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# ADJ-00020726

## ADJUDICATION OFFICER DECISION

Adjudication Reference: ADJ-00020726



Parties:

	Complainant	Respondent
Parties	A Minor	Atlantic Troy Limited T/A Charleville Park Hotel



Representatives	Sinéad Lucey Free Legal Advice Centres	Tom Kelly James O'Brien & Co.
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Complaint:

Act	Complaint/Dispute Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00027305-001	26/03/2019
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00027306-001	26/03/2019

Date of Adjudication Hearing: 25/01/2022

Workplace Relations Commission Adjudication Officer: Thomas O'Driscoll

Procedure:

In accordance with Section 25 of the Equal Status Act, 2000following the referral of the complaint to me by the Director General, I inquired into the complaint and gave the parties an opportunity to be heard by me and to present to me any evidence relevant to the complaint. This matter was heard by way of remote hearing pursuant to *the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 and SI 359/20206*, which designated the Workplace Relations Commission as a body empowered to hold remote hearings. Both sides

submitted written submissions in advance of the hearing. This complaint was heard in conjunction with three other complaints from members of the Complainant’s family, dealing with the same matters. These were ADJ-00020724, ADJ-00020725 and ADJ-00020727. The evidence and arguments presented in all cases was the same. Most of the text of this decision is replicated in the aforementioned decisions, save where the Complainants’ unique circumstances dictate otherwise. Complaint 00027305-001 is the relevant complaint to be considered here; CA-00027306-001 is a duplication. The Respondent in its written submission claimed that it had no notification of a complaint from this Complainant. The Respondent did not subsequently raise the issue at the hearing, nor did it proffer evidence on this point. Having considered that the Respondent in its own original correspondence of 18 April 2019 to the Workplace Relations Commission refers specifically to the Complainant, and the specific complaint in this instant case, I am satisfied that the Respondent had proper notification of this complaint. The Complainant is a minor and the complaint is submitted on his behalf by his mother. I have therefore decided not to name him in my decision.

**Complainant Preliminary Application – Addition of new grounds under the Equal Status Acts 2000-2015:**

On 20 January 2022, seven days before the hearing, the Complainant’s Solicitor wrote to the Respondent’s Solicitor signifying her intent, on behalf of the Complainant, to apply to the Workplace Relations Commission (WRC) to have the added discriminatory ground of ‘Membership of the Traveller Community added to the complaint.

The Complainant submits that the Respondent’s written submission refers widely to the Traveller Community, despite the Complainant never disclosing family’s membership of this community. It was not evident to the Complainant’s mother, at the time of lodging the complaint, the extent to which his Traveller identity bore or the original decision of the Respondent to refuse to provide the family with accommodation in the hotel. Therefore, the Complainant submits that a second ground of discrimination has been disclosed. On this basis the Complainant submits that the Adjudication Officer should consider this ground as part of the complaint.



**Respondent’s Position on the Preliminary Application.**

The Respondent objects to the application on the basis that it is out of time and that references to the Traveller Community in the submissions and statement were incidental and did not disclose any new ground.



**Background:**

The Complainant is a minor and the complaint is submitted on his behalf by his mother. The Complainant submits that he was discriminated against by the Respondent under the Equal Status Acts 2000-2015 on two grounds: (1) He was discriminated against on account of his family being a recipient of Housing Assistance and (2) Membership of the Traveller Community. The Respondent denies both complaints and further objects on the ground of jurisdiction with regard to the Traveller Community ground.

**Summary of Complainant’s Case:**

**Background:**

By letter, dated 25 September 2018, Cork County Council assessed the Complainant and his family as homeless pursuant to section 2 of the Housing Act 1988, with the result that he qualified for assistance pursuant to section 10 of the same Act. While section 10 is flexible in respect of the means available to local authorities to address instances of homelessness, common practice is to decide for emergency hotel accommodation on a night-to-night basis pending the provision of more suitable accommodation, be that temporary or more long term. In the present instance, Cork County Council referred the Complainant to the Department of Social Protection for a one-off emergency payment to assist his family in accessing emergency accommodation.

On 27 September 2018 a Community Welfare Officer (hereinafter ‘the CWO’) with the Department of Social Protection contacted the Respondent hotel in relation to availability and to book accommodation for the Complainant and his family until the following Monday. The Complainant’s mother and father were advised by a receptionist that there was no availability for the family during that period.

