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Equal Status Act 2000

EQUALITY OFFICER'S RECOMMENDATION NO: DEC - S2001-002

**Mr Tom Conroy
(Represented by Michael McDarby, Solicitor)**

AND

**Mr Luke Carney, Publican
(Represented by Mr Sean Foy, Solicitor)**

**File No. ES/2001/17
Date of Issue 22/5/2001**

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Summary of Decision DEC-S2001-002

Mr Tom Conroy
(Represented by Michael McDarby, Solicitor)

v

Mr Luke Carney, Carney's Bar, Ballinrobe
(Represented by Sean Foy, Solicitor)

Headnotes

Equal Status Act 2000 - Direct discrimination, section 3(1) - Membership of the Traveller community, section 3(2)(i) - Supply of goods and services, section 5(1) - Service in pubs - Hypothetical Comparator - Risk of criminal and disorderly conduct, section 15 .

Background

This dispute concerns a complaint by Mr Tom Conroy that he was discriminated against by Mr Luke Carney, owner of Carney's Bar, Ballinrobe on the grounds that he was a member of the Traveller Community. The case revolves around an incident in Carney's Bar on 30 October 2000 when the complainant states that he entered the pub and was told by the respondent that he was not being served. The complainant states that no reason for this decision was conveyed to him on the night. The respondent maintains that Mr Conroy was refused because he had evidence that he was a trouble-maker and not because he was a member of the Traveller community.

The complainant maintains that he was discriminated against on the Traveller community ground in terms of sections 3(1)(a) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public, contrary to section 5(1) of the Act. The respondent argues that he was entitled to refuse service to the complainant under section 15 of the Act

Conclusions of the Equality Officer

The Equality Officer found that the complainant had established a prima facie case and that the burden of proof had shifted to the respondent. The respondent maintained that he restricted service to the complainant because he believed that a threat of disorderly behaviour existed on the night in question. The Equality Officer found that there was insufficient evidence to substantiate this claim and concluded that the publican's actions was based on a bias he has against Travellers and that his actions constituted discrimination on the grounds of membership of the Traveller community.

Decision

The Equality Officer found that the complainant had been discriminated against on the Traveller community ground in terms of sections 3(1)(a) 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 Equality Officer found in favour of the complainant and ordered that the respondent pay him the sum of £1000 (Euro 1270) for the humiliation and embarrassment suffered by him.

Equality Officer Decision DEC-S2001-002

Complaint under the Equal Status Act 2000

Mr Tom Conroy

(Represented by Michael McDarby, Solicitor)

v

Mr Luke Carney, Carney's Bar, Ballinrobe

(Represented by Sean Foy, Solicitor)

1. Dispute

1.1 This dispute concerns a complaint by Mr Tom Conroy that he was discriminated against, contrary to the Equal Status Act 2000, by Mr Luke Carney, owner of Carney's Bar, Ballinrobe.

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 Mr Conroy states that on Thursday 30 October 2000 he entered Carney's Bar, Ballinrobe around 10.30pm. Mr Luke Carney, the owner, was on duty that night. When Mr Conroy called for a drink, he says that he was told by Mr Carney that he was not serving him and was not given a reason. Mr Carney maintains that Mr Conroy was refused because he was a trouble-maker and not because he was a member of the Traveller community.

3. Summary of the Complainant's Case

3.1 Mr Conroy states that, on Thursday 30 October 2000, he and his wife were at home when they decided to go out to Carney's Bar for a drink. He states that he had only been in Carney's Bar once before (in August 2000) but, on that occasion, he had been refused service by Mr Carney. Mr Conroy says that no explanation was given but that he believes that it was because he was a Traveller. As the Equal Status Act 2000 had come into force some days previously, Mr Conroy believed that on 30 October 2000, Mr Carney would serve him. On his arrival in the pub around 10.30pm, Mr Conroy states that he asked Mr Carney for a drink but that he was told by Mr Carney that he was not serving him and again no reason was given.

The complainant states that he tried to bring the provisions of the new Equal Status Act to Mr Carney's attention but that Mr Carney simply answered "No". Mr Conroy states that he then left Carney's Bar.

