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## **Equal Status Act 2000**

**EQUALITY OFFICER DECISION NO: DEC - S2001-020**

**Mr John Maughan,  
(Represented by The Equality Authority)**

**-v-**

**The Glimmer Man Ltd  
(Represented by McKeever Rowan, Solicitors)**

**File Ref: ES/2001/024  
Date of Issue: 18th December, 2001**

## **Table of Contents**

<b>Summary</b>	<b>3</b>
<b>Dispute and Background</b>	<b>4</b>
<b>Summary of Complainant's Case</b>	<b>4</b>
<b>Summary of Respondent's Case</b>	<b>6</b>
<b>Issues for Consideration</b>	<b>7</b>
<b>Evidence at Oral Hearing</b>	<b>7</b>
<b>Prima Facie Case</b>	<b>8</b>
<b>Conclusions of Equality Officer</b>	<b>10</b>
- Family Status	<b>10</b>
- Membership of the Traveller Community	<b>14</b>
- Disability	<b>15</b>
<b>Decision</b>	<b>18</b>

## **Summary of Decision      DEC-S2001-020**

**Mr John Maughan  
(Represented by The Equality Authority)**

**-v-**

**The Glimmer Man Ltd  
(Represented by McKeever Rowan, Solicitors)**

### **Headnotes**

Equal Status Act 2000 - direct discrimination - section 3(1)(a) - three grounds claimed under section 3(2) - family status 3(2)(c) - disability 3(2)(g)- membership of the Traveller community 3(2)(i) - section 5(1) - refusal of service in a pub - prima facie evidence - section 15 defence.

### **Background**

The complainant is visually impaired and claimed that on 2nd November, 2000, at 4.15 p.m. approximately, he entered the Glimmer Man pub with his wife (who is also visually impaired but not as severely as the complainant) his thirteen year old son and his guide dog. The complainant claimed that he was refused service contrary to the Equal Status Act, 2000, because of i) his family status, ii) his disability and iii) his membership of the Traveller community.

The respondent claimed that the complainant was not discriminated against contrary to the Act on the three grounds. It claimed that the reason the complainant was refused service was because it has a no children policy and the complainant's son kept coming into the pub while the complainant was being served there. It claimed that in having a no children policy it is acting in good faith for the sole purpose of ensuring compliance with the Licensing Acts and is not in breach of the Equal Status Act, 2000. The respondent also claimed that when parents are consuming alcohol they tend not to supervise their children properly and that its no children policy is also designed to prevent disorderly conduct on its premises.

### **Conclusions of Equality Officer**

The Equality Officer was satisfied that the complainant established prima facie evidence of discrimination on the three grounds claimed. The Equality Officer found that the respondent did not succeed in rebutting the inference of discrimination on the family status ground but that the respondent did rebut the inferences of discrimination on the disability and membership of the Traveller community grounds.

### **Decision**

The Equality Officer found that The Glimmer Man Ltd discriminated against the Mr John Maughan on the basis of his family status but that it did not discriminate against him on the basis of his disability or his membership of the Traveller community.

## **Equality Officer Decision DEC-S2001-020**

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

**Mr John Maughan  
(Represented by The Equality Authority)**

**-v-**

**The Glimmer Man Ltd  
(Represented by McKeever Rowan, Solicitors)**

#### **DISPUTE AND BACKGROUND**

1. The complainant is visually impaired and claimed that on 2nd November, 2000, he entered the Glimmer Man pub with his wife (who is also visually impaired but not as severely as the complainant) his thirteen year old son and his guide dog. The complainant claimed that he was refused service contrary to the Equal Status Act, 2000 because of i) his membership of the Traveller community, ii) his disability and iii) his family status.

The respondent claimed that the complainant was not discriminated against contrary to the Act on the grounds claimed. It claimed that the reason the complainant was refused service was because it has a no children policy and the complainant's son kept coming into the pub while the complainant was being served there. It claimed that in having a no children policy it is acting in good faith for the sole purpose of ensuring compliance with the Licensing Acts and is not in breach of the Equal Status Act, 2000. The respondent also claimed that when parents are consuming alcohol they tend not to supervise their children properly and that its no children policy is also designed to prevent disorderly conduct on its premises.

Any documents received were copied to both parties and an oral hearing was held on 24th April, 2001.