**Summary of the Complainant’s Mother’s Evidence**

The witness is a member of the Traveller Community and she and her family were in receipt of Housing Assistance as a result of being declared homeless. The witness is a full-time career for her partner. She went online and was able to book the hotel in the name of her partner for two adults and two children for the 28, 29 and 30 September 2018. The witness used a Visa Debit Card to make the booking. The online

booking confirmation was exhibited and attested to by the witness. There was no indication that a debit card would not suffice for booking the accommodation. The following morning, 28 September 2018, the witness attended at the Respondent hotel with the CWO for the purpose of checking in and paying for the accommodation. The CWO had a cheque for the requisite sum. The receptionist at the Respondent hotel indicated to the witness that the Hotel required a credit card as security against payment and that this credit card had to be in the name of the person staying in the Hotel. The Hotel would not accept the witnesses’ debit card in this regard nor provide the family with accommodation.

The witness left the hotel and contacted her solicitor to seek advice about the matter. The witness was advised by her solicitor that the Respondent Hotel is available to be booked either directly through the Hotel's own website or through numerous other booking sites such as *Bookings.com*.

The witness returned to the Hotel on the following morning with her partner and raised the matter with the receptionist. However, the receptionist again refused to allow the witness to check in and insisted that one of the witnesses’ groups would have to have a credit card in their own name before they would be allowed check in. The witness then rang her solicitor and asked the receptionist to talk to her (the solicitor) directly. The solicitor offered to pay with her credit card, but the receptionist insisted that it must be in the name of the person seeking accommodation. The receptionist had told the solicitor that there had been a change of policy with regard to credit cards since new management had taken over. The witness informed the receptionist that she was only looking for accommodation for three nights.

The witness gave evidence that she applied for a credit card at a local bank but was informed that it was bank policy that credit cards were not issued to applicants whose sole income was derived from social welfare payments.

The witness gave evidence that the Complainant and his brother were very upset when she broke the news that they would not now be staying in the hotel, as she had first promised them, based on the online booking confirmation. The witness gave evidence that they were eventually accommodated in a hotel in Mallow.

In cross-examination, the witness stated that Mallow was too far with regards to the care and education needs of the Complainant and his brother, and the family eventually moved back to a caravan. The witness and her family received the keys of a council house at the end of January 2021.

**Summary of the Complainant’s father’s evidence:**

The witness gave evidence that he was born and reared in the local town. He described events when he accompanied his wife to the hotel on the relevant dates in question and how humiliated he felt at being refused accommodation in his hometown. He said that he has a disability and that his wife cares for him.

**Legal Argument made on behalf of the Complainant:**

The Complainant’s representative submits that the Complainant was discriminated against within the meaning of section 3(2)(i) and section 3B of the Act in the provision of accommodation by the Respondent on the "Traveller Community Ground" and the "Housing Assistance ground".

Section 3(1)(a) provides:

*"For the purposes of this Act discrimination shall be taken to occur-*

*(a) where a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) or, if appropriate, subsection (3B), (in this Act referred to as the 'discriminatory grounds') which- exists, existed but no longer exists, may exist in the future, or is imputed to the person concerned"*

The relevant discriminatory grounds are set out in the same section as follows:

*"(i) that one is a member of the Traveller community, and the other is not (the "Traveller community ground")"*

Section 3 B of the Equal Status Acts provides as follows:

*"For the purposes of section 6(1)(c), the discriminatory grounds shall (in addition to the grounds specified in subsection (2)) include the ground that as between any two persons, that one is in receipt of rent supplement (within the meaning of section 6(8)), housing assistance (construed in accordance with Part 4 of the Housing (Miscellaneous Provisions) Act 2014) or any payment under the Social Welfare Acts and the other is not (the "housing assistance ground)."*

The Complainant submits that the housing assistance ground only applies to discrimination arising within the scope of section 6(1)(c) which provides as follows:

*6.-(1) A person shall not discriminate in-*

*(c) subject to subsection (1A), providing accommodation or any services or amenities related to accommodation or ceasing to provide accommodation or any such services or amenities."*

The Complainant refers to the burden of proof set out in the Acts at section 38 A, which provides as follows:



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"38A.-(1) Where in any proceedings facts are established by or on behalf of a person from which it may be presumed that prohibited conduct has occurred in relation to him or her, it is for the respondent to prove the contrary."

The Complainant submits that it is well established in the case law of the WRC and Equality Tribunal before it, that the burden of proof is on the Complainant to establish at first instance what is referred to as a *prima facie* case and it is only if a *prima facie* case has been established that the burden shifts to the Respondent to rebut the inference of discrimination.