In support of his claim that he was discriminated against, Mr Conroy introduced two witnesses at the Hearing who recounted a situation some years earlier where they say they were treated in similar fashion by Mr Carney.

Mr Conroy contends that the action of Mr Carney on the night of 30 October 2000 constituted discriminatory treatment under the Equal Status Act on the grounds of his membership of the Traveller community.

4. Summary of Respondent's Case

4.1 Mr Carney strongly rejects the claim that Mr Conroy was not served simply because of his membership of the Traveller community. Mr Carney maintains that Mr Conroy is a well-known trouble-maker in the area. Mr Carney states that the reason he did not serve Mr Conroy was because one of his regular customers had been the victim of a vicious assault by Mr Conroy in an incident in a Takeaway in the town some months earlier. Mr Carney says that he did not want this customer to have to confront Mr Conroy on his premises and that this was the sole reason he refused to serve Mr Conroy.

In support of his assertion that Mr Conroy was a troublemaker, Mr Carney called on a local Garda Sergeant to give evidence at the Hearing and also produced evidence that Mr Conroy had a previous conviction for being drunk and disorderly. The respondent admitted, however, that the latter fact was unknown to him at the time he refused to serve the complainant.

Mr Carney insists that he does not have an anti-Traveller policy in operation and that all well-behaved customers are welcome in his pub.

5 Matters for Consideration

5.1 Section 3(1) of the Equal Status Act 2000 states that discrimination shall be taken to occur where, on any of the grounds specified in the Act, a person is treated less favourably than another person is, has been or would be treated. Section 3(2)(i) of the Act specifies the Traveller community ground as one of the grounds covered by the Act.

In this particular instance, the complainant claims that he was discriminated against on the grounds of his membership of the Traveller community contrary to Sections 3(1) and 3(2)(i) of the Equal Status Act, 2000 in not being served in Carney's Bar on the night of 30 October 2000. The burden of proof lies with the complainant who is required to demonstrate that a prima facie case of discrimination exists. If established, the burden of proof then shifts to the respondent who, in order to successfully defend his case, must show that his actions were driven by factors which were non-discriminatory.

As the outline facts of the case have been agreed, the first question to be answered is whether the complainant was treated less favourably in being refused service in a situation where a non-Traveller in similar relevant circumstances would have been served. In order to prove that less favourable treatment was involved, some form of comparator is, therefore, required.

For his part, the respondent states that the sole reason that he refused the complainant service was that he was afraid that providing him with service would produce a risk of disorderly conduct. The respondent maintains that under Section 15 of the Equal Status Act 2000, he was entitled to adopt this stance as he had evidence to substantiate his belief that the complainant was likely to be the cause of trouble.

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

6 Evidence Provided by the Parties

6.1 In support of his case, Mr Carney referred back to an incident on the night of 16 April 2000 where, he maintains, Mr Conroy seriously assaulted a regular customer of his in a Takeaway in Ballinrobe. On hearing of this alleged assault, Mr Carney stated that he decided not to serve Mr Conroy on his premises as he wished to avoid a situation where the two individuals came face to face again, with the likelihood of further trouble occurring.

6.2 At the Hearing of this case on 15 March 2001, Mr Conroy described himself as a settled Traveller, married with 4 children. He has always lived in Ballinrobe and works as a Security Officer for a Security firm in Galway. At the Hearing, Mr Conroy produced 4 character references from prominent members of the local community.

Mr Conroy said that he was not a regular drinker and had only visited Carney's Bar once since Mr Carney took it over 5 years beforehand. On that occasion (August 2000), he states that Mr Carney refused him service with no explanation given.

Mr Carney is also a native of Ballinrobe. He described his Bar as more of a restaurant than a pub. He employs 8 permanent and 10 temporary staff. He said that providing meals accounted for over 80% of his business. He estimated that he provided up to 2000 meals per week, mainly to office workers at lunch time. Meals are served from 10.30 am to 9 pm and normally the premises closed before 11 pm. He stated that he does not have a regular drink trade at night time.

