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## **Equal Status Act 2000**

**EQUALITY OFFICER'S DECISION NO: DEC-S2001-008**

**Patrick O'Brien**

**v**

**Killarney Ryan Hotel**  
**(Represented by Mason Hayes & Curran, Solicitors)**

**File No. ES/2001/71**  
**Date of Issue 20/8/2001**

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## **Summary of Decision DEC-S2001-008**

**Patrick O'Brien**

**v**

**Killarney Ryan Hotel**

**(Represented by Mason Hayes & Curran, Solicitors)**

### **Headnotes**

Equal Status Act 2000 - Direct discrimination, section 3(1) - Proper adherence to Notification procedure, section 21(2) - Membership of the Traveller community, section 3(2)(i) - Imputed membership of the Traveller community, section 3(1)(a) - Supply of goods and services, section 5(1) - Service in pubs - Risk of disorderly conduct, section 15 - Establishment of a prima facie case.

### **Background**

This dispute concerns a complaint by Mr Patrick O' Brien that he was discriminated against, contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act 2000, by the Killarney Ryan Hotel, on the grounds of his membership of the Traveller community.

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 that he was not provided with a service which is generally available to the public contrary to Section 5(1) of the Act. The respondents deny discrimination and maintain that they were entitled, under section 15 of the Act, to refuse him service because the complainant posed a risk of criminal or disorderly behaviour.

### **Conclusions of the Equality Officer**

While the complainant denied that he had ever threatened or acted aggressively towards the staff of the Killarney Ryan Hotel, the Equality Officer was satisfied, having considered the evidence of all the parties, including that provided by different members of the Hotel's staff, that the complainant had been involved in incidents of a serious nature on the Hotel premises which would have given rise to concerns about staff safety.

Overall, the Equality Officer found that insufficient evidence had been produced to show that a prima facie case of discrimination existed.

### **Decision**

The Equality Officer found in favour of the respondents on the basis that the complainant has not established a prima facie case of discrimination on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 .

**Equality Officer Decision DEC-S2001-008****Complaint under the Equal Status Act 2000****Patrick O'Brien**

v

**Killarney Ryan Hotel  
(Represented by Mason Hayes & Curran, Solicitors)****1. Dispute**

1.1 This dispute concerns a complaint by Mr Patrick O' Brien that he was discriminated against, contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act 2000, by the Killarney Ryan Hotel on the grounds of his imputed membership of the Traveller community.

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 that he was not 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 maintains that he was refused service in the Killarney Ryan Hotel on 25 November 2000 and claims that he was told that the Manager had ordered that no Travellers were to be served. The complainant states that he notified the respondents of his intention to submit a case under the Equal Status Act (Form ODEI 5) on 8 December 2000 and that he has witnesses to confirm that he personally delivered the notification to the Hotel reception. In their submission, the respondents denied having received any notification from the complainant within the specified 2 month period after the incident, and maintained that the claim was, therefore, invalidated.

**3. Summary of the Complainant's Case**

3.1 Mr O' Brien states that he entered the Killarney Ryan Hotel with his daughter and son-in-law on 25 November 2000. He states that he called for a drink several times over a 6 or 7 minute interval but that the barman ignored him. Eventually, he says that he was told by the barman that only residents were being served, despite the fact that, he says, two of his neighbours were drinking at the bar. He says that he then went to the Reception area to look for the Manager. On asking for the Manager at Reception, he says that he was told by another gentleman that it was the Managers orders that no Travellers were to be served. He says that he was then asked to leave the premises, which he did.

Mr O'Brien contends that the incident on the night of 25 November 2000 constituted discriminatory treatment under the Equal Status Act on the Traveller community ground.

#### **4. Summary of Respondent's Case**

The respondents maintain that the complainant had been barred in June 1999 for abusive and aggressive behaviour towards a member of staff. They claim that on 25 November 2000, the complainant again became aggressive while waiting to be served which led to him being barred once again. The respondents deny that the complainant was refused service because he was a member of the Traveller community.