The Complainant submits that in considering the burden of proof in cases of alleged discrimination it has repeatedly been affirmed that the test set out in ***Southern Health Board v Mitchell [2001] ELR 201*** applies. In that case the Labour Court stated as follows:

*"The first requirement is that the claimant must establish facts from which it may be presumed that the principle of equal treatment has not been applied to them. 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."*

The Complainant also cites the *prima facie* test in A ***Parent v A School (ADJ:00026802)***

The Complainant asserts that it is uncontested by the Respondent that he is both a member of the Traveller Community and in receipt of Housing Assistance. In relation to the Housing Assistance ground, the means by which the Complainant’s parents proposed to pay for himself and his family’s three-night stay in the hotel was a payment provided by the Department of Social Protection. Having regard to the definition contained in section 3B, the Complainant submits it is evident that the housing assistance ground is constituted by one person being in receipt of "any social welfare payment" and the other person not being in receipt of such a payment. The Complainant’s family was in receipt of a social welfare payment (as the Department of Social Protection proposed to make payment for the accommodation on the basis of an exceptional need’s payment) and so this ground applies. The Complainant also submits that his family were at the relevant time also wholly dependent on social welfare for their income, and again this brings them within the definition of section 3B in the context of accommodation provision.

It is submitted on behalf of the Complainant that the uncontested facts relating to the refusal of the Respondent to provide accommodation on the relevant dates in September 2018 further ensures that he has fulfilled all the components of the *prime facie* test in this case, on both cited grounds.

**Housing Assistance Grounds:**

The Complainant asserts that the housing assistance ground is confined to the provision of accommodation within the meaning of section 6(1)(c) of the Acts. It is submitted on behalf of the Complainant that hotel accommodation, such as that provided by the Respondent, is squarely within the scope of section 6(1)(c) which refers to "providing accommodation" or any services or amenities related to accommodation. In this regard reference is made to the case of ***Barry Tapster v Kinlay House HostelDEC-S2014-007*** where it was found that refusal of admission to a tourist hostel came within the scope of section 6(1)(c), rather than section 5 of the Acts which relates to goods and services more generally.

The Complainant’s mother was informed that she would need to have a credit card in the name of one of the guests. The Complainant does not accept that this was the reason that he, or his family, were refused access to the hotel and he submits that this policy, if it exists at all, is a wholly discretionary one that can be waived where the Respondent Hotel is happy to accept the guest. In addition, when making the booking it was recorded that the reservation was made by "credit card" although in fact the reservation was made by debit card. This leads to the conclusion that at the time of the events complained of, for the purpose of making a reservation in the Respondent hotel, the reference to credit card is simply interchangeable with debit card. A copy of the Respondent's Reservation Terms and Condition were downloaded at the time of the events leading to the present complaints. The Complainant submits that these are different to the Terms and Conditions of reservation exhibited in the Respondent's submission, which appear to be the present terms and conditions of the Respondent hotel, and so are not an accurate record of the terms and conditions that applied at the relevant time. This refers to a "credit card" but it is evident that in fact a booking can be made by debit card. An incomplete booking, made at the time of the event complained of, shows that a range of payment methods are listed at the end of the proposed booking and that Visa Debit is clearly one of those.

The Complainant submits it is abundantly clear that although the Complainant’s mother used a Visa Debit Card to make the booking, this is recorded as a "credit card" in the confirmation email she received. For example, under the section "Pre-payment" it is stated: *"You don't need to prepay. However, the property may temporarily hold an amount on the card you provided, just to test your card, and guarantee your booking. This test payment will be returned to you"* also stating *"Youhave now confirmed and guaranteed your reservation by credit card."* Therefore, a person using a debit card to book a hotel room in the Respondent hotel online can assume that in fact the Respondent regards this as a credit card for the purpose of the booking.

In its response, dated 23 October 2018, to the notification sent on behalf of the complainants, the Respondent stated:

*"The hotel policy in relation to the provision of the personal credit card has been correctly outlined to you. The provision of a personal credit card is a requirement that is applied internationally in hotels throughout the world. It is not a requirement that is peculiar to our hotels."*



It is submitted on behalf of the Complainant that the Respondent hotel is part of the Hotel group, which also includes other named hotels which were also exhibited. The bookings pages, containing the applicable terms and conditions, that relate to each of these hotels can be relied upon to demonstrate that there is no standard requirement for a personal credit card to be presented when booking in across this hotel group.

It is submitted on behalf of the Complainant that the stated requirement of the Respondent hotel, that a credit card in the name of one guest, is an inflexible requirement applied to all guests of the hotel, does not in fact exist, and was not applied as a blanket policy across all guests of the hotel and the relevant hotel group. It would be the exception rather than the rule that a hotel would seek a credit card as security, such is the prevalence and almost universality of the use of debit cards as a means of payment for goods and services, including accommodation.