6.3 The events of 30 October 2000, when the alleged act of discrimination occurred, were explored first at the Hearing. Mr Conroy described how at about 10.30 that evening, he

suggested to his wife that they might go out for a drink. He recalls mentioning the fact that the Equal Status Act was now in force and that they should have no difficulty getting served.

He states that on his arrival in Carney's Bar, Mr Carney was cleaning tables in the lounge. He says he asked for a lucozade but Mr Carney responded "Sorry no drink". Mr Conroy states that, as other customers were present, he asked Mr Carney whether he could discuss the matter with him privately at the end of the bar (he stated that he wanted to bring the provisions of the Equal Status Act to his attention). Mr Conroy states that Mr Carney refused to discuss the matter and repeated that he was not serving him. Mr Conroy states that he then left the premises.

For his part, Mr Carney recalls Mr Conroy entering the premises on 30 October. He agrees with Mr Conroy's account of events, except that he says that Mr Conroy asked for "a pint". He recalls refusing to serve Mr Conroy and states that the reason he did so was because he was aware that Mr Conroy had been involved in an alleged assault on another customer recently. Mr Carney stated that he did not consider himself to be in any personal danger on the night but that he feared that a situation could arise with other customers who were friends of the customer who was allegedly assaulted (for the purposes of this Decision, I will refer to this customer as **Mr A** from now on). Both parties agree that Mr A was not present in Carney's Bar on 30 October 2000.

Mr Carney described Mr A as a prominent local business man who was a regular customer of his. Mr Conroy said that he knew who Mr A was but was not closely acquainted with him.

6.4 The events of 16 April 2000 were explored in detail at the Hearing. Mr Conroy provided his own testimony of what happened while the respondents called Garda Sgt James Carroll as a witness. Sgt Carroll had been on duty in Ballinrobe on the night in question.

Mr Conroy states that he had gone out that night to Mooney's Pub with his wife. He says he was drinking lucozade. Towards the end of the evening they left the Pub and, after a discussion in the street, decided to go to the local Takeaway. While in the Takeaway, Mr Conroy says that Mr A came in and started making certain accusations against him. Mr Conroy says that Mr A was intoxicated at the time and that he then got aggressive and started to assault Mr Conroy, resulting in the breaking of his glasses. Mr Conroy says that in the scuffle that followed Mr A received some cuts to his head and face. Mr Conroy states that Mr A then left the Takeaway but that he remained.

Mr Carney states that he was outside his pub around 12.30 am when he noticed Mr A down the street covered in blood. Mr Carney did not talk to Mr A at that point. However, Mr Carney states that Mr A had been in his restaurant earlier for a meal and had left at 10 pm. He says that he does not know where Mr A was between 10 pm and 12.30 am.

Sergeant Carroll then testified that he had been on foot patrol in Ballinrobe that night. He states that he remembers the day - it was 16 April 2000 and there was a Traveller funeral in the town that day. Some time prior to midnight, Mr Conroy came to his attention when he says that he

saw him and his wife out in the street having a heated discussion. He did not approach them at that time.

At around 12.30 am, Sergeant Carroll states that he came across Mr A on the footpath, covered in blood. He recalls that Mr A appeared to be intoxicated. When he asked what had happened, he says that Mr A claimed that he had been assaulted by Mr Conroy in the Takeaway. He invited Mr A to accompany him to the Takeaway. He says that, at first, Mr A was reluctant to do so saying that he was "in fear of that man". Eventually Mr A agreed to return to the Takeaway where Sergeant Carroll states that Mr A identified Mr Conroy as the person who assaulted him.

Sergeant Carroll says that he then approached Mr Conroy and asked him if he had assaulted Mr A. Sergeant Carroll states that Mr Conroy responded that Mr A had assaulted him first and had broken his glasses. Sergeant Carroll's recollection of Mr Conroy at the time is that he appeared to have had some drink taken (which is contrary to Mr Conroy's claim that he had only drunk lucozade) but that he behaved in a composed manner and was coherent when speaking to him. He does not recall Mr Conroy showing him his broken glasses but believes that Mr Conroy had no glasses on him at the time.

