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## **Equal Status Act 2000**

**EQUALITY OFFICER DECISION NO: DEC - S2001-006**

**Mr John Donovan  
( Represented by Mr Charles Foley, Solicitor )**

**-v-**

**Gort Community Council Ltd  
(Represented by Mr Colman Sherry, Solicitor)**

**File No: ES/2000/04  
Date of Issue: 5/7/2001**

**Table of Contents**

<b>Summary</b>	<b>3</b>
<b>Dispute</b>	<b>4</b>
<b>Background</b>	<b>4</b>
<b>Summary of Complainant's Case</b>	<b>5</b>
<b>Summary of Respondent's Case</b>	<b>5</b>
<b>Issues for Consideration</b>	<b>6</b>
<b>Issue of Traveller Identity</b>	<b>6</b>
<b>Prima Facie Case</b>	<b>8</b>
<b>Respondent's Rebuttal of inference of Discrimination</b>	<b>9</b>
<b>History of Travellers Using the Centre</b>	<b>10</b>
<b>Complainant's Past Behaviour</b>	<b>10</b>
<b>Criminal Conviction</b>	<b>11</b>
<b>Harassment and abuse of Ms X</b>	<b>11</b>
<b>Incident of Bad Language and Abuse at Centre</b>	<b>12</b>
<b>Incident in Racquetball Court</b>	<b>13</b>
<b>Incident in Basketball Court</b>	<b>14</b>
<b>Conclusions of the Equality Officer</b>	<b>14</b>
<b>Decision</b>	<b>16</b>

**Mr John Donovan**  
**( Represented by Mr Charles Foley, Solicitor )**

**-v-**

**Gort Community Council Ltd**  
**(Represented by Mr Colman Sherry, Solicitor)**

### **Headnotes**

Equal Status Act 2000 - direct discrimination - section 3(1)(a) - membership of the Traveller community - section 5(1) - refusal of entry to a soccer competition - issue of Traveller identity.

### **Background**

Gort Community Council Ltd runs a leisure centre in Gort. On 6th November, 2000, Mr John Donovan was refused entry to a soccer competition which was due to take place in the leisure centre. Mr Donovan claimed that he was discriminated against under section 3(1)(a) and contrary to section 5(1) of the Act because of his membership of the Traveller community when he was refused from the competition.

Gort Community Council Ltd denied Mr Donovan's allegation of discrimination. It claimed that it did not identify Mr Donovan as a member of the Traveller community and that the reason for his exclusion from the soccer competition was based on his past behaviour. It claimed that it does not have a discriminatory policy against Travellers.

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

The Equality Officer concluded that the complainant was a member of the Traveller community within the scope of the Act and also concluded that the complainant had established a prima facie case of discrimination. The Equality Officer found that the respondent did not succeed in rebutting the inference of discrimination.

### **Decision**

The Equality Officer decided that the complainant had been discriminated against on the basis of his membership of the Traveller community and ordered that the respondent pay £500 (635 Euros) compensation. The respondent was also ordered to put an appeal system in place for people who are refused membership of the leisure centre or the use of the facilities there.

**Equality Officer Decision DEC-S2001-006**

**Complaint under the Equal Status Act 2000**

**Mr John Donovan  
( Represented by Mr Charles Foley, Solicitor )**

**-v-**

**Gort Community Council Ltd  
(Represented by Mr Colman Sherry, Solicitor)**

**DISPUTE**

1. This dispute concerns a claim by Mr John Donovan, represented by Mr Charles Foley, Solicitor, that Gort Community Council Ltd, represented by Mr Colman Sherry, Solicitor, discriminated against him on 6th November, 2000, on the basis of his membership of the Traveller community contrary to the Equal Status Act, 2000, when he was refused permission to participate in an indoor soccer competition organised by Gort Community Council Ltd.

**BACKGROUND**

2. Gort Community Council Ltd runs a leisure centre in Gort. It is a community based organisation. The building works for the leisure centre were funded by local fundraising and State grants but it is now self financing through membership fees and charges for the use of the facilities. The leisure centre is run on a day to day basis by its manager and assistant manager. They report to a Committee which is ultimately responsible for the leisure centre's administration.