The respondents claim that they were entitled, under section 15 of the Equal Status Act, to refuse to serve the complainant because of his previous behaviour on the premises.

#### **5. Matters for Consideration**

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 imputed membership of the Traveller community contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act, 2000 in not being served alcohol in the Killarney Ryan Hotel on the night of 25 November 2000. The burden of proof initially lies with the complainant who is required to demonstrate that a prima facie case of discrimination exists. If a prima facie case is established, the burden of proof then shifts to the respondent.

#### **6 Validity of the Notification Form sent by Complainant**

**6.1** The early part of this Hearing on 23 May 2001 was taken up with a debate on whether or not the notification form ODEI 5 was served on the respondent within the 2 months specified in the Act. Initially, the respondents stated that their Management had never received the form while the complainant insisted that the original had been handed in on 8 December 2000 and a copy on 18 December 2000. After some discussion amongst themselves, the respondents eventually agreed that the form ODEI 5 had been received, however, due to an administrative oversight, it had not been passed up the line.

On accepting that the form had been received on time, the respondents then went on to claim that the form had not been completed properly and, therefore, was invalid. In support of their claim, the respondents referred to the form ODEI 5 which the claimant submitted to the Hotel and pointed to the fact that his signature appeared at the foot of page 2 of the form and not at the end of the form on page 3. By not signing on page 3, below the text which indicates the complainant's intention to refer a case to the Director of Equality Investigations, the respondents maintained that the complainant had not properly notified the respondents in accordance with section 21 of the Equal Status Act 2000. The respondents were informed at the Hearing that this matter would receive full consideration when the complaint was being decided by the Equality Officer.

**6.2** I have now given full consideration to the points made by the respondents with regard to the validity of the notification served on the Killarney Ryan Hotel.

Section 21(2) of the Equal Status Act 2000 requires the complainant to "notify the respondent in writing" of the allegation and of his intention to seek redress by referring the case to the Director. The Act itself does not, however, specify any requirement for a signature to appear on the notification.

**6.3** It is also worthwhile noting that form ODEI 5 was designed by the Office of the Director of Equality Investigations to assist both respondents and complainants in properly complying with the requirements of the Equal Status Act. The form was designed to facilitate complainants in requesting information and to facilitate respondents in providing that information. The form also advises respondents of the possible consequences of not replying to the notification.

The layout of the form is not prescribed by statute and, therefore, it is my opinion that the location of a signature, or indeed the total absence of a signature, would not in itself make the form invalid. I, therefore cannot accept the respondents' claim that the complainant failed to comply with the proper notification procedures under the Act.

## **7 Evidence Provided by the Parties**

**7.1** At the Hearing on 23 May 2001, the complainant Mr Patrick O' Brien explained that he believed that he had been discriminated against on the Traveller community ground. He said that this occurred because some people regard him as a Traveller although he personally does not consider himself a Traveller. He explained that his parents were Travellers and had lived a nomadic life. He said, however, that he himself had never travelled. He said that he and his wife have lived in a private housing estate for almost 30 years and had brought up their family as part of the settled community.

**7.2** At the Hearing, the Hotel Manager, Mr Patrick Galvin, took the opportunity to provide a description of the role of the Killarney Ryan Hotel. He explained that the Killarney Ryan was a very family oriented hotel and that they cater for a large volume of children. He said that very few locals drank in the Hotel. He also said that the Hotel was strict in keeping to the licensing hours and that a policy was in place to ensure that only residents were served on the premises after hours.

Mr Galvin stated that the Hotel did not operate a discriminatory policy towards Travellers and that the Head Office of the Ryan Hotel Group had, in fact, issued a directive to all managers in January 2001 instructing them not to engage in any form of discriminatory treatment. As evidence that a non-discriminatory policy was in place, the respondents made the point that Travellers were regularly served and reference was made to a group of Travellers who had been served on the premises the previous Sunday.