In relation to the Respondent's submission that the Complainant’s family were looking for a "home" not hotel accommodation, it is submitted that no such distinction or exemption exists within the Act, or is identified by the Respondent, and that this submission is wholly misconceived. The Respondent has not identified why the accommodation sought by the Complainant’s family does not come within section 6{1} (c) of the Acts or what it regards as the cut off between hotel accommodation and the provision of a "home". The reservation made by the Complainant’s mother on behalf of her family was for a period of three nights only. The Complainant does not deny that he was homeless at the relevant time or that the hotel booking was being paid for by the Department of Social Protection, but the only booking that is in question, in the present complaint, is for the three nights of 28, 29, 30 September 2018. Thereafter, the Complainant was unclear as to what arrangements might be made by the local authority for his family’s accommodation. It was not the intention nor the expectation of the Complainant and his family that they would take up occupation of the Respondent Hotel as a "home".

**Traveller Community Ground:**

The Complainant is a member of the Traveller Community. This fact is clearly recognised by the Respondent in that the response to the complaint referred to the WRC is defended by reference to denying that the Complainant has been discriminated against on the Traveller community ground although this ground was not in fact identified on the complaint form or notification. In addition, the problems experienced by the Respondent when two other Traveller families stayed in the hotel are set out in detail by the Respondent.

The direct linkage created between these two families and the Complainant and his family, and the fact that the Respondent relies on its negative experience of having two other Traveller families in the hotel over an extended period, reveals in quite an explicit way that the Traveller identity of the Complainant and his family was an active consideration and informed the decision of the hotel not to permit the Complainant and his family to stay in the hotel. It is submitted on behalf of the Complainant, that far from rebutting an inference of discrimination, it establishes very clearly that the motivation of the Respondent in refusing the Complainant’s family’s booking was at least in part predicated by the fact that the family were members of the Traveller Community.

The Complainant asserts that the Respondent’s written submission, has invoked its experience of other homeless Traveller families as a reason for refusing to accommodate the Complainant and his family on the dates in question. The very direct reference to the shared ethnicity of the Complainant with these other guests of the hotel, who caused so much frustration and stated loss to the hotel, illustrates a state of mind on the part of the Respondent that Travellers are identified as problematic and effectively not the type of guest wished for by the Respondent. The depictions in the photographs appended to the Respondent's submission of discarded items of food, clothing, overflowing bins and general disarray in the hotel bedrooms in question is highly insulting to the Complainant’s family and indicates that the Respondent expected the same problems to arise if the Complainant and his family were permitted to stay in the hotel. It is noted that the issue of homeless families staying in the hotel was not raised in the initial reply from the Respondent in its letter of 23 October 2018, but that the issue of the ethnicity emerged in the Submissions on behalf of the Respondent, in defence to an assumed allegation of discrimination on the Traveller Community ground. It is submitted on behalf of the Complainant that to defend an allegation of discrimination on an identified ground by reference to the experience of the Respondent of other people covered by the same ground must raise a presumption of discrimination that is not easily rebuttable and cannot be rebutted in the present instance.

**Impact of the discrimination and redress:**

The Complainant’s mother gave evidence as to the distress and upset caused to the Complainant and, and his family, by the refusal of accommodation by the Respondent hotel.

It is submitted on behalf of the Complainant that the appropriate form of redress is an award of compensation that takes account the significant upset caused to him in being refused accommodation that in accordance with Article 15 of the EU Race Directive (Council Directive 2000/43/EC) is effective, proportionate and dissuasive.

The Complainant further submits that the Adjudication officer, in accordance with section 27(1)(b) of the Acts may also wish the relevant hotel to take a course of action to address any ongoing issue of discrimination that may arise from insisting that hotel guests present a credit card in their name or may arise from any policy regarding the accommodation of persons who come within the housing assistance ground.





Summary of Respondent’s Case:

Summary of the Respondent’s Written Submission:

The Respondent strenuously denies that they have discriminated against the Complainant on the grounds that the family are members of the Traveling Community.

The Respondent Company owns and operates 5 hotels (including the Charleville Park Hotel) that together operate under the "SO hotel " Logo. Company policy provides that all guests in their hotels are treated equally.

The terms and conditions for booking are clearly set out on the booking form. It is clearly stated that production of a credit card and photo ID are necessary when booking in at the hotel.

The Complainant was refused a booking on 2 grounds:

- 1. The family were not in a position to comply with hotel policy on credit cards.
- 2. The family were not looking for hotel accommodation. They were looking for a home.

The Respondent submits that that on the date the family attempted to book into the hotel, they were homeless. The Respondent submits that the family were not looking for hotel accommodation on the date in question, they were looking for a home. It is the responsibility of the local authority to provide a family home, not the Respondents.

