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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NO: DEC-S2001-021

Bernard, Richard & Thomas Joyce

V

**Liz Delaney's Pub, Coolock
(Represented by D C Shaw & Co, Solicitors)**

File No. ES/2001/91-93

Date of Issue 19/12/2001

Table of Contents

Summary	4
Dispute	5
Background	5
Summary of Complainant's Case	5
Summary of Respondent's Case	5
Evidence Provided by Parties	6
Matters for Consideration	8
Conclusions of the Equality Officer	9
Decision	13

Summary of Decision DEC-S2001-021

Bernard, Richard & Thomas Joyce

v

Liz Delaney's Pub

(Represented by D C Shaw & Co, Solicitors)

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) - Admission to pubs - Establishment of a prima facie case - Risk of disorderly conduct, section 15(1)

Dispute

This dispute concerns complaints by Bernard, Richard and Thomas Joyce that they were discriminated against, contrary to the Equal Status Act 2000, by the management of Liz Delaney's Pub, Coolock.

The complainants maintain that they were 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 complainants state that, on Friday 19 January 2001, and on two subsequent occasions, they sought access to Liz Delaney's Pub at 9 pm but were refused admission on the basis that it was a "regulars only" establishment..

The respondents totally reject that they operate a discriminatory policy towards Travellers and state that the complainants were refused admission because they acted in an abusive and threatening manner at the door.

Decision

The Equality Officer found that the complainants had established a prima facie case of discrimination on the Traveller community ground. He also found that the respondents had not provided sufficient evidence to rebut the claim that they operate a discriminatory policy against Travellers, nor had they provided proof that they apply the same rules and procedures to both settled people and Travellers alike.

The Equality Officer awarded the complainants a total of £1900 (Euro 2413) for the discrimination and humiliation suffered.

Complaint under the Equal Status Act 2000
DEC-S2001-021

Bernard, Richard and Thomas Joyce
v
Liz Delaney's Pub, Coolock
(Represented by D. C. Shaw & Co, Solicitors)

1 Dispute

1.1 This dispute concerns complaints by Bernard, Richard and Thomas Joyce that they were discriminated against, contrary to the Equal Status Act 2000, by the owners of Liz Delaney's Pub, Coolock.

The complainants maintain that they were 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 complainants state that on Friday 19 January 2001, and on two subsequent occasions, they sought access to Liz Delaney's Pub in Coolock, Dublin but were informed that they could not be admitted as they were not regular customers. The respondents state that they do not operate a discriminatory policy against Travellers and that about 12 Travellers are regular customers of theirs.

3. Summary of the Complainant's Case

3.1 The complainants state that on Friday 19 January 2001 they sought access to Liz Delaney's Pub but were informed that only regulars could be admitted. The complainants state that it was then suggested that they return the next Tuesday when things would be quieter. They say that when they did return on the following Tuesday, as suggested, they were again refused access. On 18 March 2001, the complainants state that they visited Liz Delaney's Pub again and were again refused access despite having received correspondence from the Management in the interim, to the effect that they do not operate a discriminatory policy.

4. Summary of Respondent's Case

4.1 The respondents totally reject that they operate a discriminatory policy against Travellers. They maintain that a number of Travellers are regular customers of theirs. They say that they always act in good faith and that, from time to time, admission is refused when there are legitimate concerns on the part of Management relating to compliance with the Licensing Acts.

5 Evidence of Parties

5.1 The complainants explained that Thomas and Richard Joyce were brothers and Bernard Joyce was their cousin. In response to questions from the respondents, Bernard Joyce said that he was a member of the Traveller Association which promotes Traveller identity. When asked about the three complaint forms, he agreed that he had helped to prepare the forms belonging to the other complainants. He insisted, however, that the signatures on the forms belonged to the complainants.

5.2 In relation to Liz Delaney's pub, Richard Joyce confirmed that he had drunk there on several occasions before 19 January 2001. He said that the most recent time had been when he was with a settled person. Thomas Joyce stated that he had had three or four pints in Delaneys before Christmas 2000 but that in early January 2001, he had been refused by a doorman because he was "not a regular". Thomas Joyce described how, on that occasion, he knew the other doormen who, Mr Joyce says, remarked to the first doorman that "he's a Traveller, he's OK" but he still was not admitted. Thomas Joyce said that, subsequently, the doorman he knew apologised to him for what had happened and explained that a policy was in place not to allow Travellers in. The other complainant, Bernard Joyce stated that he had not been in Liz Delaney's before.