**7.3** Mr O'Brien rejected this assertion and stated that the Ryan Hotel had actually recruited doormen to ensure that Travellers were not allowed access. The complainant also claimed that this was the very reason that Mr Thomas Brosnan had been employed as Bar Manager. In support of his claim, the complainant called on two witnesses who had accompanied him to the Hearing.

The first witness, a settled person who was a brother-in-law of the complainant, stated that he, because of his association with Travellers, and other Travellers have been refused access to the Hotel for the past four years. This witness claimed that the Hotel had gone out of its way to recruit locals to act as doormen, as they would be able to identify Travellers on sight. The witness claimed that Mr Brosnan had been recruited as Head Barman for the very same reason. The witness stated that he had previously complained in writing

to the Hotel's owners and had received correspondence in the matter from their solicitors, which he could introduce as evidence if required.

The second witness, the complainant's wife, supported the first witness's contention that the Hotel had recruited locals to restrict access to Travellers. As an example, she referred to an incident the previous Christmas when herself and her sister were refused access to the Hotel by a doorman.

In response to these two witnesses, the Hotel Manager admitted that the Hotel had employed doormen in the past but insisted that none had been employed since October 2000. This statement was disputed by the complainants.

**7.4** During the course of the Hearing, reference was made to four separate occasions on which it was alleged the complainant had dealings with staff while on the premises of the Killarney Ryan Hotel. These occasions were in June 1999, 24 November 2000, 25 November 2000 and 4 February 2001. As the events that occurred on each of these dates are individually linked to the complaint under investigation (regarding an incident on 25 November 2000), I propose to consider each event in date order.

**7.5** Firstly, with regard to the incident which allegedly occurred in June 1999, evidence was provided and a written statement made by the Bar Manager, Thomas Brosnan, to the effect that he was off duty that night and decided to call into the Hotel on his way home from another function. He states that he arrived in the Hotel after midnight and spoke to some of his bar staff. He states that, within a few minutes of his arrival, Mr O' Brien approached him and asked to speak to him privately because he had just been refused a drink at the bar. Mr Brosnan states that he told Mr O'Brien that he was off duty but still agreed to speak to him.

Mr Brosnan claims that Mr O' Brien immediately accused him of "staring at his family" and accused the Hotel of discriminating against Travellers. Mr Brosnan says he responded by stating that Travellers were not discriminated against and that the fact that Mr O' Brien had been served all night was evidence of that. Mr Brosnan stated that he then informed Mr O' Brien that the probable reason he had just been refused a drink was because it was past closing time and he was not a resident of the Hotel.

Mr Brosnan claims that, at this point, Mr O'Brien got very annoyed and agitated. Mr Brosnan claims that Mr O' Brien got very abusive and compared the treatment he was getting from Mr Brosnan and the Hotel to that afforded to the Jews during the Second World and to Blacks in other countries. Mr Brosnan states that Mr O'Brien then threatened to ask a particular individual to call to Mr Brosnan's house with a view to inflicting grievous bodily harm on him.

Mr Brosnan states that, as he was not officially on duty that night, he took no formal action against Mr O' Brien at the time. He stated that he did, however, verbally report the incident to the Hotel Manager the next day (this was confirmed by the Hotel Manager at the Hearing who recalls that the event appeared to have had an unsettling effect on Mr Brosnan). Mr Brosnan states that, two weeks later, Mr O'Brien returned to the bar with two other men who he recognised. At that point, Mr Brosnan, who was on duty, states that he informed Mr O' Brien that he was barred from the Hotel on account of his abusive and threatening behaviour two weeks beforehand.

At the Hearing, Mr O' Brien totally rejected Mr Brosnan's account of events in June 1999. The complainant states that he has no recollection whatsoever of the incident referred to nor of Mr Brosnan

informing him that he was barred. He also denies threatening Mr Brosnan and states that he does not know the individual who Mr Brosnan states he threatened would inflict bodily harm on him.