The hotel is not equipped to provide the type of accommodation required by the family. For example, there are no kitchen facilities or laundry facilities to facilitate this type of accommodation. The hotel living accommodation is not designed or equipped for residential use.

The Respondent submits that there is no basis for claiming that the Complainant was discriminated against. The hotel previously accommodated other persons in a similar situation to the Complainant’s family. The Respondent states that the experience was disastrous both from the point of view of the hotel and the families concerned. The circumstances were that accommodation was sought by Cork County Council for 2 families (ten persons) from the Traveling Community. The Respondents were advised that accommodation was required for a short period of a week or so. The Respondents relied on the representation that the accommodation would be for a short period. The accommodation was provided as requested. Contrary to what was represented these 2 Families remained in the hotel for 12 months. Numerous requests were made to the Local Authority to provide housing for these families and all of these requests were ignored. Having 2 families using the hotel as a family home for 12 months proved to be most unsatisfactory and proved to be totally unworkable for the families, the hotel and hotel staff.

During the period of this accommodation substantial damage was caused to the hotel. (Photographs of the purported damage were exhibited by the Respondent). Estimates for repairs to the damage is also enclosed from which the Respondent wants it noted that it cost in excess of €30,000.00 to repair the damage caused. The Local Authority have refused to reimburse the hotel in respect of this loss and damage.

The Complainant and her family were looking for a Home, the hotel cannot provide that. Using the hotel as a Family Home would give rise to insurance issues in relation to Public Liability.

Legal Argument:

The Respondent refers specifically to Section 3 (1)(a) which provides:

*"For the purposes of this Act discrimination shall be taken to occur-*

*"(i) that one is a member of the Traveller community, and the other is not (the "Traveller community ground")"*

The Respondent submits there is no evidence that the Complainant and his family were treated any differently than other patrons of the hotel.

The Respondent submits that no *prime facie* case has been established by the Complainant as is required by Section 38A of the Equal Status Act. The Respondent submits that on the facts outlined above the Complainant cannot assert that prohibited conduct has occurred in relation to him.

The Respondent submits that the facts, as disclosed, do not support the claims made by the Complainant that he was discriminated against contrary to Section 3(1)(a) and 3(2)(i) of the Equal Status Act and in terms of Section S (1) of that Act.

Summary of the evidence of the General Manager of the Respondent Hotel (both in written statement and oral evidence)

The witness is currently the General Manager of the Respondent hotel, however in 2018, he was the group General Manager of SO Hotels of which the Respondent hotel forms part. The witness recalls the General Manager of that time, (who is no longer with the company). He was directly involved in the provision of temporary accommodation for two Families from the Traveling Community in 2018 after being approached by Cork County Council to provide accommodation for the stated period of "a few day" of temporary accommodation.



The then General Manager was happy to assist on the basis that the accommodation was short term. The witness stated that this was because a hotel is not a family home and cannot be regarded as such. The families moved into the hotel and utilised two rooms. After a short time, it was realised by the General Manager that the County Council had no great urgency in providing family home accommodation for these families. The witness stated that the Council obviously took the view that these families had a place to live so, in effect, their problems were solved and showed little regard for the problems created for the hotel and the families due to the gross unsuitability of using a hotel bedroom at a permanent residence. Numerous letters and telephone communications with the County Council proved useless in the hotel's efforts to resolve the problems created by the continued use of the hotel as a family home. The witness stated that It took 12 months of constant communication with the County Council to get these families moved to appropriate accommodation.

The witness outlined hotel policy in that it requires all guests to present a valid credit card in their names to gain use of the accommodation. This is under the T&C's on the website. There are no circumstances under which these conditions can be circumvented. The rules are set down by the hotel owners and their advisers and there is no flexibility on the part of hotel management to alter, vary or waive the rules.

The witness attested to the following being the 'Reservation Terms and Conditions':

*Cancellation Policy: Cancel your booking by 12 noon 48 hours/2 days prior to your arrival date to avoid incurring first night charge.*

*All rates are quoted subject to availability and alteration. All discounted rates quoted are limited offers and may be subject to a minimum night's stay.*

*Credit cards accepted are VISA, Mastercard and American Express. Guests must present a credit card under their name on check-In.*

*Pre-booking is required for Breakfast, Dinner, Leisure Club & Kids Club during this time to allow us to manage your stay in a safe and secure manner. You will receive an email from us 3 days prior to arrival with a link to book same.*

*While every effort has been made to ensure the accuracy of all information, the Charleville Park Hotel & Leisure Club does not accept liability for any errors or omissions and reserves the right to change information.*

*Should you wish to cancel a reservation prior to arrival, the Charleville Park Hotel & Leisure Club has a strict policy of 48 hours' notice. In the event of the Charleville Park Hotel & Leisure Club not being notified of a cancellation the first night's accommodation will automatically be charged to your credit card.*

The Witness gave evidence that the credit card was important because it provided financial security for the hotel in that it ensured that bills would be paid. A debit card might have only €10 in an account. He stated that the rule was sacrosanct. A credit card is required.