#### **SUMMARY OF COMPLAINANT'S CASE**

2. The complainant claims that at 4.15 p.m. approximately on Thursday, 2nd November, 2000, when he entered the Glimmer Man pub with his wife, Margaret, thirteen year old son, Martin, and his guide dog, the following occurred:
  - His party approached the bar and they sat down on bar stools.
  - There were other customers in the pub.
  - There were three bar staff on duty that day, one male and two females.
  - He asked the barman for 2 pints of Carlsberg which were for himself and his wife.
  - The barman replied that he could not serve him because the pub had a no children policy.
  - The complainant then sent his son home and his son did not return to the pub.
  - The complainant was still not served by the barman so he asked to speak to the bar manager.
  - At that stage he began talking to the younger of the female bar staff who told his wife her name was Aisling.

- Aisling told him that she couldn't serve him because the pub serves food and doesn't allow dogs on the premises in case dog hairs get into the food.
- The complainant then showed Aisling a card which stated that guide dogs are allowed entry to restaurants, food shops and other food premises.
- Aisling then said "this is a drinking house, I suppose you want one".
- The complainant and his wife were then served one pint each and subsequently received a second pint each when they had finished the first.
- During the time when the complainant was drinking his two pints he asked Aisling whether the reason he had difficulty being served was because of his membership of the Traveller community. Aisling replied that this was not the reason and that the reason was because of the risk of dog hairs getting into the food.
- When the complainant sought to order a third pint for himself and his wife he was ignored by the bar staff. Up until this point the staff had been polite to him at all times.
- After about half an hour trying to be served a third pint he and his wife left the pub.

- 2.1 Mrs Margaret Maughan, the complainant's wife, and their son, Martin, gave evidence at the hearing in support of the complainant's version of events.
- 2.2 The complainant claimed that he was discriminated against by the respondent on the basis of i) his family status, ii) his disability and iii) his membership of the Traveller community. The complainant originally claimed that he was also harassed by the respondent on each of these grounds but he withdrew his allegations of harassment at the oral hearing.
- 2.3 In relation to the family status ground the complainant claimed that the respondent has a no children policy and that the respondent would not serve him while his son was in the pub. He claimed that this is in breach of the Act. He claimed that nothing in the Licensing Acts prohibit children from being in pubs at the same time as their parents and that section 34(2) of the Intoxicating Liquor Act, 1998, makes it legal for a child to be in a pub at the same time as its parents.
- 2.4 In relation to the disability ground the complainant claimed that he suffered less favourable treatment than someone with no guide dog would have received. He claimed that the reason for this was that the respondent initially refused to serve him because of his guide dog and he was only served when he produced the card. The complainant's representative provided in evidence some material which it claimed makes it legal for people with guide dogs to be served in pubs, restaurants, etc. The material was a copy of a letter from the Department of Health and Children, enclosing:
- i) a copy of section 25 of the Food Hygiene Regulations, 1950,
  - ii) a circular dated December 2000, from the Department of Health and Children to the Chief Executive Officer of each health board, and
  - iii) a circular dated 7th June, 1991, from the Department of Health to the Chief Executive Officer of each health board.

On the membership of the Traveller community ground the complainant claimed that the staff on duty would have recognised him to be a member of the Traveller community and that this was part of the reason why he was refused service.

### **SUMMARY OF RESPONDENT'S CASE**

3. Mr William Fortune said that he is the owner of the Glimmer Man public house for the past eleven years. He claimed that on 2nd November, 2000, when the incidents complained of occurred:
- He was not on duty himself.
  - His wife, Mrs Ita Fortune, and a bar man called Mr Stuart Kelly were the only staff on duty at the time.
  - Nobody named Aisling was working in the pub and nobody of that name ever worked there.
  - When the complainant's party first entered the pub they were told that they would not be served because children were not allowed on the premises.
  - The complainant sent his son outside the pub.
  - The complainant and his wife were served a pint each.
  - The complainant's son came back into the pub and service was again refused when the complainant ordered a second round of drinks.
  - The complainant sent his son back outside and he and his wife were served a second pint each.
  - The same thing happened again when the complainant sought and received a third pint.
  - It was raining outside and on each occasion when the complainant's son came back into the pub he became more agitated and insistent that his parents leave the pub and go home.
  - The complainant became abusive when a fourth pint was refused to him and his wife.
  - Action taken in good faith by a publican for the sole purpose of ensuring compliance with the Licensing Acts is permitted under section 15(2) of the Equal Status Act, 2000. The complainant was refused service because a child under his care was on the premises while he was consuming alcohol. The policy not to allow children on the premises is for two main reasons which are in keeping with section 15(2):
    - i. The respondent is conscious of the obligations which the Licensing Acts, 1833-1999, place on it regarding the consumption of alcohol on the premises by under eighteen year olds. Its policy of not allowing children on the premises is designed to prevent a potential breach of the terms of its pub license. The respondent stated that in particular sections 34 and 35 of the Intoxicating Liquor Act, 1988 are appropriate in this regard.
    - ii. Adults having charge of children are consuming alcohol and tend not to adequately supervise the children, which may endanger the childrens' safety, and also be troublesome for customers and staff alike. During his eleven years as owner of the Glimmer Man pub he has found from experience that children are likely to engage in disorderly conduct or behaviour when left without supervision in such circumstances. The respondent claimed that section 13 of the 1872 Licensing Act deals with public order offences and is appropriate in this regard.
  - The staff on duty did not see the complainant come into the pub and at the time when he first sought service they did not know that he had a guide dog with him. This was because when the complainant was sitting at the bar the dog was lying down and was not visible to the staff from behind the bar.