**7.6** The second date of interest is Friday 24 November 2000, when Mr O' Brien states that he visited the Killarney Ryan with his daughter and son-in-law who were home from England. On that occasion, Mr O'Brien states that he had no problem getting served at the bar and that he spent a few hours in the Hotel with his family. The barman on the night, Mr Stephen O' Sullivan, recalls serving Mr O' Brien and agrees that there was no hint of trouble from anyone that night.

**7.7** The next night, Saturday 25 November 2000, the date of the alleged act of discrimination, was explored in great detail at the Hearing. Mr O' Brien states that he again visited the Killarney Ryan Hotel with his daughter and son-in-law. When they arrived, he says that there was loud music playing. He says he went up to the bar to find that there was a shortage of bar staff and a lot of people calling for drinks. Mr Stephen O' Sullivan was the only person serving, he said.

The complainant states that he was waiting for 6 or 7 minutes and that he called loudly to Mr O' Sullivan several times in an effort to be heard over the music. Eventually he says that Mr O' Sullivan approached him and asked for "his room number" stating that he could only serve residents. Mr O' Brien stated that he was extremely embarrassed by this incident as he could see other neighbours of his already drinking in the bar. As he did not want to tell his family what had happened, he says that he made an excuse to his daughter about a phone call from home and went to the Reception where he asked for the Manager.

Mr O' Brien states that Mr Patrick O' Sullivan came to see him and introduced himself as the Assistant Manager. Mr O' Brien then claims that he asked Mr O'Sullivan why he had not been served and that Mr O' Sullivan replied that the General Manager had instructed that no Travellers were to be served. Mr O' Brien states that he was then ordered off the premises.

**7.8** When asked to respond to the complainant's comments, Mr Brosnan offered to provide some background information to the events of the 25 November. Mr Brosnan explained that he himself had not been on duty on 24 November 2000 when Mr O' Brien had been served. On arriving into the Hotel on 25 November 2000, he states that he was informed by the Night Porter, who recalled Mr O' Brien from the June 1999 incident, that Mr O' Brien had been on the premises the night before until late. On hearing this, Mr Brosnan said that he made a point of telling his staff to watch Mr O' Brien if he came in again and not to serve him if he became abusive.

When questioned about the events of 25 November 2000, Mr Stephen O' Sullivan, the barman who was on duty that night, confirmed that he had received instructions from Mr Brosnan that day to "keep an eye on" Mr O' Brien and that he was not to be served if he acted aggressively in any way.

Stephen O' Sullivan recalled how Mr O' Brien arrived at the bar sometime after 9pm on Saturday 25 November 2000. He agrees that it was a very busy night, there was loud music playing and he was the only barman behind the bar at the time. He stated that there were many customers calling for service and that he was trying to deal with them as fast as he could. He agrees that Mr O' Brien spent about 6 or 7 minutes waiting to be served and that it was hard to hear customers because of the loud music. He remembers Mr O' Brien calling from the end of the bar and says that he indicated to him that he would be with him shortly.



Stephen O' Sullivan states that after a few minutes Mr O' Brien began shouting loudly at him demanding that he be served immediately. Mr O' Sullivan says that it was obvious to him that Mr O' Brien was getting annoyed and that this brought to mind the instruction that his Bar Manager had given him earlier that day. He says that he then went down to Mr O' Brien and told him that he was only serving residents and asked Mr O' Brien for his room number. Mr O' Sullivan said that Mr O' Brien then walked away from the bar.

**7.9** Mr Patrick O' Sullivan, Assistant Manager, then described how he was called to the Reception Area at about 9.30pm on 25 November 2000. He said that he introduced himself to Mr O' Brien and asked how he could help him. Mr O'Sullivan stated that he had never met Mr O' Brien before and certainly did not associate him with the Traveller community.