An indoor 5-a-side soccer competition organised by Gort Community Council Ltd was due to take place in the leisure centre in November, 2000. The complainant's friend whom I shall refer to as Mr A, who is not a Traveller, tried to enter a team into the competition. The team was to have included Mr A himself, two other members of the settled community, the complainant and a close relative of the complainant's, whom I shall refer to as Mr B. On 6th November, 2000, Mr A was informed by the management of the leisure centre that the complainant and the complainant's brother could not take part in the competition but that himself (Mr A) and the two other members of the settled community could take part. Later on that day this was confirmed to the complainant himself by the management.

Written statements in relation to the complaint were provided by both parties and an oral hearing was held on 13th March, 2001.

### **SUMMARY OF CLAIMANT'S CASE**

3. The complainant is 20 years old. He regularly used the facilities at the leisure centre until he left school when he was 17 years old. After he left school he used to play football at the Centre every week until the end of 1999 when he stopped of his own volition.

Mr Donovan contends that he never caused any trouble at the leisure centre and that his membership of the Traveller community was the basis for his exclusion from the soccer competition. He contends that the management of the leisure centre does not want to admit any Travellers. He says that this is because some Travellers broke the rules of the centre and caused trouble in the past and the management now tars all Travellers with the same brush by refusing them all - not just the Travellers who broke the rules and caused the trouble.

Mr Donovan contends that settled people are not treated in the same way in this regard. He considers that he was discriminated against on the basis of his membership of the Traveller community when he was refused permission to participate in the soccer competition because he was treated less favourably than a member of the settled community.

The complainant contends that his exclusion from the leisure centre has a significant impact on his social life. His main hobbies are snooker and soccer. The only place in Gort to play snooker is in the leisure centre. He used to play on a local soccer team in Gort but when the Winter came the team started training in the leisure centre and he had to give up playing because he was not able to train with the other members of the team.

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

4. Gort Community Council Ltd denies that it discriminated against Mr John Donovan on the basis of his membership of the Traveller community when he was refused permission to participate in the soccer competition.

The respondent claims that since its establishment it has always allowed everyone in Gort to use its facilities provided they abided by its rules and regulations. The respondent claims that it does not have a discriminatory policy against Travellers. It pointed out that Travellers used the facilities and became members in the past and claims that two of the claimant's brothers are currently allowed to use the facilities at the leisure centre.

The respondent claims that the reason for the the complainant being refused permission to enter the soccer competition was based on his past behaviour there. The following reasons were cited by the respondent as the basis for his exclusion in this regard:

1. on 6/1/99 the complainant refused to leave the racquetball court in the leisure centre along with other members of his family while wearing black-soled shoes,
2. on 9/1/99 the complainant took a basketball from young girls on the basketball court in the leisure centre, the young girls went home, and he refused to pay for the court time,

3. on 28/8/99 the complainant was present when family members were refused membership due to past disturbances. Comments like “*the committee are shit*” and “*you will be out of a job*” were shouted at members of staff in an aggressive and loud manner,

The respondent also claims that Mr Donovan intimidated and harassed a former manager of the leisure centre who was female and who hereafter will be referred to as Ms X, and that this was also a reason why he was excluded from the soccer competition.

The respondent claims that when the complainant was refused permission to participate in the soccer competition that he was treated the same way as anyone else would be treated in the same circumstances.

The respondent claims that Mr John Donovan is not a Traveller because he does not lead a nomadic lifestyle. The respondent claims that it has never considered Mr Donovan or any of his relatives to be Travellers and that it never treated either he or they less favourably than members of the settled community. The respondent considers that the complainant only wants to be considered as a Traveller so that he can make a complaint under the Equal Status Act, 2000.

#### **ISSUES FOR CONSIDERATION**

5. The issue for consideration in this complaint is whether or not Gort Community Council Ltd discriminated against Mr John Donovan on the basis of his membership of the Traveller community in terms of section 3(1)(a) and contrary to section 5(1) of the Equal Status Act, 2000, when he was refused permission to participate in a soccer competition. 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.