- Although after the complainant had been served the bar staff became aware of the guide dog's presence there was no discussion between the complainant and any of the staff on duty to the effect that he could not be served in case dog hairs got into the food.
- No card was produced by the complainant stating guide dogs are allowed entry to restaurants etc. and the dog was not a factor in the complainant's refusal. The pub only serves pre packed food, i.e. sandwiches, crisps, peanuts etc., so hygiene was not an issue.
- There was never any mention of the complainant being a member of the Traveller community until he brought it up himself when he was leaving the premises.

Mrs Ita Fortune and Mr Stuart Kelly gave evidence at the hearing in support of the respondent's version of events.

#### **ISSUES FOR CONSIDERATION**

4. 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) provides that the discriminatory grounds include the family status ground, disability ground and membership of the Traveller community 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 this complaint are whether or not The Glimmer Man Ltd discriminated against Mr John Maughan on the basis of the grounds claimed, in terms of section 3(1)(a) and contrary to section 5(1) of the Equal Status Act, 2000, on 2nd November, 2000. In reaching my decision in this case I have taken account of all of the submissions, both oral and written, made to me by both parties.

#### **EVIDENCE AT ORAL HEARING**

5. At the oral hearing the respondent's representative objected to the way in which the witnesses for the parties gave their evidence because they were not required to provide sworn evidence. He also objected to the evidence of the parties being referred to as “evidence” and claimed that the word “statement” was more appropriate.

I have considered this matter and in my view the case of *Kiely v Minister for Social Welfare (1977) I.R. 276* is particularly relevant. As Henchy J. stated:

*“Tribunals exercising quasi-judicial functions are frequently allowed to act informally - to receive unsworn evidence, to act on hearsay, to depart from the normal rules of evidence, to ignore courtroom procedures, and the like -*

*but they may not act in such a way as to imperil a fair hearing or a fair result”.*

I am satisfied that the oral hearing was conducted in accordance with the principles of natural and constitutional justice. I am also satisfied that the absence of sworn evidence did not prejudice either party or imperil a fair result in any way.

### **PRIMA FACIE CASE**

6. For the complainant’s claim to be upheld on any of the grounds claimed he has to establish prima facie evidence of discrimination on that ground. In order for the complainant to establish prima facie evidence on a ground he has to show that he was treated less favourably than someone in the same circumstances who is not covered by that ground. If he succeeds in establishing prima facie evidence on a ground, the burden of proof then shifts to the respondent to rebut the inference of discrimination on that ground.

The complainant claimed that he was discriminated against on the family status, disability and membership of the Traveller community grounds.

### **Family Status**

- 6.1 Section 2(1) of the act defines family status, inter alia, as meaning:

*“Being pregnant or having responsibility-*

*(a) as a parent or as a person in loco parentis in relation to a person who has not attained the age of 18 years,”.*

Both parties agree that when the complainant first entered the pub his thirteen year old son was with him. I am therefore satisfied that the complainant is covered by the family status ground.

### **Disability**

- 6.2 Disability is defined in section 2(1) of the Act as:

*“(a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,*  
*(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,*  
*(c) the malfunction, malformation or disfigurement of a part of a person’s body,*  
*(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction,*  
*or*  
*(e) a condition, disease or illness which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour”.*

The complainant claims that because of his visual impairment he falls within the scope of this definition and I accept that this is the case.



### **Membership of the Traveller Community**

6.3 Section 2(1) states that “Traveller community” means:

*“the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions, including historically, a nomadic way of life on the island of Ireland.*

At the oral hearing the complainant stated that although he does not lead a nomadic lifestyle at the moment he did so in the past with his parents for a time. He said that he has always considered himself to be a member of the Traveller community and that his relatives also identify themselves as Travellers. He said that he lived on a halting site for a number of years and I consider that he is a member of the Traveller community within the meaning defined in the Act.

### **Number of Refusals**

6.4 I have noted in this case that the parties agree that at least two refusals of service took place. The first agreed refusal occurred when the complainant was told he could not be served because of the no children policy. The second agreed refusal occurred, according to the complainant, after he was served two pints but the respondent claims that it occurred after the complainant was served three pints.