Mr Patrick O' Sullivan says that Mr O' Brien appeared agitated and wanted to know why he had been refused service. He says he replied that he would have to ask his staff. At this point, Mr O' Sullivan states that Mr O' Brien got very annoyed, called him a "bald discriminating bastard", made references to "Jews and Blacks" and threatened to "tear the place apart". Mr O' Sullivan described Mr O' Brien's language as appalling and said that it was shocking to hear, especially as there were so many children around.

Mr Patrick O' Sullivan stated that, on account of this outburst, he decided "on the spot" to tell Mr O' Brien that he was barred for life. He says that the complainant then took him by the arm and told him he would be sorry he barred him and left the Hotel. Mr O'Sullivan stated that he prepared a written report of his encounter with Mr O' Brien that evening and handed to the Hotel Manager the next day. A copy of this report was produced at the Hearing.

**7.10** Mr O'Brien denied at the Hearing that he had acted aggressively towards Mr Patrick O' Sullivan on 25 November 2000 and insisted that it was not in his nature to be aggressive, particularly having just shaken hands with someone. Mr O' Brien states that he recalls asking M O' Sullivan why the Hotel would not serve Travellers and then leaving without receiving an answer from Mr O' Sullivan. Mr O' Brien states that he has no recollection of Mr O' Sullivan informing him on 25 November 2000 that he was barred.

**7.11** As both parties believed that the subsequent events of 4 February 2001 had a bearing on this case, the events of 4 February 2001 were also explored at the Hearing.

The complainant explained that he and his brother-in-law, the other witness he had brought to the Hearing, decided to return to the Killarney Ryan Hotel to try and obtain evidence to support his case that the Hotel operated a discriminatory policy towards Travellers.. The complainant explained that their intention was to call for a drink at the bar and to secretly record the conversation which followed with the barman. Mr O'Brien described how his brother-in-law switched on the tape-recorder and hid it under his coat before approaching the bar.

The complainant states that they then sat at the bar waiting for a barman. The complainant states that Mr Stephen O' Sullivan then approached them stating that he could not serve them without a room number.

Mr O' Sullivan, however, states that, while he was on duty that night, that it was another barman who spoke to the pair at the bar. Mr O' Sullivan states that he recognised the complainant when he came to the bar and that he immediately rang Mr Patrick O' Sullivan in Reception to tell him that the person he had barred some months ago was back.

**7.12** Mr Patrick O' Sullivan then described how he went into the bar and informed Mr O' Brien that he was not been served as he had been barred previously. Mr O' Sullivan stated that he did, however, indicate to the brother-in-law that he had no difficulty in serving him. Mr O'Sullivan states that, at that point, Mr O'Brien announced that he was recording their conversation and the tape recorder was produced. Mr O' Sullivan says that he immediately insisted that the tape recorder be turned off. He says the complainant refused and insisted on the Gardai being called. Mr O' Sullivan states that the complainant then began to get loud and aggressive again. Fearing a repetition of Mr O' Brien's behaviour on 25 November 2000, Mr Patrick O' Sullivan said that he was happy to agree to call the Gardai, which he did.

Mr Patrick O'Sullivan described how this encounter took place within feet of the bar and how the complainant's outbursts could be heard by all the customers in the bar. He also said that the complainant refused to move from the bar area pending the arrival of the Gardai.

Mr Stephen O' Sullivan, the barman who was on duty that night, described at the Hearing how he had to completely shut down the bar for 20 minutes on 4 February 2001 pending the arrival of the Gardai. He said that Mr O' Brien's demeanour was such that he feared a violent incident. He, therefore, decided, that it was in the best interests of customers and staff to close the bar for a while.