5.3 The respondents stated that they, Gary and George Payne, had taken over the pub 2 to 3 years earlier. Formerly it had been known as The Black Sheep. When they took it over they were concerned about its bad reputation, so they decided to employ doormen to monitor customers. Now there is always someone on the door from 10.30 am to after midnight. The respondents stated that the pub had a capacity of 700 and that their clientele was very mixed in age, race and culture. They denied that any form of discriminatory policy was in operation. They also said that at weekends, music was provided to cater for the many young people who came in.

The respondents stated that Liz Delaney's was a very popular house and that on big occasions (football matches etc) they often had to turn hundreds of people away. They said that they had an "open door" policy and only refused people who were acting aggressively at the door. In order to ascertain the condition of an individual who is seeking access, the respondents state that their door staff have been trained to engage them in conversation by asking "Have you been here before" . By so doing, the respondents state that they are able to ascertain a person's "form" and "attitude" before deciding on whether to admit them.

5.4 On Friday 19 January 2001, the complainants state that Bernard Joyce drove them to Liz Delaney's Pub around 9 pm. They say that none of them had been drinking that day. They say that there were two doormen on duty. One of the complainants identified Mr Gary Payne as one of the

doormen. The other doorman was identified as having worked in another local pub that served Travellers. The complainants state that the other doorman engaged them in conversation before Mr Payne informed them that it was "regulars only".

Despite claiming that they had been there before, the complainants state that they were not let in. Mr Bernard Joyce states that he then showed the doormen his Student Card from Maynooth College and asked how one could become a regular, to which, he says, the other doorman replied "come back on Tuesday". The complainants maintain that they were totally polite in their dealings with the doormen, before leaving quietly and going to another pub for a drink.

5.5 Mr Gary Payne responded by saying that his recollection was that the complainants arrived after 10 pm. He said that he immediately "got a vibe" from them that they had been drinking and were somewhat aggressive. Mr Payne states that the other doorman "engaged them in conversation" at which time he says two of the complainants became abusive and demanded that they be let in. He says that, at that point, he decided to bar all three. He admitted, however, that this decision was not conveyed to the complainants at the time for fear that it might provoke a situation. He also admitted that sometimes it was necessary to "mislead" people in order to avoid a confrontation. On the night of 19 January 2001, he says that he simply persisted with the line that they could not be let in that night.

As the complainants were leaving, Mr Payne states that he immediately summoned the rest of his door staff to the front door so that they could identify the complainants if they came back again. The complainants state that they do not recall anyone else appearing at the front door while they were returning to their car. At this point of the Hearing, the complainants referred to the fact that the respondents had stated that they videotaped events at the front door for security purposes and they made the point that, if these tapes were available, that they would show that the complainants were not acting aggressively on the night of 19 January 2001. The respondents stated that the tapes were no longer available as they were recycled after a month.

5.6 Mr Payne insisted that he was totally unaware that the complainants were Travellers, when they arrived,. He insists that his decision to refuse them service was based entirely on their demeanour and attitude. He says that it was only after he had refused them access that they referred to their Traveller identity and claimed that they were being discriminated against.

When pressed by the respondents, the complainants agreed that the word "Traveller" had probably not been used by the door staff on the night. However, they argued that, from the outset, it would have been obvious from their accents that they were Travellers. They also claimed that the other doorman would have recognised them and would have been aware of their identity even before they spoke.

5.7 The respondents then focussed on the question of whether any evidence existed that the pub practised a discriminatory policy against Travellers. In support of their case, they pointed to the fact that two of the three complainants had previously been served in Liz Delaneys. They also claimed that they had a regular Traveller clientele base and that they could identify 12 Travellers who regularly drank there.

The complainants argued that this was not clear evidence that Travellers were not discriminated against. A witness for the complainants, Mr Fintan Farrell from the Irish Traveller Movement said that this was a ploy used by many pubs to cover up their attitude towards Travellers. He said that it was becoming commonplace for pubs to let a limited number of Travellers in, in order to give the impression that no bias was in place.

5.8 The complainants then referred to the night of Tuesday 23 January 2001, the date on which they say it was suggested they return. They state that when they arrived on 23 January, a different doorman was on duty. The complainants say that they explained to him about the previous Friday, and how they had been advised to come back on the Tuesday and that they would be allowed in. Although they could see that the pub was almost empty inside, they state that the doorman insisted that it was "regulars only" and would not let them in. They say that they then asked for the Manager but were told that he wasn't there. They say that they then left quietly.

At the Hearing, Mr Gary Payne stated that he had no recollection of this incident on 23 January 2001 having been reported to him by the doorman.