The Witness stated that neither he, nor the hotel discriminates against the Traveller Community. He was aware that members of the Traveller Community were members of the Leisure Club at the hotel.

**Cross Examination:**

The witness accepted that the online confirmation which the Complainant had received did not seem to reflect the current policy of the hotel.

The witness accepted that there were instances when a credit card was not necessary for a reservation and cited as examples corporate clients or regular customers who would be well known to him.

The witness could not recall when he found out that the Complainant was a member of the Traveller Community and surmised that he may have been told by someone but could not recall who had told him.



**Findings and Conclusions:**

**Complainant Preliminary Application – Addition of the ground of Membership of the Traveller Community under the Equal Status Acts 2000-2015:**

The Complainant submits that the Respondent's written submission refers widely to the Travelling Community, despite the Complainant never disclosing this fact, nor referring to it in his original complaint. Therefore, the Complainant submits that a second ground of discrimination has been disclosed. On this basis the Complainant submits that the Adjudication Officer should consider this additional ground as part of the complaint.

The Respondent objects to the application on the basis that it is out of time and that references to the Traveller Community in the submissions and statement were incidental and did not disclose any new ground.

The scope or otherwise of the Employment Appeals Tribunal to alter/add to an original complaint was addressed by Charleton J in a judicial review hearing of **Galway-Mayo Institute of Technology v Employment Appeals Tribunal [2007] IEHC 210**. Paragraph 24 of his decision gives direction as to how to

approach the matter in this instant case, which suggests that a quasi-judicial tribunal should not be necessarily rigid:

*It follows from the foregoing that a judicial or quasi-judicial tribunal is not entitled to invoke a statutory remedy which no one has sought and in respect of which no one is on notice. For the purpose of fulfilling the requirements of natural justice, however, I would have thought that if any such tribunal does have jurisdiction to give a remedy under a particular Act, then if this remedy is sought in an originating document, for instance by ticking a box giving a choice of remedies, or if it is orally sought to in the course of the hearing, such a tribunal is entitled to make a choice in favour of it. If that happens, parties have to be taken as being aware that in the event that a decision goes a particular way the tribunal may look to a remedy claimed. In that regard, I would regard a written claim or an oral assertion seeking a particular remedy as being sufficient for the due administration of constitutional justice provided the tribunal has jurisdiction in respect of it. If remedies are complex, and a tribunal has rules as to notice in the form of simple originating documents, then it should abide by its own procedures or consider the grant of an adjournment to a genuinely surprised party.*

A pivotal issue to decide here is whether the Respondent was genuinely surprised or otherwise prejudiced by application of inclusion of the new ground of membership of the Traveller Community at a late stage. It is clear upon reading the written submission of the Respondent that its sole argument in rebutting the complaint is based on defending its position in relation to alleged discrimination on grounds of membership of the Traveller Community. Curiously, the Respondent's written submission makes no reference to the original complaint of Housing Assistance ground at section 3B of the Acts but refers instead to the Traveller Community ground.

I am satisfied that the Respondent has not been prejudiced nor surprised by the inclusion of the Traveller Community ground. On the Respondent's position of it being out of time, I am satisfied that the existence of the relevant information revealing a potential second ground under the Acts, was disclosed to the Complainant in the Respondent's submission when it was filed with the WRC on 20 January 2022. I am satisfied that this extra ground was not discernible to the Complainant when she lodged her original complaint. Therefore, I find that the ground of Membership of the Traveller Community is a legitimate additional ground to be considered in the complaint before me.