**7.13** On the arrival of a Garda, Mr Patrick O' Sullivan says that the group went into the Reception area, where he explained to the Garda that Mr O' Brien had been barred previously and that he was now recording their conversation. He says that the Garda immediately instructed Mr O' Brien to stop the recorder. He states that the Garda then advised Mr O'Brien to leave the premises otherwise he would be in breach of the peace. He states that, after some further debate with the Garda, Mr O'Brien and his brother-in-law left the premises.

At the Hearing, Mr O'Brien recalled how the Garda insisted on him leaving because Mr O' Sullivan had said that he was barred. He says that he explained to the Garda that the reason he was recording the conversations in the bar was to provide evidence that he was being discriminated against by the Hotel. Mr O'Brien states that at all times that night he had behaved himself. When asked whether he had the tape recording with him at the Hearing, Mr O'Brien indicated that he not brought it.

## **8 Establishment of a Prima Facie case**

**8.1** As stated earlier, in a case 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.

**8.2** 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.*"

*Article 4 of the EC Burden of Proof Directive (Council Directive 97/80/EC)*, while not directly relevant to this case, contains the following definition: "*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*". This Directive was transposed

into Irish law on 18 July 2001 by the European Communities (Burden of Proof in Gender Discrimination Cases) Regulations, 2001 {Statutory Instrument 337 of 2001},

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.* "

## 9 Conclusions of the Equality Officer

**9.1** At the Hearing, the complainant Mr Patrick O' Brien explained that he believed that he had been discriminated against on the Traveller community ground because some people regard him as a Traveller. He stated that he personally does not consider himself a Traveller and explained that, while his parents were Travellers and had lived a nomadic life, he himself had never travelled. He said that he and his wife have lived in a private housing estate for almost 30 years and had brought up their family as part of the settled community.

This point raises the question as to whether the complainant is entitled to claim discrimination on the Traveller community ground when he does not see himself as a Traveller. We must consider, therefore, whether Mr O'Brien's complaint can be admitted on the grounds of imputed membership of the Traveller community under section 3(1)(a) of the Act.

Section 2 of the Equal Status Act defines Traveller community as " *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*".

Given that the complainant has stated that his parents were members of the Traveller community and that they did indeed travel, I believe that, by imputation, the complainant's status is in keeping with the Act's definition of a member of the Traveller community. For this reason, I believe that the complainant comes within the definition of a member of the Traveller community contained in the Act

**9.2** 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. 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 not being provided with service in the Killarney Ryan Hotel on the night of 25 November 2000.

As stated above, the burden of proof lies with the complainant who is required to demonstrate that a prima facie case of discrimination exists. In other words, **the onus is on the complainant to provide evidence**

**which, in the absence of any convincing contradictory evidence from the respondent, would lead any reasonable person to conclude that discrimination had occurred.**

**9.3** This complaint of alleged discrimination refers to an incident on 25 November 2000 when Mr O' Brien was not served in the Killarney Ryan Hotel. Mr O' Brien claims that he was refused because he was a member of the Traveller community. The respondents state that he was refused service because of his aggressive behaviour towards staff.

In support of his case:

- the complainant states that he never caused trouble in the Killarney Ryan Hotel on or before the night of 25 November 2000. He says that he has no recollection of having any dealings with Mr Brosnan in 1999. The complainant totally denies that he was abusive and acted aggressively towards Mr Brosnan in June 1999 nor does he recall Mr Brosnan informing him in 1999 that he was barred from the Hotel.
- the complainant recalls the night of 24 November 2000 when he spent most of the evening in the Killarney Ryan Hotel with his daughter and son-in-law. He states that he had a few drinks in the Hotel that night and that there was no hint of trouble from him.
- the complainant denies that he got agitated and started shouting loudly at the barman, Mr Stephen O' Sullivan, on the night of 25 November 2000. He also denies that he was abusive and acted aggressively towards Mr Patrick O' Sullivan in the Reception of the Hotel on that same night.
- the complainant denies that he got loud and aggressive in the bar of the Killarney Ryan Hotel on 4 February 2001 when asked to leave by Mr Patrick O' Sullivan.