At that point, Sergeant Carroll states that trouble started in the Takeaway between two other men which required him to call for assistance. On account of this disturbance, Sergeant Carroll was unable to deal further with Mr Conroy and Mr A at that time. Over the coming days Sergeant Carroll states that he visited both parties to ascertain whether either wished him to make a statement. He says that both parties declined and no further action was taken by the Gardai in the matter.

6.5 Mr Carney states that it was on account of the above incident that he had decided not to serve Mr Conroy in his pub. Full details of the events of 16 April had been recounted to him by Mr A in the weeks that followed. On the basis of the information supplied to him, Mr Carney states that he decided not to serve Mr Conroy as he believed that allowing him on the premises, would be an affront to Mr A and also likely to incite trouble between Mr Conroy and Mr A and possibly other customers. Mr Carney states that he was justified in taking this stance under Section 15 of the Equal Status Act as he felt that there was a risk of disorderly behaviour.

6.6 In defence of his action, Mr Carney also produced evidence that Mr Conroy had a conviction in 1997 for drunk and disorderly behaviour. When pressed on this point, Mr Conroy admitted that this was correct but stated that this related to an incident 2 days before Christmas 1997 when he was found staggering home late at night. Mr Conroy admitted that he was drunk on the night but says that he was not disorderly, and he maintains that this was borne out by the fact that he was only fined £10.

Mr Carney also referred to a conversation he had subsequent to 30 October 2000 with another publican in Ballinrobe. This publican informed Mr Carney that Mr Conroy had acted aggressively towards him in the street and threatened him that he would take action against him under the Equal Status Act if he continued to refuse him service. Mr Conroy admitted speaking to the publican in question, who had refused to serve him a lucozade previously. However, Mr

Conroy's maintains that the reason he spoke to the other publican in the street was to remind him that the Equal Status Act was coming into force and that he should change his policy with regard to serving Travellers.

6.7 Mr Carney stated that he does not operate a policy of discrimination against Travellers. He states that he personally would find it difficult to distinguish between Travellers and settled people who enter his pub and that this is particularly so on market days when both farmers and Travellers would come in dressed in old clothes and wellingtons.

At present, Mr Carney states that 7 or 8 people are barred of whom, to his knowledge, only 2 are Travellers.

This point was taken up at the Hearing when the complainant's solicitor asked Mr Carney whether he usually served "non-violent" Travellers. Mr Carney stated that he did.

The complainant's solicitor then asked two witnesses who had accompanied Mr Conroy to the Hearing to describe a particular incident which occurred in May 1996. These witnesses were a settled married Traveller couple who stated that they had lived in Ballinrobe all their lives. The husband stated that he grew up with Mr Carney. They played together on the same local team and even worked together for ten years.

The couple recalled an incident on the evening of Sunday 25 May 1996 when they were out for a walk. They remembered the day as the Connaught Football Final was played that afternoon and Mayo had beaten Galway. On passing Carney's Pub, they recognised a car outside belonging to a settled friend that they had not seen in ages. When they entered the pub, they say that they joined their friend and another settled gentleman at the bar for a chat. They did not ask for a drink as they were not planning to stay. They say that after a few minutes Mr Carney arrived in the pub (he had been at the match). The husband states that he said hello to Mr Carney but got no response. Mr Carney went into the rear of the pub.

The husband stated that, almost immediately, their friend was told that there was a phonecall for him at the other end of the bar. When he came back, the husband says that their friend was in bad humour and he told them that Mr Carney had rang from the kitchen and had asked him "Why did you bring that pair into the pub? ". They say that their friend then informed them that Mr Carney had insisted that they all leave the pub, They then left the pub with their friend. At the Hearing, the wife said that she could not believe what had happened as they had known Mr Carney for years and that the only explanation she could think of for Mr Carney's actions was because they were Travellers.

The next day, the husband says he called to Mr Carney to establish why he had been barred. He says that Mr Carney stated that it was because he was "with someone who was barred and that, as it was his premises, he could serve who he liked".