The complainant claims that a third refusal of service also took place in between the two agreed refusals. He claims that the third refusal occurred after his son had left the pub when he was then told that he could still not be served in case his guide dog’s hairs got into the food.

The respondent denies that the third alleged refusal occurred but it claims that a number of other refusals occurred because the complainant’s son kept coming back into the pub after the complainant had received service. The complainant denies this and claims that his son went straight home and did not return to the pub.

6.5 Having satisfied myself that the complainant is covered by the three grounds claimed I now have to consider whether he has established prima facie evidence of discrimination on any of the grounds claimed when any of the refusals, including the refusals alleged by both parties, occurred. Both parties agree that when the complainant first entered the pub other people were being served there at the time. It is agreed that none of them were blind and none of them were known to be members of the Traveller community. It is also agreed that the respondent has a no children policy. In these circumstances I am satisfied that the complainant has established prima facie evidence of discrimination on the three grounds claimed. It now falls to the respondent to rebut the inference of discrimination on the three grounds.

## CONCLUSIONS OF EQUALITY OFFICER

7. I will now examine the complaint on each of the grounds claimed.

### Family Status

- 7.1 The respondent accepts that it has a no children policy and that it has signs up in the pub to this effect. To avoid any confusion it is important to note what the respondent's no children policy means in practical terms. Its policy is not to always refuse service to parents of children under 18 years old and only to serve people who have no children under that age. It does not differentiate between parents and non parents in this way. Rather, its policy is to refuse parents service when their children under 18 years old are with them on its premises at the same time. Once the children are no longer on the premises the parents will then be served in normal circumstances. The respondent claimed that its no children policy applies to all children no matter what their age i.e. from 1 day to 17 years and 364 days. At the oral hearing the respondent said that the only circumstances where he might consider serving parents with children was if the parents did not consume alcohol. However, I got the impression that the respondent was not very definite about this and he did not state whether this had ever happened since he introduced his no children policy.
- 7.2 The complainant has claimed that he was discriminated against by the respondent on the basis of his family status in that he was unable to avail of the service provided by the respondent when his son was with him. He claimed that as someone with family status, within the definition in the Act, that he received less favourable treatment than someone with no family status i.e. someone who sought service with no children with them, in that he was initially refused service because his son was with him and the only way the respondent would serve him was if his son left the pub. He claims that this constitutes discrimination as defined in the Act.

Section 15(2) of the Act states:

*“Action taken in good faith by or on behalf of the holder of a licence or other authorisation which permits the sale of intoxicating liquor, for the sole purpose of ensuring compliance with the provisions of the Licensing Acts, 1833 to 1999, shall not constitute discrimination”.*

I have noted that the respondent invoked the section 15(2) defence. It claimed that its reasons for having a no children policy are basically that it is acting in good faith for the sole purpose of ensuring compliance with the provisions of the Licensing Acts, 1833 to 1999. In particular it is conscious of its obligations to ensure that under 18 year olds do not consume alcohol on its premises and it is relying on sections 34 and 35 of the Intoxicating Liquor Act, 1988, in this regard. The respondent also claimed that parents tend not to properly supervise their children when consuming alcohol themselves and that this can result in trouble for staff and other customers and danger to the childrens' safety. The respondent claimed that it was also trying to ensure compliance with section 13 of the 1872 Licensing Act in this regard.

7.3 I have studied carefully all of the legislation which the respondent quoted. I have also noted that at the oral hearing the complainant's representative claimed that nothing in the Licensing Acts prohibits children from being in pubs with their parents. The complainant's representative also claimed that section 34(2) of the Intoxicating Liquor Act, 1998, specifically allows children to be in pubs when accompanied by their parents. On this point I have checked the Licensing Acts and there does not appear to be an Intoxicating Liquor Act, 1998, so I am taking it that the complainant's representative was actually referring to the Intoxicating Liquor Act, 1988, and not 1998, as stated.

Section 34(1) of the Intoxicating Liquor Act, 1988, states that:

*“Subject to subsection (2) of this section, the holder of a licence of any licensed premises shall not allow a child to be at any time in the bar of his licensed premises”.*

Section 34(2) of the Intoxicating Liquor Act, 1988, states that:

*“It shall not be unlawful for the holder of a licence of any licensed premises to allow a child to be in the bar of his licensed premises at any time (other than a time during which the sale of intoxicating liquor is prohibited under the Act) if such child is accompanied by his parent or guardian”.*

I have noted that section 34(1) states that it is subject to section 34(2). On the basis of the evidence presented it is clear to me that 34(2) of the Intoxicating Liquor Act, 1998, allows children to be in licensed premises when accompanied by a parent at any time, other than when the sale of intoxicating liquor is prohibited i.e. before opening time, after closing time, etc.. In this particular case the complainant sought to receive service from the respondent at 4.15 p.m. approximately, on Thursday, 2nd November, 2000. I have noted that both parties agree that the complainant was served after his son left the pub and that no evidence was presented that the sale of alcohol was prohibited at that time. I am satisfied that the sale of intoxicating liquor was not prohibited by the Licensing Acts at that time.