#### **ISSUE OF TRAVELLER IDENTITY**

6. The first issue to be clarified in this case is whether Mr John Donovan is a Traveller within the meaning defined in section 2 of the Act. This has to be clarified first because if Mr Donovan is not a member of the Traveller community within the meaning defined therein, as argued by the respondent, his complaint cannot be considered under the Act. The definition in section 2 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.*

- 6.1 From this definition it is clear that for someone to be considered as a member of the Traveller community that they do not have to be actively leading a nomadic way of life. This is because the definition states that Travellers are people with a shared history, culture and traditions “*including historically, a nomadic way of life*”. The word “historically” in this context is important and can include people who were nomadic in the past but who are now settled and the settled descendants of people who led a nomadic way of life in the past. In response to a question at the oral hearing the complainant stated that he identified himself as a Traveller because his parents, grandparents and all of his relatives identify themselves as Travellers. He is now 20 years old and has lived in a house in Gort as a settled Traveller since he was 5 years

old. Before his parents settled in Gort he lived with them in a caravan and led a nomadic life. Clearly in my mind the complainant satisfies the link to nomadism required by the definition.

- 6.2 Mr Donovan's first cousin, Mr John Francis Donovan, also gave evidence at the oral hearing in relation to this complaint. He gave a very similar answer to that provided by the complainant. Another first cousin of the complainant, Mr Dan Donovan, was also present during the oral hearing but he did not give evidence on this point. However, during the hearing I observed the facial expressions and demeanour of the three Donovans when the issue of their Traveller identity was being discussed. In my opinion all three seemed to be taken aback and surprised at the notion that they might not be identified as Travellers and it was clear to me that they have always identified themselves as such.
- 6.3 According to the complainant's solicitor the general perception in the area is that the complainant is regarded as a member of the Traveller community. However, according to the respondent's solicitor the general perception in the area is that the complainant is not considered to be a Traveller and I think it is important that the question of the respondent's opinion of the claimant's identity be clarified further.

There are 11 members of the the Committee and at the time during the hearing when this point was being discussed three of them were present at the hearing - Mr Michael C Breathnach, a retired Principal of the local vocational school which the complainant attended, Mr Jeremiah Sheehan, a retired Garda Sergeant and Mr P J Flaherty a local man who also runs the sweet shop in the leisure centre. In addition the current Manager of the leisure centre, Mr Paul O'Halloran, was also present. All four were asked whether they thought of the complainant as being a member of the Traveller community. Mr Sheehan was the only one of the four who replied that he was aware that the complainant is a Traveller. Of the three Committee members present, 33% considered the complainant to be a member of the Travellers community. I cannot say that this percentage would be representative of the Committee as a whole because I do not know how the other members of the Committee viewed the complainant as they were not at the hearing to give evidence. Nor was Ms X present to give her view. However, in view of the fact that Mr Sheehan was aware of it I think it is likely that others on the committee would have been aware of it also.

- 6.4 Gort is a relatively small town. Evidence was given on behalf of the respondent that if there is an incident of trouble in the town everybody in the town is likely to hear about it, to know who was involved and who did what. I got the impression that Gort is a closely knit community where most people know each other. They may not know each other very well but they would probably know each other to see or by family name.

The complainant has lived in Gort for the last fifteen years. He has a lot of relatives who also live in Gort. The respondent submitted in evidence a copy of its Incident Log Book entitled "Breach of Rules and Regulations Log Book" which covers incidents from 6/1/99 to 2/3/01. There are a number of entries in it relating to the complainant's extended family. The respondent also submitted in evidence the

minutes of the Committee meetings from 5/1/99 to 14/11/00. The complainant's extended family are referred to on a number of occasions.

- 6.5 From the evidence provided I am satisfied that the extended Donovan family are well known in Gort. I am also satisfied on the balance of probabilities that it is widely recognised by the people in Gort, and in particular the members of the Committee of Gort Community Council Ltd and the management of the leisure centre, that the Donovans are members of the Traveller community. On the basis of the all of the evidence presented on this point I am satisfied that the complainant is a member of the Traveller community within the meaning defined in the Act and that he is identified as such by the respondent.

### **PRIMA FACIE CASE**

7. Having established this the next issue to be clarified is whether the complainant has a prima facie case of discrimination on the basis of his membership of the Traveller community when he was refused entry to the competition.

The definition of what constitutes discrimination is set out in Section 3(1) of the Equal Status Act, 2000. It states that:

*“For the purposes of this Act, discrimination shall be taken to occur where-*  
*(a) on any of the grounds specified in subsection (2) (in this Act referred to as “the discriminatory grounds) ..... a person is treated less favourably than another person is, has been or would be treated.”*

In Section 3(2) the “Traveller Community ground” is included among the discriminatory grounds.