At the Hearing, Mr Carney was asked whether he recalled the incident. He said that he did and insisted that the only reason they were all asked to leave was because their friend was already

barred. Mr Carney admitted, however, that the other gentleman in their company was allowed remain on in the pub that evening.

6.8 At the Hearing, the complainant's solicitor asked to be allowed address a number of questions to Mr Carney, through the Chair. Firstly he enquired whether Mr Carney had been aware of Mr Conroy's 1997 conviction prior to 30 October 2000. Mr Carney replied that he had not. Secondly, he asked when Mr Carney had spoken to the other publican about Mr Conroy. Mr Carney confirmed that this also happened after 30 October 2000. Thirdly he elicited from Mr Carney that the alleged assault in the Takeaway was the only incident that he knew of where Mr Conroy had allegedly been involved in an altercation.

The complainant's solicitor then raised the issue of natural justice and suggested to Mr Carney that perhaps he should have listened to both sides of the story before refusing Mr Conroy. The solicitor also suggested to Mr Carney that the reason he had not been prepared to listen to Mr Conroy was because he was a Traveller and the other party was a well-respected local businessman and a good customer of his. In response, Mr Carney stated that he knew Mr A well and had no reason to doubt his account of the alleged assault. Mr Carney insisted that he had acted in good faith throughout and that he was entitled to take the approach he did in accordance with Section 15 of the Act.

7 Conclusions of the Equality Officer

7.1 The complainant in this case maintains that Mr Carney's decision to refuse him service was based on a long-running prejudice he has against Travellers. In support of this claim, Mr Conroy produced witnesses in an effort to show that Mr Carney has previously treated Travellers less favourably than settled people. Having listened to the testimony of the witnesses at the Hearing and Mr Carney's response to their allegations, I am inclined to believe the former's testimony more so than the latter's. Principally because of the fact that, while Mr Carney maintains that the husband and wife were barred for being with someone who was already barred, it seems that the fourth member of the group (a settled person) was not asked to leave.

From the evidence outlined above, I am satisfied that there is strong evidence that Mr Carney has in the past displayed a personal prejudice towards Travellers. However, I note that the incident in 1996 occurred at a time when discrimination against Travellers was not unlawful and, therefore, I am not prepared to consider this incident as an influencing factor in reaching a final decision on this case.

7.2 Section 3(1) of the Equal Status Act 2000 states that **discrimination shall be taken to occur where, on any of the grounds specified in the Act, a person is treated less favourably than another person is, has been or would be treated.** In this particular case, the complainant claims that he was treated less favourably on the grounds of his membership of the Traveller community. The question to be answered, therefore, is whether the complainant was refused service in a situation where a non-Traveller in similar relevant circumstances would have been served. In order to prove that less favourable treatment was involved, some form of comparator is required.

Throughout this case, Mr Carney has argued that Mr Conroy was treated in the same manner as he would treat any other customer whom he believed to be a "troublemaker". Mr Carney maintains that the fact the Mr Conroy was a Traveller was not a factor in him being refused service.

I note, however, that in this particular case, no evidence was produced by either party as to the circumstances in which other individuals were barred from Mr Carney's premises. It is difficult, therefore, based on the facts available, to compare the treatment afforded to Mr Conroy with the treatment afforded to other barred customers.

In order to properly evaluate Mr Conroy's case, I believe, therefore, that it is necessary to introduce a hypothetical comparator at this point. The Equal Status Act 2000 provides for the use of a hypothetical comparator in Section 3(1)(a) where it states that discrimination shall be taken to occur where a person is treated less favourably than another person is, has been or would be treated.