#### **Prohibited Conduct-The Equal Status Acts 2000-2015 (hereinafter 'the Act'):**

The Complainant is alleging that he was subject to prohibited conduct in being refused accommodation by the Respondent under grounds of being in receipt of Housing Assistance and Membership of the Traveller Community contrary to the Act. The Act provides in its relevant parts:

Section 3 (1)(a) provides:

*"For the purposes of this Act discrimination shall be taken to occur-*

*(a) where a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) or, if appropriate, subsection (3B), (in this Act referred to as the 'discriminatory grounds') which- exists, existed but no longer exists, may exist in the future, or is imputed to the person concerned"*

The relevant discriminatory grounds are set out in sub-section (2) of Section 3, in its relevant part states:

*"(i) that one is a member of the Traveller community, and the other is not (the "Traveller community ground")"*

Section 3 B of the Equal Status Act provides as follows:

*"For the purposes of section 6(1)(c), the discriminatory grounds shall (in addition to the grounds specified in subsection (2)) include the ground that as between any two persons, that one is in receipt of rent supplement (within the meaning of section 6(8)), housing assistance (construed in accordance with Part 4 of the Housing (Miscellaneous Provisions) Act 2014) or any payment under the Social Welfare Acts and the other is not (the "housing assistance ground)."*

*6.-(1) A person shall not discriminate in-*

*(c) subject to subsection (1A), providing accommodation or any services or amenities related to accommodation or ceasing to provide accommodation or any such services or amenities."*

#### **Prima Facie Case:**

The burden of proof is described at Section 38A of the Act where it states:

*"Where in any proceeding's facts are established by or on behalf of a person from which it may be presumed that prohibited conduct has occurred in relation to him or her, it is for the respondent to prove the contrary..."*

The Complainant is required to establish facts that may give rise to an inference of discrimination (the 'prima facie' case) and the burden of proof then shifts to the Respondent to disprove the inference of discrimination. It was not disputed that the Complainant and his family, were recipients of Housing Assistance and Members of the Traveller Community within the ambit of the Acts, and at the time of the prohibited conduct so alleged, nor was it disputed that the Complainant and his family, were refused accommodation at the Respondent hotel in the sequence of events beginning on 27 September 2018, as





described in the evidence of the Complainant’s mother and his father. I deem these facts to be of sufficient significance to raise a presumption of discrimination and the onus shifts to the Respondent to prove that there is no infringement of the principle of equal treatment.

**Housing Assistance Ground:**

The Respondent did not dispute the evidence that the Complainant’s family was in receipt of housing assistance as defined under Section 3B of the Acts. The evidence of the Respondent was pointedly emphatic on a narrative that the Hotel was not in the business of providing a home and the Respondent further submitted that it did not consider the hotel would be an entity approved by the Minister to provide long term housing. The Respondent considered the last experience of providing accommodation to those on housing assistance, to be, in its own description, ‘disastrous’. However, the evidence of the Complainant’s mother, both documentary and oral, was that they were not looking for a ‘home’, as argued by the Respondent, but were in fact looking for three nights’ accommodation. What became obvious during the hearing was that the Respondent had already adopted a strong pre-determined position not to allow those on Housing Assistance to be accommodated in the hotel, before the date of refusal of accommodation to the Complainant’s family. This position was re-enforced by an admission by the Respondent that the change of policy to allow final bookings by credit card only, and not any other payment, was as a direct result of the hotel’s experience of having two families previously at the hotel, under similar circumstances i.e., receipt of Housing Assistance, to the Complainant and his family.

The Respondent witness gave evidence that the rule on credit card booking was, as described by him, ‘sacrosanct’. He had previously submitted a written statement to the WRC stating that” *The rules are set down by the hotel owners and their advisers and there is no flexibility on the part of hotel management to alter, vary or waive the rules.*” However, when pressed on this point, he accepted that he had the discretion to waive the rules on credit card bookings, if in his judgement they were reliable customers known to him or corporate clients who regularly used the hotel.

The Respondent witness gave evidence that there was no interchangeability between Debit and Credit cards in the understanding of the hotel. Documentary evidence was submitted on behalf of the Complainant to show that when his mother had booked online with a Debit card, she was informed that”*You have now confirmed and guaranteed your reservation by credit card.*”. An incomplete booking made at the time of the event complained of, was also exhibited on behalf of the Complainant. This showed a Visa Debit card as an acceptable method of payment. This evidence illustrates that there was an interchangeability between credit card and debit card at the time of the booking and that there was no explicit reference to a credit card only policy.

I found the evidence of the Respondent witness to be inconsistent at times. He initially proclaimed a strict, unequivocal rule regarding the use of credit cards which applied to everyone but became quite equivocal on the point when exceptions were outlined by him after further questioning. Overall, I found the evidence of the Complainant’s mother, to be more convincing on this point.

I conclude that the insistence of the hotel on differentiating between credit card and debit card on the days in question, pointed toward a selective approach to the Complainant’s family. This approach conflicted with the widely accepted practice, as a matter of general knowledge, that Debit Cards are interchangeable with Credit Cards when hotel accommodation is being booked. Furthermore, the Respondent could not provide clear evidence that there was a strict ‘credit card only’ policy at the time of the booking.