I have also studied the other subsections of section 34 and section 35 in its entirety. I am satisfied that nothing in these prohibit children from being in licensed premises with their parents.

7.4 It is accepted by both sides that the respondent or its staff did not know the complainant's party before they came into the pub on 2nd November, 2000. Accordingly, I consider that the staff on duty had no basis for assuming that the complainant would attempt to give alcohol to his thirteen year old son. The respondent did not raise this point as an issue in relation to the complainant specifically and claimed that its no children policy was designed to ensure that no under 18 year olds consume alcohol on its premises.

7.5 I acknowledge that publicans are obliged by the Licensing Acts not to serve alcohol to people under 18 years old and that they are entitled to put procedures in place to ensure that under 18 year olds are not served alcohol. Although I consider the respondent in this case is to be commended for having a rigorous policy not to serve alcohol to under 18 year olds I can see no basis for using sections 34 and 35 of the Intoxicating Liquor Act, 1998,

for refusing to serve parents while their children under 18 years are present on the premises at the same time. In this case I also consider that the respondent's staff could not have been acting in good faith under section 15(2) to ensure compliance with these parts of the Licensing Acts by refusing service to the complainant. This is because they had no previous knowledge of him or the rest of his party and I have not been convinced that they had any basis for assuming that any breaches of these parts of the Licensing Acts would occur.

7.6 Section 13 of the 1872 Licensing Act, states:

*“If any licensed person permits drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds. Any conviction for an offence under this section shall be recorded on the license of the person convicted, unless the convicting magistrate or justices shall otherwise direct”.*

I have considered this piece of legislation in conjunction with sections 15(1) and 15(2) of the Act and I am satisfied they cannot legitimately be used in good faith by the respondent as a reason for refusing service to the complainant. This is because a reasonable person, having the responsibility, knowledge or experience of the complainant and his party, would not have believed that there was any danger of disorder, criminal conduct or damage to property at or in the vicinity of the pub. I am also satisfied that a reasonable person would not believe there was a risk of drunkenness, violent, quarrelsome or riotous behaviour in serving the complainant when he first sought service in the pub with his son. As stated earlier the respondent's staff had no previous knowledge of the complainant's party before they entered the pub and no evidence was presented to the effect that the staff on duty suspected that any of the party would be in any way disorderly. Although Mr Kelly said in oral evidence that he thought the complainant had drink taken when he first came into the pub this point was denied by the complainant and was not substantiated in any way by the respondent. I note that the respondent's solicitor did not mention it as a reason for the complainant's refusal in the letter which was sent to me dated 19th February, 2001.

7.7 I am satisfied that the respondent has failed to rebut the inference of discrimination on the family status ground. The only way the complainant could receive service from the respondent was to send his son outside the pub. I consider that having a blanket ban on under 18 year olds being in pubs with their parents is a discriminatory policy against parents of under 18 year olds on the family status ground under the Equal Status Act, 2000. I am satisfied that the complainant was treated less favourably by the respondent and that the respondent directly discriminated against him on the basis of his family status.

7.8 Although there are strong moral and social arguments why parents should not bring children under 18 years old into pubs with them I consider that under current legislation parents are entitled to bring their children into licensed premises with them if they wish. However, my findings on this point should not be interpreted as meaning that publicans must serve parents when accompanied by their children under 18 years old in all circumstances. This is because the Licensing Acts require publicans to run orderly houses and to ensure that under

18 year olds do not consume alcohol on their premises. The Equal Status Act, 2000, has not changed their obligations in this regard.

It is important for publicans to note that there are provisions in the Equal Status Act which allow them to refuse service to parents who are accompanied by their children under 18 years old. For example, as mentioned earlier, under section 15(2) of the Act where publicans act in good faith for the sole purpose of ensuring compliance with the Licensing Acts they can refuse service and not be in breach of the Equal Status Act, 2000. Although the respondent in this case unsuccessfully invoked the section 15(2) defence there are situations where I consider it could be successfully invoked. For instance if a publican saw an under 18 year old consuming alcohol on the premises when accompanied by a parent then the publican could be entitled to refuse service. Similarly a publican could be entitled to refuse service in other situations such as if a parent was drunk or if a parent or under 18 year old were disorderly. I consider that publicans could also successfully invoke other defences contained in the Act but the important point for them to note is that they cannot have blanket bans on parents who seek service when accompanied by children under 18 years old.