Hypothetical comparators have been introduced in a number of employment equality cases in recent years where an actual comparator did not exist. For example, discriminatory questioning was an issue in the case of *Fleming v. Dr J Maloney, Blackrock Clinic (EE04/1996)*, where the only actual comparators were other married women. During the course of the interview for a part-time secretary position, the claimant was asked about child-minding arrangements for her children. In that case, the Equality Officer found that, although no males applied for that post, a hypothetical male or single female comparator could be used in deciding whether the questions put to the candidate were discriminatory. The Equality Officer stated that "*I accept that there were probably no male or single female applicants for the post, however, I consider that the respondent discriminated against the claimant when she asked her or allowed her to be asked questions which would not be asked of a male or single female.*"

Similarly, in *Barrington v Medical Council, EE9/1988*, although there were a number of male applicants for the post, the Equality Officer did not examine in his recommendation whether they had actually been asked the questions which the claimant complained of. Instead, he simply stated that he was "satisfied that no male candidate would have been asked the questions which the complainant was asked" thus using a hypothetical male comparator.

7.3 As stated earlier, no evidence has been produced to me by either party to indicate why other individuals had been barred from Mr Carney's establishment. I believe, therefore, that it is necessary to introduce a hypothetical comparator at this point and ask the question as to whether Mr Carney would have adopted a different stance if the incident on 16 April 2000 had involved two prominent local businessmen who were both customers of his, in a situation where one of them had made allegations of trouble making against the other. Would Mr Carney have accepted the word of one and not listened to the other ?

Having considered this question in some depth, I believe that, in such circumstances, it is reasonable to expect that Mr Carney would have, at the very least, afforded both parties an opportunity to tell their side of the story. However, in Mr Conroy's case, Mr Carney was not prepared to do this - he says himself that he fully accepted his regular customer's account of events and that he had no

interest in hearing Mr Conroy's side of the story. I consider this to be because of a prejudice Mr Carney has towards members of the Traveller community.

Mr Carney states that he does not have an anti-Traveller policy in place. As evidence of this, he says that on market days he serves all-comers - he says that there is no distinction between farmers and Travellers as they both tend to wear similar clothing. This action does not necessarily constitute evidence of a positive policy towards Travellers. Another interpretation could be that the only reason Mr Carney serves Travellers on market days is because he cannot distinguish them from farmers.

7.4 Another persuasive aspect of this case, is the fact that when making his decision on 30 October 2000, the respondent relied totally on allegations made by Mr A about Mr Conroy. While Mr Carney produced evidence at the Hearing about Mr Conroy's previous conviction and his verbal confrontation with another publican, he admits that he was not aware of these incidents on 30 October 2000. Therefore, the only information available to Mr Carney on 30 October 2000, with regard to Mr Conroy's character, was that obtained in the course of conversations with Mr A, and it would appear that Mr Carney made his decision based solely on this information.

At the Hearing, the complainant's solicitor asked Mr Carney why, in the interests of natural justice, he did not afford Mr Conroy an opportunity to put his side of the story when he entered his premises on 30 October 2000. Mr Carney's reply was to the effect that Mr A was a regular client of his and a prominent local business man and, as such, he had no reason to doubt him.

7.5 The respondent's defence in this case is based entirely around Section 15 of the Equal Status Act 2000. Mr Carney maintains that under Section 15 he was entitled to refuse Mr Conroy service as, in his opinion, not to do so would produce a substantial risk of disorderly conduct or behaviour.

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

In reaching his conclusion, that serving Mr Conroy would produce a risk of disorderly behaviour, Mr Carney has admitted that he relied entirely on the word of Mr A, a regular customer of his. Mr Carney has also admitted that, on 30 October 2000, he was unaware of Mr Conroy's previous conviction and that he had not yet spoken to the other publican who had been approached by Mr Conroy. Therefore, on the night in question, the only information that Mr Carney had with regard to Mr Conroy's character, was the information supplied by Mr A about the events of 16 April 2000.

7.6 I also note that, in support of his case, Mr Carney called Sergeant Carroll to give evidence about the events of 16 April 2000. On hearing this evidence, however, I must say that I find it inconclusive. Sergeant Carroll has stated that circumstances on the night prevented him from fully investigating the matter and, as neither party wished to make a statement afterwards, the matter was not pursued any further. Indeed, if anything, the Sergeant's testimony would appear to favour the complainant more so than the respondent as Mr Conroy was described as "coherent" while Mr A was described as "intoxicated".