5.9 Following these incidents, the complainants state that they decided to send copies of form ODEI 5 to the respondents. They received a response dated 19 February 2001 from Liz Delaney's Pub, bearing Gary Payne's name, stating that the pub does not have a discriminatory policy against any member of the public.

Believing that they now would have no difficulty in gaining access to Liz Delaney's pub, two of the complainants, Bernard and Richard Joyce state that they returned to the pub at 8.30 pm on Sunday 18 March 2001. They say that, although they were well-dressed and acted politely they were told that it was "regulars only" or else they needed to be accompanied by someone who was a regular. The complainants state that there were 2 or 3 doormen on duty but say that they cannot say for certain whether Gary Payne was one of them. They say that no reference was made by them on the night to the response that had been received to the ODEI 5 forms.

Mr Gary Payne stated that he recalled that night and said that he was on duty at the door. He says that he recognised the complainants and informed them that it was "regulars only". At that point, he says that the complainants got aggressive and threatened that they were "going to get a group". They then left.

5.10 In an effort to prove that the pub's stated "regulars only" policy was simply a means of covering up the pub's discriminatory policy towards Travellers, the complainants introduced a witness from the settled community. This witness stated how, some nights after the third incident, at the request of the complainants, he visited Liz Delaney's pub on his own. He said that he had never been in the pub before yet when he approached the door staff, no questions were asked of him and he was let in without any difficulty. The complainants state that this evidence totally contradicts the respondents' assertions that all members of the public are treated the same and that a universal policy of "regulars only" is applied.

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 complainants claim that they were discriminated against on the grounds of their 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 Liz Delaney's Pub on three separate occasions in early 2001.

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

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.

7.2 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.*"

7.3 In this particular case, with regard to (a) above, the complainants have all identified themselves as members of the Traveller community and the respondents have not disputed this. With regard to (b) above, the respondents have admitted that the complainants were refused admission to their premises. With regard to (c) above, I am satisfied, from the evidence provided, that non-Travellers who are also non-regulars have been admitted to Liz Delaney's Pub in the past, which supports the complainants' assertion that they were treated less favourably than non-Travellers were treated on the night.

Having considered the above points, I am satisfied that a prima facie case of discrimination has been established and that the burden of proof has shifted to the respondents in this case.

7.4 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 complainants on 19 January 2001 and subsequent nights, was not on the grounds of their membership of the Traveller community but that other reasons existed for their non-admittance.

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

- The respondents have stated that they would recognise Travellers from talking to them. The respondents have also stated that they don't decide whether someone should be admitted until after they have spoken to them, to establish their "form" and "attitude". Having considered the above, and the fact that the respondents have confirmed that a conversation took place before the complainants were refused entry, I am satisfied that the respondents were aware that the complainants were Travellers when they decided to refuse them admission on 19 January 2001.
- The respondents state that they do not practice a discriminatory policy against Travellers and that 10 or 12 Travellers are regulars in the pub. In response, the complainants maintain that this is simply a ploy used by many pubs who have adopted a policy of admitting a token number of Travellers to protect themselves against allegations of discrimination.
- Two of the three complainants have confirmed that they were served previously in Liz Delaney's pub and had no difficulty getting in. More recently, however, one of the complainants stated that he was refused entry because he was not "a regular". On that

occasion, the complainant states that one of the doormen who he knew, clearly identified him as a Traveller and vouched for him to the other doorman, but he still was not admitted.

- In this case, the respondents have admitted that a "judgement call" is usually made at the door as to whether an individual is admitted. If they are not happy about a person's "form" or "attitude", they say that they usually use the "regulars only" excuse for refusing entry. By assessing people at the door, the respondents state that they reduce the likelihood of trouble occurring on the premises.
- The complainants have disputed that the respondents operate a "regulars only" policy and claim that this excuse was only used to deny them access to the premises. As evidence of this, the complainants produced a witness at the Hearing who claimed that he had never before been in Liz Delaney's pub, yet had no difficulty gaining entry to the pub shortly after the complainants had been refused for the third time.

On the basis of the above information, the only conclusion I can arrive at is that the respondents do not enforce a "regulars only" policy but simply use this excuse as a convenient means of refusing access to individuals they do not want on the premises.

7.6 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.

In other words, if a complainant had previously caused trouble in a pub, then a respondent would be within his rights, under the Equal Status Act 2000, to refuse admission to that person on the basis that admission would most likely lead to further disorderly conduct.