**9.4** Mr O' Brien claims that the real reason he was not served on 25 November 2000 was that the Hotel operated a policy of discrimination against Travellers. In support of this claim, Mr O' Brien produced credible witnesses who described how, on occasions in the past, the Hotel had employed individuals from the locality to stop Travellers at the door. Mr O'Brien contended that these individuals, as well as Mr Thomas Brosnan, were specifically employed to identify local Travellers and then restrict them access to the Killarney Ryan Hotel.

For their part, the Hotel denied the allegation that local people had been employed to identify and refuse access to Travellers. However, the Hotel did admit that doormen had been employed up until October 2000 for security purposes. Taking this statement into account and, having listened to the complainant's witnesses at the Hearing, I have come to the conclusion that, on the balance of probabilities, Travellers were probably treated less favourably than non-Travellers in the past, in seeking to gain admission to the Hotel.

Whether this action by the Hotel constitutes evidence of a strict anti-Traveller policy is another matter. For its part, the Hotel denies that such a policy is in place and maintains that a number of Travellers regularly drink in the Hotel. The respondents also state that the fact that Mr O'Brien himself was served in the Hotel as recently as 24 November 2000, is convincing evidence that no discriminatory policy is in operation.

**9.5** In their defence, the respondents state that, under section 15 of the Equal Status Act 2000, they were within their rights to refuse Mr O'Brien service. They claim that it was solely Mr O'Brien's aggressive attitude towards their staff on 25 November 2000 that led to Mr O'Brien initially being refused service and

then subsequently being barred by Mr Patrick O'Sullivan. In support of this claim, the respondents point to the three separate occasions described at the Hearing, by three separate staff members, where they allege there occurred a sudden change in Mr O' Brien's temperament.

- The first incident allegedly occurred in June 1999, before it was unlawful to discriminate against Travellers. Mr Brosnan states that, on that occasion, he was approached by Mr O'Brien in the Hotel around midnight. Of interest here is the serious nature of the incident which the respondents allege occurred. According to the respondents, Mr Brosnan was subjected to threats of grievous bodily harm by the complainant. The respondents state that, while the incident was reported verbally to the Hotel Manager the next day, a written report was only prepared prior to the Hearing.

I believe it is unfair for respondents to raise unproved allegations of threats of a criminal nature against a complainant in the absence of any independent corroboration (for example from the Gardai). In such a case as this, one would expect that such threats would have been reported to the Gardai. However, in this instance, there is no indication that the Gardai were notified of the incident nor has any independent corroboration been produced.

As the complainant has totally denied that this incident occurred and, as the alleged conduct, which would have been a criminal offence, is uncorroborated, I have decided that it would not be prudent to take the June 1999 allegations into account in deciding this case.

- The second incident allegedly occurred on 25 November when firstly Mr Stephen O' Sullivan encountered the complainant at the bar and secondly when Mr Patrick O' Sullivan met with Mr O' Brien in Reception. While this incident would appear to have been of a serious nature, it is unclear as to whether threats of grievous bodily harm were involved which would necessitate the Gardai being informed. Mr O'Sullivan did, however, write a report on the incident for Management that evening, which has been produced in evidence.
- The third occasion was on 4 February 2001 when both Mr Stephen O' Sullivan and Mr Patrick O' Sullivan encountered Mr O'Brien in the bar. On that occasion the Gardai were called to the scene.

**9.6** At this point, I believe that it worthwhile addressing another issue which has arisen i.e. the respondent's use of the "non-resident" excuse to refuse service. In this case, the respondents have stated that, on two occasions, Mr O'Brien was told that he could not be served as he was not a resident of the hotel. Firstly, in June 1999, when the respondents state that Mr O'Brien was told that non-residents could not be served after closing time. However, on 25 November 2000, this excuse was used again to refuse the complainant service. This time, however, the excuse was used around 9.00pm, when the complainant claims, without contradiction, that other non-residents were being served.

