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# ADJ-00025710



## ADJUDICATION OFFICER DECISION

Adjudication Reference: ADJ-00025710



Parties:

	Complainant	Respondent
Parties	Marina McCarthy	Gurranabraher Credit Union

Representatives	Daly Derham Donnelly Solicitors Ms Nikki O'Sullivan BL	Ronan Daly Jermyn Solicitors
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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-00032654-001	03/12/2019

Date of Adjudication Hearing: 27/01/2020

Workplace Relations Commission Adjudication Officer: Thomas O'Driscoll

Procedure:

In accordance with Section 41 of the Workplace Relations Act, 2015 and Section 25 of the Equal Status Act, 2000, following 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.

Background:

The Complainant is a member of the Traveller Community who alleges she was discriminated in the way her application for a loan was dealt with by the Respondent credit union. Particularly, the Complainant alleges that the Respondent refused to issue her with a loan refusal letter and that such a refusal, and the manner in which she was treated by the Respondent when conducting her business, were discriminatory acts. The Respondent denies the allegation and maintains the Complainant was treated with respect and dignity at all times and that her loan application was dealt with in the normal manner.

Summary of Complainant’s Case:

The Complainant gave evidence that she was seeking a grant for a mobile home from the City Council for herself and her children. She presently lives in a one room caravan with her children with no running water nor electricity. Her partner is recently deceased. To fulfil the eligibility requirement for the grant, she needs to show that she had applied to two financial institutions for a loan as an indication that she does not have access to sources of finance. She must then produce documentation to show that loans were refused. The Complainant gave evidence that she applied for a loan in the Respondent’s premises. She believed she was a current member of the credit union. This application was done through a receptionist who took details of the application and who informed the Complainant that she should hear back on the application within 48 hours. The Complainant gave evidence that she heard nothing back from the Respondent within that timeframe. She then went to the Respondent’s premises but was told that a bar had been put on her account and that she would have to reactivate it.

She later went to the Respondent premises with a Traveller Visibility Group advocate, Mr O’C to follow up this matter. They spoke with a receptionist and they were informed of that she could not give them details on the Complainant’s application. They said that they told the receptionist that they wished to speak to a manager on this issue. She gave evidence that a senior manager, Ms T, came out to meet them in the public area after a prolonged period of time. The Complainant contends that Ms T was hostile in her approach to her. She contends that Ms T shook the hand of her advocate but did not shake her hand. The Complainant gave evidence that Ms T. said she could give her a letter of refusal but chose not to, because she said that if she did give such a letter “They’d all be down looking for one”. The Complainant took this to mean a reference to other members of the Travelling Community. The Complainant submits that this interaction took place in the public area of the Respondent’s premises and that she felt humiliated because it was within earshot of members of the public. She was never directed to a desk or private consultation room.

Mr O’C gave evidence on behalf of the Complainant. Mr O’C said that following a refusal from another institution, a second letter of refusal was needed from a financial institution to show that the Complainant was an eligible candidate to receive a grant from the City Council for the purchase of a mobile home. He gave evidence of accompanying the Complainant to the Respondent’s premises and eventually asking for a manager when no satisfactory response was given to the Complainant’s query. He said that Ms. T came out after a period of time. He asserts that Ms T. told him that the Complainant was not a current member of the credit union but would need to activate her account, with current I.D. being needed. Mr O’C said that he offered Ms T €10 to deposit in the account, to reactivate it. He said that Ms T said I could, but “what do we get out of it”. He states that in response to the request for a letter of refusal, that Ms T said that she could give one, but that she wasn’t going to give one. He states that she said, “they’d all be down looking for one.” Mr O’C understood the reference to mean other members of the Traveller Community in the locality. Mr O’C said that he found the demeanour of Ms T to be hostile. He states that she stood at least four feet back from the Complainant and that she shook his hand but made no effort to shake the Complainant’s hand. He felt the Complainant was dealt with in a totally unacceptable way. He said that he told Ms. T that he was going to seek advice from the Financial Ombudsman, which he did on his mobile phone in the public area. Later, he accompanied the Complainant to a desk where a receptionist drafted an internal email of complaint on behalf of the Complainant. Some days later, he received a phone call from the Respondent’s CEO, who dealt with him in a courteous manner and the Complainant subsequently received the formal refusal letter, which was initially sought.

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Summary of Respondent’s Case:

Ms T gave evidence she was employed as a senior manager with the Respondent for over 20 years. She explained that no loan application could be processed unless the applicant had an active account. On the day in question, she was informed by a colleague that two members were refusing to leave the credit union until they met with a manager. She accepts that she knew that the Complainant is a member of the Traveller Community. She states that she treated the Complaint with due courtesy and respect on the day in question and that the Complainant was treated no differently to a member in similar circumstances with a de-activated account. She accepts that she said words to the effect that “They’ll all be down looking for one” when referring to a letter of refusal, but she states that this referred to the credit union members generally and not just to the members of the Traveller community.

Mr H, the CEO, gave evidence of the difference between dormancy and membership when it came to accounts. He said that the Complainant was not an active member when she applied for the loan because she did not have the requisite amount in her account. He gave evidence of contacting Mr O’C later with the intention of resolving the issue. He later sent out a letter to the Complainant which satisfied the requirement of a formal letter of refusal for a loan.

Findings and Conclusions:

The matter for decision is whether the respondent discriminated against the Complainant by its refusal to supply her with a requisite letter of loan refusal and further, whether the manner she was dealt with in the day in question at the credit union, on the basis that she is a member of the Traveller community, amounted to discriminatory behaviour.