- 7.1 The use of the facilities in the leisure centre is open to members and non-members and non-members are subject to the same rules and regulations as members. In this case the soccer competition was open to both members and non-members. Teams entered the soccer competition by submitting a form containing a list of players to the management of the leisure centre. The management then had to approve the team submitted before it could gain entry to the competition. According to the complainant a friend of his called Mr A, who is not a Traveller, gave such a list of players to Ms X, the former manager of the leisure centre, in an attempt to enter a team. The list contained Mr A's own name and those of two other non Travellers whom I shall refer to as Mr C and Mr D, and the two other players on the team were entered as AN Other. Both sides agreed that Ms X told Mr A that he would have to reveal the identity of the AN Others before his application could be accepted. It was also agreed that when Mr A told her that the AN others were the complainant and a close relative of the complainant, whom I referred earlier to as Mr B, that Ms X told Mr A that the complainant and Mr B would not be allowed to participate in the competition and that Mr A would have to get two other players.

In early November, 2000, Ms X had left the employment of the leisure centre. Mr A approached Mr Kenneth Shiel, Assistant Manager of the leisure centre. He said that Ms X had given her permission for the complainant and Mr B to enter the competition and that he wanted to confirm this to make certain that it was still OK. Although this



was not true Mr A was not subsequently excluded from the competition for this reason.

Mr Shiel said he would check this and rang Ms X who told him that she had not said it was OK and advised him to check with the new manager, Mr Paul O'Halloran. On 6th November, 2000, Mr Shiel told Mr A what Ms X had said and told him that the complainant and Mr B would still not be allowed to enter. Mr O'Halloran was also present at this time and concurred with what Mr Shiel had said.

A few minutes later the complainant asked Mr Shiel why he wasn't being allowed to enter. To quote from the Incident Log Book which is kept by the Centre, Mr Shiel told the complainant "*we had problems with the Donovans before and that they were refused membership and use of the centre*". Mr Shiel also told the complainant that "*it was a committee decision and out of my hands*". The complainant asked Mr O'Halloran if he agreed with this and Mr O'Halloran confirmed that he did.

- 7.2 The inference of Mr Shiel's statement to the complainant was that there was a Committee decision to refuse access and membership to the leisure centre to either the complainant on his own or else all of the Donovans. I have examined the minutes of the Committee meetings which were supplied and I cannot find any reference to a Committee decision to either effect. At the oral hearing the members of the Committee who were present did not tell me about having made any such decision either. Therefore, I am inclined to doubt that a decision to effectively bar either the complainant or all of the Donovans was ever formally made. It seems to me that Mr Shiel was not correct when he told this to the complainant.
- 7.3 I understand that about 20 teams participated in the competition when it was held. It was agreed by both sides that there were no Travellers on any of these teams. On the basis of the evidence before me I am, therefore, satisfied that there is prima facie evidence that Mr John Donovan was refused permission to participate in the soccer competition because of his membership of the Traveller community. I am satisfied that he is a Traveller within the meaning defined in the Act and that he was denied access to the competition while members of the settled community were not so refused.

#### **RESPONDENT'S REBUTTAL OF INFERENCE OF DISCRIMINATION**

8. As the complainant has established a prima facie case of discrimination on the basis of his membership of the Traveller community it falls to the respondent to rebut the inference of discrimination. I now have to examine whether in fact someone who was not a member of the Traveller community would have been treated the same as the complainant in the same circumstances.

### **HISTORY OF TRAVELLERS USING THE CENTRE**

9. The respondent contends that it allowed other members of the extended Donovan family to use the facilities and become members in the past and that 2 of the claimant's brothers are currently allowed to use the facilities at the leisure centre. The respondent contends that this shows it does not discriminate against Travellers.
- 9.1 The complainant accepts that Travellers were allowed to use the facilities in the past but said that things changed about 5 years ago following a number of incidents of trouble involving other Travellers. He cited one incident in particular as a turning point in which the cloth of a snooker table was ripped and the damage was not paid for by the Travellers responsible. He said that ever since then things have been made difficult by the respondent. This was denied, however, by the respondent.
- 9.2 I asked the respondent to supply me with its membership records. I have examined the records which the respondent submitted and they show that the extended Donovan family were actively involved in the leisure centre for some time. However, the current membership records were not supplied. The complainant, Mr Dan Donovan and Mr John Francis Donovan all stated that they have experienced difficulties when they attempted to become members. The respondent has not supplied any documentary evidence to show that any Travellers are members of the leisure centre at the moment.
- 9.3 I have considered the respondent's argument on this point and I am satisfied that it has not succeeded in shifting the burden of proof. A historical open membership policy of itself does not prove that the respondent did not discriminate against the complainant when he was refused access to the soccer competition. In addition, the claimant's two brothers who are currently allowed to use the facilities are aged about 10 and 12 years old so this fact of itself is not convincing evidence of an open membership policy on the 6th November, 2000, either. No documentary evidence was provided by the respondent to show that the claimant's younger brothers are currently members of the leisure centre.