From the evidence before me, it would appear that the Hotel has no clear policy in place with regard to the serving of non-residents and I can only presume that this excuse is used as a convenient means of refusing service to customers where there is a reluctance to disclose the real reason (a previous incident or, possibly, for some discriminatory reason).

On 25 November 2000, the complainant was asked around 9 pm for "his room number" which implied that only residents were being served. As it was obvious to the complainant at the time that other

non-residents were being served, this comment, in my opinion, undoubtedly served to aggravate the complainant further.

As a service provider, the Killarney Ryan Hotel must realise that the use of reasons, which are obviously false, to refuse service can only serve to inflame a situation further. In this case, Mr O'Brien was refused service for a manifestly untrue reason, and clearly this only served to increase his conviction that the real reason was a discriminatory one, and this would appear to be what fuelled Mr O'Brien's actions on 25 November 2000.

I believe, therefore, that Mr Stephen O'Sullivan's comments to the complainant on 25 November 2000 were ill-advised and somewhat provocative. However, I cannot accept that these comments justified the subsequent behaviour of the complainant in the Reception area which led to him being barred by Mr Patrick O'Sullivan.

**9.7** Having considered all the evidence put before me, I believe that the principal factors in this case are as follows:

- Mr O'Brien has produced evidence that the Hotel may have been involved in the past in operating a discriminatory policy towards Travellers.
- The respondents have produced three separate witnesses, who have all described how on three different occasions Mr O'Brien became abusive and aggressive towards staff in the Hotel. As stated earlier, however, I do not propose to take the alleged incident in June 1999 into account.
- On his own admission, Mr O'Brien had no difficulty getting served in the Hotel on the night before the alleged discriminatory incident. This admission, in itself, would seem to clearly undermine his contention that the Hotel operated an anti-Traveller policy and that it discriminated against him the following night on the basis of his imputed membership of the Traveller community.

**9.8** Having fully considered the facts of this case, I have come to the conclusion that the primary reason behind Mr O'Brien not being served in the Killarney Ryan Hotel on 25 November 2000 was his reaction to being left waiting for service for some considerable time. I believe that the delay in Mr O'Brien being served on 25 November 2000 led to him getting annoyed on that occasion. This, I believe, then resulted in him acting aggressively towards Mr Patrick O'Sullivan in the Reception area which ultimately led to him being barred.

**9.9** I, therefore, find that the complainant has not produced sufficient evidence to demonstrate that a prima facie case of discrimination exists on the Traveller community ground.

## **10 Decision**

**10.1** I find that the complainant has not produced sufficient evidence to substantiate his claim that the respondents discriminated against him on the grounds of his imputed membership of the Traveller community.

**10.2** I, therefore, find in favour of the respondents on the basis that the complainant has not established a prima facie case of discrimination on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 .

## **11. Recommendations**

**11.1** I would recommend that the Killarney Ryan Hotel put in place a training program for staff to ensure that they are fully up to date with the new equality legislation and to ensure that they act in full compliance with the provisions of the Equal Status Act in relation to the provision of service to customers.

This case also serves to highlight how, in some circumstances, the behaviour of employees can inflame situations. As service providers can be held vicariously liable for the actions of their staff under section 42 of the Equal Status Act, I would recommend that representative organisations consider the inclusion of a module on conflict reduction in staff training programmes.

**11.2** I also recommend that hoteliers and publicans alike 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 and the type of behaviour that is likely to lead to a customer being barred. The Code should also make it clear that these rules will be applied to all customers, irrespective of their background.

Also, to avoid confusion over who exactly is barred at any given time, I believe that it is in hotelier's and publicans' interests to keep their staff clearly informed, on a regular basis, of those individuals who are currently barred from their premises and the reason they have been barred.

**Brian O' Byrne**  
**Equality Officer**  
**20 August 2001**