- 7.9 I now have to consider whether the complainant was discriminated against by the respondent on this ground at any other time on 2nd November, 2000. In this regard I have noted that the respondent has alleged that the complainant's son kept coming back into the pub after he first left and that the complainant was refused further service on each occasion when this occurred. The respondent claimed that the complainant became abusive when he was refused a fourth pint for this reason. The respondent also claimed that this was why he was refused further service. I have also noted that the complainant denies the respondent's version of events and claims that his son went straight home and did not return.
- 7.10 Having considered this point carefully I consider that it essentially boils down to the word of one party against the other and that the evidence is inconclusive as to who is correct. Accordingly, I cannot find that further discrimination occurred on the family status ground. In any event the complainant claimed that his son did not return to the pub. I consider that if I were to accept his word in this regard I could not find that any of the further alleged refusals were based on his family status. This is because no evidence was presented to the effect that the respondent has a policy to refuse service to parents when their children under 18 years old are not on the premises with them at the same time.

### **Membership of the Traveller Community**

8. I will now deal with the complainant's claim of discrimination on the membership of the Traveller community ground.
- 8.1 There is a conflict between the parties as to how many staff were on duty that day. The two witnesses who the respondent accepts were there, Mrs Fortune and Mr Kelly, both stated at the hearing that they did not know that the complainant was a member of the Traveller community until he raised this point himself when he was leaving the pub after the second agreed refusal occurred. Their perception is particularly important because they were the ones who decided to refuse service to the complainant.
- 8.2 Both parties agree that the complainant was never in the pub before 2nd November, 2000, but the complainant claimed that the staff on duty would have known he was a Traveller because it is possible to tell Travellers from non Travellers by their appearance. I believe in some cases it will be obvious whether someone is covered by a ground covered by the Act. For example, I consider it was obvious to the respondent's staff that the complainant was covered by the family status ground because his thirteen year old son was with him when he sought service. However, having said this I accept that there are circumstances where respondents may have some difficulty identifying people who claim to be covered by the membership of the Traveller community ground.
- 8.3 The complainant's representative claimed at the oral hearing that although there was no direct evidence of discrimination on the Traveller ground that there rarely is in discrimination cases and that inferences of discrimination can be used to establish that discrimination occurred. The complainant's representative also claimed that there was no other apparent reason for the way the complainant was treated and that this fact contributed to showing that he was discriminated on the membership of the Traveller community ground. I do not accept that the claim of the complainant's representative in this regard is correct. This is because the complainant has also claimed that he was discriminated against on the disability and family status grounds and it is clear, therefore, that there could have been other reasons for the way he was treated.
- 8.4 No other evidence was presented to the effect that the respondent's staff knew the complainant was a member of the Traveller community before he mentioned this fact to them. On the balance of probabilities I am satisfied that the respondent's staff, regardless of whether it was two or three of them, did not know the complainant was a member of the Traveller community from his appearance or demeanour when the first refusal occurred. I consider that the respondent has succeeded in rebutting the inference of discrimination up until the time when the complainant made it known to the respondent's staff that he is a member of the Traveller community.
- 8.5 Both sides agree that after the complainant had been served he disclosed to the respondent's staff that he was a member of the Traveller community. I consider that the position after this fact was made known warrants further investigation and that the timing of the complainant's disclosure in this regard is important.

- 8.6 The key question which needs to be determined is exactly when the complainant told the respondent's staff that he is a member of the Traveller community - was it before or after the respondent decided to refuse further service to the complainant. This is crucial because from the point of disclosure onwards there is no doubt that the respondent's staff were aware that the complainant was a member of the Traveller community and from that point onwards the respondent has to show that it did not act unlawfully. I have noted that the parties disagree as to when the complainant made this fact known. The complainant claimed that it was before service was finally refused but the respondent claimed that it was after the complainant was refused service as he was leaving the pub.

On the balance of probabilities I am satisfied that the staff did not know the complainant was a member of the Traveller community until after the decision had been made to refuse him further service. Accordingly, the respondent has succeeded in rebutting the inference of discrimination in relation to the membership of the Traveller community ground.