### **COMPLAINANT'S PAST BEHAVIOUR**

10. Section 15 of the Act states that service providers do not have to provide services to a 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 the discriminatory grounds, that the ..... Provision of the 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 .....*"

Although the respondent did not refer to this specific section of the Act in its defence of the allegations of discrimination, it did refer to it indirectly by raising questions about the claimant's past behaviour.

## **CRIMINAL CONVICTION**

11. The respondent's solicitor asked the complainant whether he had ever intimidated or harassed a woman before to which the complainant replied that he had never done so.

The respondent's solicitor then brought to my attention the fact that on 14th February, 2001, the complainant was convicted and fined £300 at Gort District Court for using or engaging in threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace on 14th October, 2000. The respondent's solicitor said that this conviction arose from an incident involving the complainant and a young woman from Gort to whom I shall refer to as Ms Y. The respondent's solicitor contended that by denying he had ever intimidated or harassed a woman the complainant had shown himself to be a liar because his conviction proves otherwise. The respondent's solicitor also contended that all of the complainant's evidence was, therefore, unreliable and I accept that his point in this regard must be borne in mind when considering the credibility of the complainant.

The complainant said that although he has a conviction arising from the incident on 14th February, 2001, he is innocent of the offence and hence he was not lying when he said that he had never intimidated or harassed a woman. However, I want to put on record that as far as I am concerned the conviction which the complainant received arising from this incident shows that he was guilty as charged. I was not provided with any evidence of a successful appeal.

- 11.1 While on the subject of this incident involving the complainant and Ms Y, I note that the complainant's close relative, Mr B, and Mr C, a non Traveller who was referred to earlier as being part of the team which Mr A tried to enter in the soccer competition, were also convicted following the incident and that they received more severe penalties from the Court than the complainant. I also note that Mr C, was allowed to participate in the soccer competition which the complainant was refused entry to. The respondent did not say whether the management of the leisure centre was aware of this incident when the complainant was refused admission to the soccer competition or whether it was a contributory factor in his exclusion. I note however, that the date when the complainant was refused entry to the soccer competition was over three months prior to his conviction and nothing had been proven at that stage.

## **HARASSMENT AND ABUSE OF MS X**

- 12 The respondent's solicitor contended at the oral hearing that this incident and the claimant's subsequent conviction supports the view that Ms X felt harassed and intimidated by the complainant in the past and that for this reason the respondent's decision to exclude the complainant from the soccer competition was reasonable. However, Ms X did not attend the oral hearing despite the fact that I sent her a letter notifying her that I required her to attend. The letter requiring her to attend was only sent shortly before the hearing because of the late request by the respondent and I cannot be certain whether she received it in time given the short notice. However, as Ms X did not give any evidence I cannot draw any conclusions about what she may or may not have felt or as to why she did not attend the hearing.
- 12.1 I note that the contention about Ms X's feelings was not mentioned as a reason to the complainant on 6th November, 2000, when he was refused entry to the soccer

competition and it was not referred to either in Mr O'Halloran's letter of 15th November, 2000, to the complainant when the respondent first rebutted the allegation of discrimination which the complainant made. I think that by using different reasons at different times the respondent has showed some inconsistency in its defence of the allegation of discrimination. I consider that the inconsistency in the defence is not helpful to the respondent's case.