When the Complainant’s mother booked online, she successfully did what customers typically do when making a reservation with a Debit Card. However, when the Complainant’s mother and father presented themselves at the Respondent hotel and it was made clear that the bill for three nights was to be paid by the Department of Social Protection, the Respondent Hotel insisted that the Complainant should produce a credit card in his name, or in the name of any member of her family who were staying at the hotel. Greater context for such an approach by the hotel is provided when the Respondent’s written submission and evidence are considered. This shows an unambiguous intention of no longer facilitating those in receipt of Housing Assistance. I am satisfied, after hearing the evidence and submissions in this case that the Respondent had full knowledge that the Complainant’s mother and father, as social welfare recipients and in receipt of Housing Assistance, would not readily have a credit card and, therefore, that such an insistence was a device used on this particular occasion to deny the Complainant and his family, the right to equal treatment in the provision of accommodation. I conclude that the Complainant’s *prima facie* case of discriminatory treatment on the grounds of his family being recipients of Housing Assistance was not satisfactorily rebutted by the Respondent. I find, therefore, the Respondent engaged in prohibited conduct contrary to section 3B of the Act.

**Traveller Community Ground:**

The Respondent did not dispute the evidence that the Complainant is a member of the Traveller Community. The General Manager in a written statement submission referred to a previous experience of the Respondent hotel when providing “*temporary accommodation for 2 Families from the Traveling Community*” in 2018. The Respondent’s submission included numerous photographs of the purported damage to rooms carried out by the aforementioned families.

The Hotel manager gave cogent evidence that members of the Traveller community were also members of the Respondent’s Leisure Club and therefore the hotel does not discriminate against that community. However, the Complainant’s representative raises a plausible argument where it was submitted on his behalf that “*The very direct reference to the shared ethnicity of the Complainant with these other guests of the hotel who caused so much frustration and stated loss to the hotel illustrates a state of mind on the part of the Respondent that Travellers are identified as problematic and effectively not the type of guest wished for by the Respondent*”. The provision of Leisure Facilities differs substantially from the provision of



accommodation. This difference is more than identified in the Respondent’s position. The Respondent portrays what it sees as the negative experience of providing accommodation in the past; the corollary being that it does not want to see the experience repeated. In putting forward such a position the Respondent plainly seeks to portray all Traveller families in the same light and raises a serious presumption of discrimination that it does not satisfactorily rebut.

I find, based on balance of probabilities, that the membership of the Traveller Community was a material fact, which in part, led to the Respondent denying the Complainant, and his family, accommodation at the Respondent hotel.

I conclude that the Complainant’s *prima facie* case of discriminatory treatment on the ground of membership of the Traveller Community was not satisfactorily rebutted by the Respondent. I find therefore the Respondent engaged in prohibited conduct contrary to section 3 of the Act.

**Redress:**

The Complainant’s mother spoke of the effect the prohibited conduct had on the family, and their minor children in particular. The children were excited when she had told them she had booked a hotel for them for three nights. They subsequently experienced upset and devastation when she had to tell them otherwise. The Complainant’s mother and father gave evidence of how embarrassed and humiliated they felt to be refused accommodation at the reception desk. The Complainant and his brother were not in attendance at the reception on the days in question and therefore were spared this upsetting experience. Nevertheless, the refusal of accommodation had a detrimental impact on them. The prohibited conduct of the hotel was not to deny a booking for a social occasion, which would have been serious enough, but instead to deny emergency accommodation for three nights only, to a family who were both homeless and members of a vulnerable minority at the margins of society. This conduct not only breached a socially remedial statute but also fell below the threshold of decency that reasonable people expect of the hospitality sector. I direct the Respondent to make compensation of €3,000 to the Complainant for the effects of the prohibited conduct, having regard to the principle of proportionality and that the award should be dissuasive. I also direct the Respondent to revise its requirement on Credit Card bookings so that the policy does not infringe upon its obligations under the Equal Status Acts 2000-2015.



**Decision:**

Section 25 of the Equal Status Acts, 2000 – 2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under section 27 of that Act.

**CA-00027305-001:** I find that the Respondent engaged in prohibited conduct under the Equal Status Acts 2000-2015 for the reasons outlined above. I direct the Respondent to make compensation of €3,000 to the Complainant for the effects of the prohibited conduct, having regard to the principle of proportionality and that the award should be dissuasive. I also direct the Respondent to revise its requirement on Credit Card bookings so that the policy does not infringe upon its obligations under the Equal Status Acts 2000-2015.

Dated: 16-02-2022

**Workplace Relations Commission Adjudication Officer:** Thomas O'Driscoll

**Key Words:**

Equal Status Acts 2000-2015, Housing Assistance, Membership of the Traveller Community