### **Disability**

9. The complainant claims that after his son left the pub he was still not served so he asked to speak to the manager. He claims that one of the female bar staff named Aisling then told him that the reason he was not being served was in case his guide dog's hairs got into the food. The complainant claims that he then produced a card which stated that guide dogs are allowed entry to restaurants, food shops and other food premises and that he was then served. This card was produced at the oral hearing and I am satisfied that it was issued to the complainant by Irish Guide Dogs for the Blind and not the Minister for the Environment or the Environmental Officers Association as stated by the complainant in his written submissions.
- 9.1 The complainant's version of events is disputed by the respondent. It claims that the complainant was served after his son left the pub and that the complainant was not refused because of his guide dog. It claims that this was because its staff did not know the complainant had a guide dog at that stage as its staff did not see the complainant come into the pub and the dog was not visible from behind the bar when the staff were first dealing with the complainant. It also claims that none of the comments which the complainant alleges were made and that the complainant did not produce a card from the Minister for the Environment or anyone else. The respondent also claims that only two staff were on duty and that it never employed anyone named Aisling.
- 9.2 In considering the complainant's claims about this alleged refusal I am conscious that there is a major conflict in the evidence of the two parties and although both sides had witnesses to support their evidence none of these could be considered to be totally independent. In these circumstances I have to judge whose account I consider to be the most credible and I have taken into account all of the evidence provided.

I have noted in particular that the letter dated 19th February, 2001, from the respondent's representative stated that there were complaints from other customers about the guide dog but at the oral hearing Mr Kelly stated that there were no such complaints. I have also noted that the letter dated 19th February, 2001, also stated that the complainant was

abusive when he was told his son would have to leave before he could be served but Mrs Fortune said at the oral hearing that he was not abusive at that time. As both of these inconsistencies relate to around the time when the complainant alleges this refusal occurred I consider that they are pertinent to this issue and that they are not helpful to the respondent's case.

- 9.3 In reaching my conclusions in relation to this ground I have also taken into account that Mr Fortune said at the oral hearing that until this complaint under the Equal Status Act, 2000, was brought to his attention he had a policy not to allow dogs, including guide dogs, in his pub. Mr Fortune said that although he had never refused service to someone with a guide dog before that he would have done so if someone with a guide dog came into his pub. He said that his no dogs policy came about because one of his customers used to bring a dog (not a guide dog) into the pub and it was a bit of a hazard because it tended to get in the way of other customers. Mr Fortune also said that because the only food which the pub serves is pre packed sandwiches, crisps, peanuts etc., food hygiene was not a contributory factor in his policy to ban dogs from the pub.
- 9.4 I consider that Mr Fortune's evidence on this point is significant and lends credibility to the complainant's version of events. In this case the complainant brought his guide dog into a pub which had a policy not to serve people with dogs, including guide dogs. Although Mr Fortune also stressed that he never had to enforce this policy I am, nevertheless, satisfied that the respondent's staff were aware of the no dogs policy and that they automatically refused to serve the complainant initially because of it.
- 9.5 On the basis of the evidence presented I consider that the respondent's staff saw the complainant coming into the pub with his dog. I also consider that after the complainant's son had left the pub a female member of the bar staff told the complainant that he still could not be served in case his dog's hairs got into the food. I am satisfied that the reason the complainant was refused at this point was because the staff were aware of the respondent's no dogs policy. I consider that the complainant then produced the card from Irish Guide Dogs for the Blind which stated "*Guide Dogs are allowed entry to Restaurants, Food Shops and other Food Premises. Their very special training means that they are not a risk to hygiene in such premises*". In my opinion, the staff may not have known for certain until then that the dog was a guide dog and I noted at the hearing that the parties disagreed as to whether the dog was in a harness and whether the complainant had a white cane. However, once the card was produced there could have been little doubt that the dog was a guide dog. I am satisfied that the card sparked a doubt in their minds as to whether the no dogs policy extended to guide dogs. The staff then decided to serve the complainant because of the doubts which they had.
- 9.6 At the oral hearing the complainant claimed that he was discriminated against on the disability ground because although he was eventually served, he was initially refused service because of his guide dog. He claimed that this amounted to less favourable treatment on the disability ground. Having clarified what I consider to have happened I now have to determine whether the refusal of service before the card was produced constitutes less favourable treatment on the disability ground.



9.7 In reaching my conclusions on this ground I am satisfied that if a person brought a dog, which was not a guide dog, into the respondent's premises they would not have been served in line with the respondent's no dogs policy. On the face of it, therefore, the complainant was not treated less favourably because he was treated the same as anyone else with a dog would have been treated. However, because of his visual impairment the complainant was not in the same circumstances as someone else with a dog who was not visually impaired. This difference is important and to quote the European Court of Justice ruling in the case of *Gillespie and others v Northern Health and Social Services Boards and others* (Case no. C-342/93) “ *discrimination involves the application of different rules to comparable situations, or the application of the same rules to different situations*”. This principle is supported by the ruling in the US Supreme Court case of *Jenness v Fortsom* (403 US 431 (1971)) and the rulings in the Irish Supreme Court cases of *O'Brien v Keogh* (1972 IR 144) and *de Burca v Attorney General* (1976 IR 38). I believe that section 4 of the Act is relevant on this point.

