardai, that, on the balance of probabilities, the complainant was sober at the time. Yet service was refused.

On the basis of the foregoing, I simply cannot accept that, in refusing service to the complainant, Mrs Coffey had any other reason but that she recognised the complainant and his brother as Travellers and dealt with them in the same manner as her husband had done the previous night.

7.10 It is quite clear from Mr Coffey's comments at the Hearing that his perception and treatment of Travellers has remained unchanged since that time, 12 years earlier, when he states that a group of Travellers allegedly caused serious damage to his premises. On account of that incident, the respondent admits to having put in place a system whereby only a limited number of Travellers, regardless of who they are, are granted access to his premises at any given time.

Even with the introduction of the Equal Status Act, Mr Coffey has indicated that he is happy to continue with this now unlawful system of restricting the number of Travellers who are permitted to drink on his premises. It is also quite clear from Mr Coffey's evidence that he has little time or respect for Travellers and, indeed, it would seem that he would very much prefer if they did not frequent his pub at all.

8 Decision

8.1 Having given full consideration to the evidence before me, I can only conclude that Mr Coffey and his wife actively discriminate against members of the Traveller community. Irrespective of their individual identities, Mr Coffey has clearly shown that he believes that Travellers are not deserving of the same treatment as non-Travellers.

Regardless of whether a Traveller has ever caused trouble before, Mr Coffey admits that the "quota system" rule is applied to all Travellers, and that additional Travellers are refused service if five Travellers are already on the premises .

8.2 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.**

In this particular case, it is obvious from Mr Coffey's own evidence that Travellers in general are treated less favourably than non-Travellers in the Castle Inn. I have, therefore, no hesitation in finding that the respondents have not rebutted the allegation of discrimination and that the actions of Mrs Coffey on 7 November 2000 constituted discrimination under the Equal Status Act 2000.

8.3 In considering the level of redress most appropriate in this case, I am mindful of the fact that this incident occurred within two weeks of the Equal Status Act 2000 coming into force, and that the respondents may not have been fully aware of the provisions of the Act at the time. On the other hand, I am cognisant of the fact that, at the Hearing of this case almost a year later, the respondent gave no indication that he was willing to reconsider his attitude towards the admission of Travellers to his pub.

I, therefore, order that the respondent pay the complainant £1000 (Euro 1270) for the embarrassment and humiliation suffered by him on 7 November 2000.

I also order that the respondent immediately review his practices to ensure compliance with the Equal Status Act 2000 in respect of everyone seeking service in his pub.

8.4 I would also recommend that Mr Coffey, and publicans in general, expedite the drawing up of a universal Code of Practice, emphasising their commitment to non-discriminatory practices and setting out clearly the rules which they apply to all customers with regard to admission and to the behaviour expected from customers when on their premises. The Code should also make it clear that these rules will be applied to all customers, irrespective of their background.

Brian O' Byrne
Equality Officer
19 December 2001