In this particular case, two of the complainants stated that they had previously drunk in Liz Delaney's pub and the respondents did not dispute this. More importantly, from a Section 15 perspective, the respondents gave no indication whatsoever that any of the complainants had previously caused trouble in Liz Delaney's pub. Yet on 19 January 2001 and on subsequent nights, the complainants were refused admission.

7.7 Mr Gary Payne has stated that, on 19 January 2001, the complainants acted in such an abusive and threatening manner that he felt obliged to immediately summon all his security staff to the front door, so that they could identify the three gentlemen he had just decided to bar. For Mr Payne to take such drastic action, one can only assume that a very serious incident had occurred involving the three complainants.

For their part, the complainants claim that they acted in a very mannerly fashion throughout, and maintain that security footage of the incident would bear this out.

The respondents have stated that security video footage of the premises is normally retained for a period of a month. This would mean that the footage of 19 January and 23 January would still have been available to Mr Payne when he received the ODEI 5 notification forms from the complainants in mid-February. Mr Payne's response to these forms was actually sent to the complainants on 19 February 2001, exactly a month after the first incident.

Despite the fact that Mr Payne knew that a possible complaint of discrimination was pending, it would appear that no effort was made to ensure that video footage of the incidents in question was retained. If, as Mr Payne claims, the complainants behaved in a most disorderly fashion on 19 January 2001, I believe that it would have been sensible for him to retain the video footage in question as evidence, in the event of a complaint of discrimination being lodged. For whatever reason, Mr Payne chose not to take this step.

7.8 With regard to the events of Tuesday 23 January 2001, it would appear that the complainants were subjected to the same treatment as on the previous Friday. The complainants have stated that, once again, they were sober and well-behaved and the respondents have offered no evidence to contradict this. This time, by all accounts, a different doorman was on duty but the complainants were still given the "regulars only" rebuff.

To me there are two possible reasons for the refusal on 23 January 2001. Either the complainants had been pointed out to the doorman on the previous Friday by Mr Payne, and the doorman refused them access, on Mr Payne's instruction. Or the doorman, with no prior knowledge of the complainants, engaged them in conversation, recognised them as Travellers and refused them admission.

7.9 With regard to the events of 18 March 2001, Mr Gary Payne states that he again was on the door and refused the complainants access, on account of their alleged conduct on 19 January 2001.

7.10 The respondents state that the treatment afforded the complainants on 23 January and 18 March was consequential to the events of 19 January 2001. The complainants agree that all three incidents followed the same pattern - they were engaged in conversation, they were informed that a "regulars only" policy was in place and they were refused admission.

In the circumstances, I must, therefore, decide whether the original incident on 19 January 2001 constituted discrimination on the Traveller community ground.

7.11 Having considered all of the evidence before me in relation to the events surrounding 19 January 2001, I believe that the complainants were recognised as Travellers on speaking with the doormen. Given that the respondents had no record of any previous incidents involving the complainants, I can see no other reason, apart from a bias against Travellers, for the complainants being refused admission.

Also, from the evidence before me, I am satisfied that the respondents have no "regulars only" policy in place and that this excuse is used as a ploy to deter people who, for some other reason, they do not approve of.

7.12 If, as the respondents state, the complainants were threatening and abusive, I believe that they had ample opportunity to retrieve and retain the video evidence which would have shown this. The respondents did not, however, avail of this opportunity.

I, therefore, find, on the balance of probabilities, that the actions of the respondents on 19 January 2001 were based on a bias against members of the Traveller community amounting to discrimination under the Equal Status Act.

7.13 Having considered all the evidence before me, I find that the respondents have failed to provide sufficient evidence to rebut the claim that they discriminated against the complainants.

8 Decision

8.1 In this particular situation, I believe that, on 19 January 2001 the complainants were clearly identifiable as members of the Traveller community and this, I believe, led to them receiving less favourable treatment than a non-Traveller would have received in a similar situation. I also believe that the treatment afforded the complainants on their two subsequent visits to the pub followed the same pattern as the original incident and, therefore, was also discriminatory under the Equal Status Act 2000.

I, therefore, find that the complainants were discriminated against, contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act 2000, by Liz Delaney's pub, on the grounds of their membership of the Traveller community.

8.2 I order that the respondents pay Bernard and Richard Joyce the sum of £700 (Euro 889) for the distress and humiliation suffered by them over the course of the three incidents between 19 January and 18 March 2001 and that the respondents pay a further £500 (Euro 635) to Thomas Joyce who was involved in two of the three incidents.

8.3 I would also recommend, that publicans seriously consider drawing up 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 to their premises 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