I must first consider whether the existence of a prima facie case has been established by the Complainant. Section 38A of the Equal Status Acts (the Act), sets out the burden of proof which applies in a claim of discrimination:

*38A. — (1) 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.*

*(2) This section is without prejudice to any other enactment or rule of law in relation to the burden of proof in any proceedings which may be more favourable to the person.*

*(3) Where, in any proceedings arising from a reference of a matter by the Authority to the Director of the Workplace Relations Commission under section 23(1), facts are established by or on behalf of the Authority from which it may be presumed that prohibited conduct or a contravention mentioned in that provision has occurred, it is for the respondent to prove the contrary.*

It requires the Complainant to establish, in the first instance, facts upon which she can rely in asserting that prohibited conduct has occurred in relation to her. It is only where such a prima facie case has been established that the onus shifts to the Respondent to rebut the inference of discrimination raised.

Discrimination under the protected ground of membership of the Traveller is provided for at section 3 of the Act:

Section 3(1)(b) of the Acts provides, inter alia, that discrimination shall be taken to occur where:

*“(1) 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’ ... ”*

Section 3(2) of the Acts provides that:

*“(2) As between any two persons, the discriminatory grounds (and the description of those grounds for the purposes of this Act) are: ....*

*(i) that one is a member of the Traveller community and the other is not (the “Traveller community ground”.*

The Respondent accepts that it knew that the Complainant was a member of the Traveller community. It further accepts that it had an interaction with the Complainant, and an accompanying Traveller community advocate, in a public area of the credit union on the day in question. The Respondent confirms that no letter of loan refusal was issued on the day nor was the Complainant allowed to reactivate her account. I find that the Complainant establishes a *prima facie* case upon which discrimination can be inferred based on her membership of the Traveller community, therefore the burden shifts to the Respondent to rebut the inference of discrimination inferred.

In evidence Ms T said that she was told that “two members” were refusing to leave the credit union until they met a manager. The Complainant gave supported evidence that they were in the public area for some time before there was an engagement with a manager. Ms T further gave evidence that there were private areas where members confidential transactions could be carried out, and in hindsight accepts that she could have directed the parties to a more private area.



In the transaction with the Complainant it is alleged that Ms T said that if she had given a letter of loan refusal that “They would all be down looking for one”. Ms T. said that she meant members of the credit union generally and not just members of the Traveller community. However, Ms T gave evidence that she was aware that the Traveller community, where the Complainant lived, was in an area on higher ground near the credit union. The Complainant, with convincing supporting evidence from Mr O’C, said she felt the comments referred to other members of the Traveller community where she was resident. I found the evidence of Ms T to be unconvincing on who she was referring to when she made her remarks. I find, on the balance of probabilities, that the remarks were directed towards the Traveller community specifically, and not the credit union membership generally. Furthermore, evidence was also given that Ms T said that she could give the letter of refusal on the day but chose not to do. I find that there was no plausible reason given by the Respondent for not issuing the letter on the day.

Mr O’C gave cogent evidence of a hostile demeanour being adopted by Ms T in that she chose to stand at least four feet back from the Complainant and that she did not shake the Complainant’s hand, after shaking the hand of Mr O’C. Mr O’C also gave evidence, which was not denied, that Ms T refused €10 from Mr O’C, which would have reactivated the Complainant’s account. Ms T gave evidence that she was respectful and courteous in the interaction. I prefer the evidence of the Complainant and Mr O’C on what had transpired on the day.

In conclusion, the reasons proffered by the Respondent for refusing the loan were plausible. However, the matter at issue is not the actual refusal of the loan but the rejection of a reasonable request to issue a letter declining the application on the day in question. The Complainant eventually received her letter of loan refusal after the CEO contacted the Complainant’s advocate sometime after the events in question. I find that the refusal to issue the letter when the Complainant attended the credit union to be a discriminatory act. The Respondent did not give any sound evidence that a member of the public, or a credit union member, who was not a member of the Traveller community, would have been treated any differently.

I also find that the Complainant was subjected to an approach adopted by the Respondent, which on the balance of probabilities, would not have been afforded to a person who was not a member of Traveller community. No effort was made by Ms T to seek out a private area for what was a clearly a confidential transaction. The evidence on the demeanour of Ms T, together with her remarks, especially the inference directed towards other members of the Traveller community, were indicative of a discriminatory slant. This was followed through with cogent evidence that Ms T had the power to issue a letter there and then but declared that she chose not to do so to the Complainant.

I conclude that the Complainant established a *prima face* complaint that she was discriminated against in the way that she was treated by the Respondent. I conclude that the Respondent did not satisfactorily rebut the inference of the discrimination raised, therefore I find that the complaint is well founded.

I conclude that the discrimination had both a punitive and embarrassing effect on the Complainant. Punitive in that her circumstances clearly showed she needed to have the letter in question to expedite her application for proper living accommodation. Embarrassing, in that she was subjected to behaviour in a public area that I believe would not have been afforded to another member of the credit union or indeed any other member of the public who might walk in with a reasonable query, who was not a member of the Traveller community. There was no evidence given other than the Complainant behaved in a civil and humble way. Having taken all the circumstances and evidence into account, I consider the discrimination to have had a tangible detrimental effect on the Complainant. In accordance with Section 27 of the Equal Status Act, I order the Respondent to pay the Complainant €5,000 in compensation in respect of the finding of discrimination on the ground of membership of the Traveller community.



## 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.

In accordance with Section 27 of the Equal Status Act, I find that the complaint is well founded. I order the Respondent to pay the Complainant €5,000 in compensation in respect of the finding of discrimination on the ground of membership of the Traveller community.

Key Words:

Equal Status Act, Membership of Traveller Community.



The Labour Court