#### **INCIDENT OF BAD LANGUAGE AND ABUSE AT CENTRE**

13. I now come to the other reasons which the respondent referred to as being the reasons for refusing the complainant entry to the soccer competition. In his letter to the complainant's side dated 15th November, 2000, Mr O'Halloran stated that the reason for the claimants refusal was based on three incidents of trouble in which the complainant was allegedly involved.
  - 13.1 One incident of trouble cited by the respondent occurred on 26th August 1999 when it is alleged that the complainant was present when family members were refused membership due to past disturbances. Comments like "*the committee are shit*" and "*you will be out of a job*" were shouted at members of staff in an aggressive and loud manner. The complainant accepts that he was there and that aggressive and loud language was used but he denies that he himself was loud or aggressive. According to the complainant, he was accompanied by Mr Dan Donovan that day. He said that they asked Ms X about becoming members but Ms X told them that it was not up to her and that the Committee would have to decide.
  - 13.2 It is probable that Ms X did say this because I note that in the minutes of the Committee meeting of 14th July, 1999, the Committee decided that "*due to past disturbances from members of the Donovan (sic) that all applications will have to be ratified at Committee level*". I think that Ms X probably had this decision in mind on 26th August, 1999. My view in this regard is supported by the complainant's statement that he asked Ms X about becoming a member in January 2000 and was again told by her that he would have to contact the Committee. In addition Mr John Francis Donovan stated that he was also told to follow this procedure in October, 2000, when he asked Ms X about becoming a member and Mr Dan Donovan recounted a similar experience. Therefore, I am concluding that this was the policy of the respondent in relation to how applications from the members of the Donovan family should be handled or is was at least how Ms X perceived the policy to be.
  - 13.3 The complainant stated that as soon as Mr Dan Donovan commenced using offensive language he turned around and went away because he could see no point talking to Ms X any further. Mr Dan Donovan admitted using the language described but said that he only did so through frustration. He said that he had been to the Centre to enquire about membership three times that week and that he felt was given the runaround by Ms X on each occasion.
  - 13.4 At the oral hearing the respondent's solicitor put forward the argument that the complainant had used loud and aggressive language during this incident. The respondent had no witnesses at the oral hearing to give evidence to confirm that the complainant had actually used loud or aggressive language himself. However, some corroborating evidence is contained in the minutes of the Committee meeting of

September 4th, 1999, and in the Incident Log Book. I have examined both of these and it is clear to me that Mr Dan Donovan used loud and aggressive language that day. This view tallies with the evidence of the complainant and Mr Dan Donovan. However, the respondent's contention that the complainant also used loud and aggressive language is not conclusive. On the balance of probabilities I am satisfied that the respondent should not have used this incident as a reason for excluding him from the soccer competition.

#### **INCIDENT IN RACQUETBALL COURT**

14. Another incident of trouble cited by the respondent occurred on 6/1/99 when it is alleged that the complainant refused to leave the leisure centre's racquetball court along with other members of his family while wearing black soled shoes. The complainant denies that he was there that day although he agreed that some other members of his extended family were there. The complainant stated that he thought the respondent must be confusing him with one of the other members of his extended family. He pointed out that he has a number of relatives who are also called John Donovan and that he is known as "John Boy" Donovan to distinguish him from them.

The respondent did not have any witnesses to confirm that it was the complainant who was there that day and not one of his extended family. Its evidence is based on an entry in the Incident Log Book by Ms X. It clearly states that a "John Donovan" was there that day. However, I note that other entries in the log book by Ms X refer to "John Boy" Donovan. I also note from the minutes of the Committee meeting which took place on 2nd February, 1999, that it is also stated that John and not John Boy was involved in this incident. It was also mentioned at that meeting that John Boy was involved in another incident which occurred in the basketball court to which I will refer shortly.

In evidence the complainant stated that he knew Ms X from the times when he used the facilities at the leisure centre. He said that he had problems with her in the past when he asked her about becoming a member of Gort Community Council Ltd. He said that she had made it awkward for him and refused his application. He mentioned one particular occasion when she did this in January, 2000, when she told him that he would have to take it up with the Committee but would not tell him who was on the Committee.

- 14.1 Although there are doubts about the credibility of the complainant I am satisfied that Ms X knew him and that if the complainant had been in the racquetball court that day that Ms X would have stated "John Boy" Donovan rather than "John" Donovan in the Incident Log Book. In addition the minutes of the Committee meeting on 2nd February, 1999, would have referred to "John Boy" rather than "John" also. Therefore, I conclude that on the balance of probabilities the complainant was not in the racquetball court that day and that the respondent should not have used this incident as part of the reason for excluding him from the soccer competition.