Section 4 of the Act states, inter alia:

*“(1) For the purposes of this Act discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service.*

*(2) A refusal or failure to provide the special treatment or facilities to which subsection (1) refers shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question”.*

I consider that allowing a guide dog into a pub with a visually impaired person is special treatment without which it would be impossible or unduly difficult for the visually impaired person to avail of the service. The respondent did not raise the question of nominal cost and no evidence was presented to suggest that allowing a guide dog into a pub would involve expenditure for the respondent.

9.8 I consider that by showing the card to the staff the complainant was essentially trying to make them aware of his special circumstances and the way in which his need to bring his guide dog into the pub differed from the needs of non visually impaired people with other types of dogs. I am satisfied that once the staff read the card which the complainant showed them from Irish Guide Dogs for the Blind that they effectively decided to ignore the usual no dogs policy and provided special treatment to the complainant in line with section 4(1) of the Act.

9.9 I am aware that the complainant was only served after he produced the card but I do not consider that he was treated less favourably. Effectively he was treated the same as anyone else with a dog would have been treated up until the point where he showed that his dog was a guide dog and that special treatment would be required. I consider that if the staff

were unsure whether the complainant's dog was a guide dog they were entitled to refuse service until their doubts were clarified by the complainant. Once it was clear-cut that special treatment was required the staff decided to ignore the usual policy and served the complainant. I consider that the card effectively served one of the purposes for which it was probably designed i.e. to help people with guide dogs gain access to pubs, restaurants, etc.. Taking into account all the circumstances of the case I am satisfied that the respondent has succeeded in rebutting the inference of discrimination on the disability ground up until this point.

- 9.10 I will now consider whether discrimination occurred on this ground at any other time when the complainant was on the respondent's premises.

The respondent claimed that the reason the complainant was finally refused service was because his son kept coming back into the pub and the complainant became abusive when he was refused further service. The complainant denied the respondent's version of events but as I stated previously I considered the versions of both parties and found that the evidence was inconclusive as to who is correct.

However, both parties agree that the complainant was served at least two pints before service was finally refused. The respondent claimed at the hearing that because the complainant was served with his guide dog it shows that he was not discriminated against on this basis. In considering whether the disability ground was the reason for the complainant's final refusal I have to consider whether it is logical that the respondent's staff would initially refuse the complainant service because of his guide dog, then serve him at least two pints knowing that he had a guide dog and then stop serving him because he had a guide dog. Having thought about this carefully in my opinion such a sequence of events, although possible, is unlikely. On the balance of probabilities I consider that the respondent has succeeded in rebutting the inference of discrimination on this ground.

### **DECISION**

10. Taking account of all the evidence presented it is my decision that Mr John Maughan was discriminated against by The Glimmer Man Ltd on the basis of his family status on 2nd November, 2000, contrary to the Equal Status Act, 2000. It is also my decision that Mr John Maughan was not discriminated against by The Glimmer Man Ltd on the basis of disability or his membership of the Traveller community on the same day.

Under section 27(1) of the Act the types of redress which may be ordered following a decision in favour of a complainant are:

- “(a) an order for compensation for the effects of the discrimination; or  
(b) an order that a person or persons specified in the order take a course of action which is so specified”.*

Under section 27(1)(a) of the Act the maximum amount I can award is £5,000 but I do not think that the maximum would be appropriate in this case. This is because the Equal Status Act, 2000, only came into operation on 25th October, 2000, and the discriminatory act only happened just over a week after that. Therefore, despite its clear legal duty to comply fully

with the Equal Status Act, 2000, I consider that the respondent did not properly assess and realise the full range of new obligations placed on it by the Act. I order that The Glimmer Man Ltd, pay £2,000 (2,539 Euro) to Mr John Maughan as compensation for the embarrassment and stress which he suffered.

Under section 27(1)(b) I order that:

- i) The Glimmer Man Ltd take down any signs in the Glimmer Man pub which give the impression that parents cannot be served when accompanied by their children under 18 years old.
- ii) The Glimmer Man Ltd place a sign in a prominent place behind the bar of the Glimmer Man public house stating that ‘The owner of this pub is committed to treating people equally in accordance with the terms of the Equal Status Act, 2000’. The sign should be left on display for at least one month thereafter. The letters of the words on the sign should be no less than 1 inch in height. The sign should be easily visible to anyone who seeks service there.

Anthony Cummins  
Equality Officer  
18 December, 2001