With regard to the night of the alleged discrimination, 30 October 2000, I note that Mr Carney states that he feared trouble from Mr Conroy. From the evidence before me, it would appear that Mr Carney was out on the floor cleaning tables when Mr Conroy arrived and that there were only a few customers left in the bar. Both parties agree that Mr A was not on the premises and no evidence has been produced to indicate that any of the remaining customers had any grievance against Mr Conroy.

In the circumstances, I cannot accept Mr Carney's contention that by serving Mr Conroy, he was exposing himself to a substantial risk of disorderly conduct on the night of 30 October 2000. I have, therefore, formed the opinion that Mr Carney was not justified in reaching this conclusion and, therefore, I consider that other motives played a part in his decision to refuse Mr Conroy service.

7.7 From the evidence before me, I believe Mr Carney sees himself as a restaurateur more so than a publican. His establishment caters for a quality clientele base. Mr Carney admits that most of his turnover comes from serving meals to office workers rather than from serving alcohol to customers. Travellers are not great contributors to Mr Carney's business and I believe that he regards them as something of a nuisance and a deterrent to the image of his business.

Having considered all of the above, I have come to the conclusion that Mr Carney's action on 30 October 2000 was based on a clear bias against a member of the Traveller community. Mr Carney was fully prepared to accept the uncorroborated evidence of a member of the settled community yet he absolutely refused to listen to the Traveller's version of events. To me this action constitutes discrimination of the highest order. I, therefore, find that on 30 October 2000, the respondent unlawfully discriminated against the complainant on the Traveller community ground, contrary to Section 3(1) and Section 3(2)(i) of the Equal Status Act 2000.

8. Decision

8.1 Having fully considered all aspects of this case, I find that the complainant has established a prima facie case of discrimination on the Traveller community ground. I also find that the respondent has not provided sufficient evidence to rebut the claim that he operates a discriminatory policy towards Travellers, nor has he provided proof that he applies the same rules and procedures to both settled people and Travellers alike. I also find that the respondent has not provided sufficient evidence to substantiate his claim that he was entitled to refuse service to the complainant under Section 15 of the Equal Status Act.

Section 15 of the Equal Status Act is designed to protect a publican from having to provide a service to an individual whom he genuinely believes is likely to produce **a substantial risk of criminal or disorderly behaviour**. In this particular case, the respondent has relied totally on the evidence of one customer to make his decision to refuse service to the complainant.

In addition, the Garda witness introduced by the respondent was unable to corroborate Mr A's allegations and the respondent failed to produce any other relevant evidence to support his claim that the complainant was likely to be the cause of trouble. In addition, the publican was unaware at the time, that the complainant had a previous conviction for disorderly conduct and, therefore, his reliance on Section 15 was somewhat tenuous at best. If the respondent had known of the complainant's previous conviction on the night of the incident, it is possible that this fact may have put a different complexion on the case.

This decision should not be seen as a deterrent to publicans from carrying on business in a responsible manner. Publicans who can show that they apply the same rules to Travellers and settled people alike, have nothing to fear from the Equal Status Act. Section 15 is designed to protect such publicans from claims of discrimination, arising from a situation where the publican has refused service to a "troublemaker" with a previous history of disorderly behaviour.

I would recommend, therefore, that publicans seriously consider drawing up a universal Code of Practice, emphasising their commitment to non-discriminatory practices and setting out clearly the rules which they apply to all customers 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 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.

8.2 In relation to the events of 30 October 2000, I am satisfied that the complainant suffered unlawful discrimination at the hands of Mr Carney within the meaning of the Equal Status Act 2000. In particular, I find that Mr Conroy was discriminated against on the grounds of his membership of the Traveller community contrary to sections 3(1) and 3(2)(i) of the Act.

I, therefore, find in favour of the complainant and order that Mr Carney pay the complainant the sum of £1000 (Euro 1270) for the humiliation and embarrassment suffered by him.

Brian O'Byrne
Equality Officer
22 May 2001