#### **INCIDENT IN BASKETBALL COURT**

- 15 Another incident of trouble cited by the respondent occurred on 9th January, 1999 when it is alleged that the complainant took a basketball from young girls who were

aged around 9-11 years old on the basketball court. It is alleged that the the young girls then went home and that the complainant refused to pay for the court time.

- 15.1 The complainant denies that he was there that day. Mr Dan Donovan admitted being there but said the complainant was not there. He disputed the respondent's version of events and said that he and the other members of the Donovan family who were with him only used the court for a couple of minutes when the girls had finished playing on it. He denied taking the ball from them.

Mr Flaherty was the only witness for the respondent in relation to this incident. He said that he was working in the leisure centre that day and remembers the events as described in Mr O'Halloran's letter. He said that the incident was reported to him by the girls involved but he could not remember exactly who reported it to him. Mr Flaherty said he remembers that the complainant, Mr Dan Donovan and another member of the Donovan family were there but he couldn't remember the name of the other person. In the Incident Log Book there is an entry recorded by Mr Flaherty of an incident as described by the respondent. I have no doubt that Mr Flaherty would not have mistaken the complainant for any other member of his family and I am satisfied that the complainant was there that day.

- 15.2 I consider that Mr Dan Donovan's credibility as a witness also has to be questioned in view of the fact that he denied the complainant was there that day and my finding above that the complainant was in fact there that day. However, what is less clear is what the complainant or the other Donovans did that day and I consider that the respondent's claims in relation to this incident are not conclusive. I note that Mr Flaherty did not actually see any of Donovans taking the basketball from the girls. His evidence at the oral hearing was simply that one of the girls reported to him that the Donovans had taken the ball from them. There is no other evidence to support the respondent's contention that the complainant took the basketball from them. On the balance of probabilities I consider that this incident should not have been used by the respondent as a reason for excluding the complainant from the soccer competition.

### **CONCLUSIONS OF EQUALITY OFFICER**

16. I think that it is important to note that the three incidents which were given as reasons by Mr O'Halloran for refusing the complainant entry to the soccer competition occurred from 6th January, 1999, to 28th August, 1999. Yet the complainant was allowed by the respondent to use the facilities at the leisure centre throughout 1999 until he stopped going there of his own volition at the end of 1999. Indeed he participated in and won a soccer competition there in November 1999 and he had no problem being admitted on that occasion. I consider that if the respondent was satisfied that the complainant was involved in the three incidents as described in Mr O'Halloran's letter of 15th November, 2000, and if it had been satisfied that they were serious enough to warrant his exclusion, then he would not have been allowed to use the facilities in the leisure centre throughout 1999. There must have been some other reason for his exclusion from the soccer competition as he was not involved in any other incidents at the leisure centre until he was refused admission to the soccer competition on 6th November, 2000.

- 16.1 I have examined the minutes of the Committee meetings which took place from 5th January, 1999, to 14th November, 2000. It is clear from these minutes that the Committee discussed the issue of the extended Donovan family using the facilities at the leisure centre regularly during that time. These discussions followed various incidents which involved members of the extended Donovan family.
- 16.2 As I stated earlier, on 14th July, 1999, the Committee decided that “*due to past disturbances from members of the Donovan (sic) that all applications will have to be ratified at Committee level*”. I think that this shows that the Committee decided to group the Donovans together as one. By stating that all applications would have to be ratified at Committee level I am satisfied that the extended Donovan family were being treated less favourably by the respondent than members of the settled community would have been. The inference of the Committee’s decision is that for any applications for membership by a member of the Donovan family, even if the person concerned had never been in any trouble before or never used the leisure centre before, that the application would still have to be ratified by the Committee. However, if a person who was not a member of the Donovan family in the same circumstances sought membership then that application could be ratified without reference to the Committee. I do not think the Committee would have made a similar decision if the Donovans were not Travellers and the respondent did not provide any arguments or evidence to the contrary. I am satisfied on the basis of the evidence presented that they were, therefore, treated less favourably by the respondent than members of the settled community.
- 16.3 I also note that on 4th September, 1999, when discussing the incident which occurred on 26th August, 1999, involving the complainant and Mr Dan Donovan, the Committee decided to “*accept them on an individual basis + each application would be dealt with separately*”. There is no indication from the minutes of this meeting that the Committee decided that the complainant should not be allowed to use the facilities from then on. It seems to me that this decision shows that the Committee recognised the inequity of its previous decision to treat all of the Donovans the same and that it was attempting to try not to discriminate against those members of the Donovan family who had not caused trouble in the past. However, there was no indication that the earlier decision of 14th July, 1999, was to be changed so I am satisfied that the Committee still had a policy at that time to treat the Donovans less favourably than members of the settled community.
- 16.4 On 14th October, 1999, following a further incident with some members of the Donovan family the Committee “*decided to give them one last chance + if rules are broken from now on there will be question only to expel them*”. Although the Committee was probably referring to the individual members of the Donovan family who were involved it is not certain that this is actually what they meant. They may have also been referring to all of the members of the Donovan family when they said “*if rules are broken from now on there will be question only to expel them*”. I think that this decision again shows a tendency on the part of the Committee not to treat the members of the extended Donovan family individually and to treat them less favourably than members of the settled community.

- 16.5 Between 14th July, 1999, and 6th November, 2000, (the day the complainant was refused entry to the soccer competition) there were five incidents recorded in the Incident Log Book. Although they all involved members of the Donovan family the complainant was only involved in one incident which occurred on 26th August, 1999, and which I have referred to earlier. There is no indication from the Incident Log Book that the complainant was involved in any of the other incidents. Therefore, I consider that if the Committee's decision of 4th September, 1999, to treat the Donovans individually had been implemented, the complainant should have been admitted to the soccer competition in November, 2000, as there is no evidence that he was involved in any trouble since the Committee made its decision on 4th September, 1999.
- 16.6 As I mentioned earlier the complainant has established a prima facie case of discrimination on the basis of his membership of the Traveller community and it falls to the respondent to rebut the inference of discrimination. I am satisfied that the respondent in this instance has failed to discharge that burden. The complainant was allowed to use the facilities at the leisure centre throughout 1999 and this included some time after the three incidents occurred which were originally given by the respondent as the reason why the complainant was refused entry to the competition. In addition the allegation that the complainant intimidated and harassed Ms X were not substantiated because Ms X did not provide any evidence to this effect. Finally, no evidence was provided to show that when the complainant was refused entry to the soccer competition that the management of the leisure centre was aware of the incident with Ms Y which gave rise to the complainant receiving a conviction. In any case nothing had been proven against the complainant when he was refused and Mr C was allowed to participate although he received a more severe penalty from the Courts than the complainant.

### **DECISION**

17. In my opinion, on the basis of the evidence presented, the reason the claimant was refused entry to the soccer competition was based on his membership of the Traveller community. He was not treated as an individual in the same way that a member of the settled community would have been treated in the same circumstances. I am satisfied that if the complainant was a member of the the settled community that he would have not have been treated less favourably by the respondent and that he would have been allowed to participate in the soccer competition. It is my decision that Gort Community Council Ltd discriminated against Mr John Donovan on the basis of his membership of the Traveller community in terms of section 3(1)(a) and contrary to section 5(1) of the Equal Status Act, 2000.
- 17.1 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) the maximum amount I can award is £5,000 I but I do not think that this amount would be appropriate in this case. The Equal Status Act, 2000,



only came into operation on 25th October, 2000, and the discriminatory act only happened within a couple of weeks 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 have also taken into account the credibility of the complainant in determining the appropriate level of monetary redress. I order that Gort Community Council Limited pay £500 (635 Euros) to the complainant, Mr John Donovan. This is to compensate him for the stress and loss of amenity which he suffered.

- 17.2 The first decision made under the Employment Equality Act, 1998, was the Equality Authority v Ryanair (DEC - E/2000/14). The Equality Officer in that case considered that in addition to monetary compensation the respondent take a specific course of action under section 82(1)(e) of the Employment Equality Act, 1998. In a recent decision which I made under the Equal Status Act, 2000, Connors v Molly Heffernan's Public House (DEC-S2001-003) I took a similar approach which I consider is also necessary in this case.

Under section 27(1)(b) I order that Gort Community Council put clear procedures in place to provide a transparent appeal system at Committee level for people who are either refused membership or the use of the facilities in the leisure centre. Full details of the appeal system should be provided in writing to anyone so refused and appeals should be heard by the Committee within two months of receipt of an appeal.

Anthony Cummins  
Equality Officer  
5 July 2001