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ADJ-00037223

ADJUDICATION OFFICER DECISION

Adjudication Reference: ADJ-00037223

Parties:

	Complainant	Respondent
Anonymised Parties	<i>Bride</i>	<i>Hotel</i>

Representatives	Sister	Hassett Considine Solicitors
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Complaint:

Act	Complaint Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00048620-001	05/02/2020

Date of Adjudication Hearing: 30/03/2022

Workplace Relations Commission Adjudication Officer: Marie Flynn

Procedure:

In accordance with 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.

At the hearing the parties were advised that, in accordance with the Workplace Relations (Miscellaneous Provisions) Act 2021, hearings before the Workplace Relations Commission are now held in public and, in most cases decisions are no longer anonymised. Representations were made on behalf of the Complainant

requesting me to anonymise the parties to this complaint. While the Respondent did not make representations in this regard, I am cognisant of the personal circumstances of the Wedding Co-ordinator. I have, therefore, made the decision to anonymise the parties to this complaint.

The parties were also advised that the Workplace Relations (Miscellaneous Provisions) Act 2021 grants Adjudication Officers the power to administer an oath or affirmation. All participants who gave evidence were sworn in.

Background:

The Complainant is a member of the Traveller Community. The Complainant submits that the Respondent directly discriminated against her by refusing to provide information in relation to available dates thereby effectively preventing the Complainant from holding her wedding reception in the Respondent's premises.

Preliminary Issue: Time Limits



Summary of Respondent's Case:

The Respondent submits that the Complainant's referral to the WRC is out of time and does not comply with the statutory period set down by Section 21 of the Equal Status Act 2000, as amended.



Summary of Complainant's Case:

The Complainant submits that her complaint was submitted marginally outside the statutory time limit prescribed by section 21 of the Equal Status Acts due to the fact that she was hospitalised between 29 January and 10 February 2020. The Complainant submitted medical certification in this respect.



Findings and Conclusions:

The first matter I must decide is if I have jurisdiction to hear this complaint.

In making my decision, I must take account of both the relevant legislation and the legal precedent in this area.

The time limits for submitting claims to the Workplace Relations Commission are set out in section 21(6) (a) of the Equal Status Act 2000, as amended which provides that:

"Subject to subsections (3)(a)(ii) and (7) , a claim for redress in respect of prohibited conduct may not be referred under this section after the end of the period of 6 months from the date of the occurrence of the prohibited conduct to which the case relates or, as the case may be, the date of its most recent occurrence."

I note from the complaint referral form, that the most recent date of discrimination was 4 August 2019. Therefore, under section 21(6)(a) of the Equal Status Act, the initiating complaint referral form must be submitted within 6 months of the that date i.e. on or before 3 February 2020. I find, therefore, that the herein complaint has been lodged outside the time limits prescribed by section 21(6)(a) of the Equal Status Act.

Section 21(6)(b) of the Equal Status Act provides that if a complaint is not submitted within six months of the alleged contravention, an extension may be granted by an Adjudication Officer up to a maximum time limit of 12 months where, in the opinion of the Adjudication Officer, the Complainant has demonstrated reasonable cause for the delay in accordance with the provisions:

"On application by a complainant the Director of the Workplace Relations Commission or, as the case may be, the Circuit Court may, for reasonable cause, direct that in relation to the complainant paragraph (a) shall have effect as if for the reference to a period of 6 months there were substituted a reference to such period not exceeding 12 months as is specified in the direction; and, where such a direction is given, this Part shall have effect accordingly."

In summary, the general principles which apply are that something must be advanced which will both explain and excuse the delay.

The Labour Court has set out the test in **Cementation Skanska v Carroll, DWT 38/2003** as follows;

"It is the Court's view that in considering if reasonable cause exists, it is for the claimant to show that there are reasons which both explain the delay and afford an excuse for the delay. The explanation must be reasonable, that is to say it must make sense, be agreeable to reason and not be irrational or absurd. In the context in which the expression reasonable cause appears in the statute it suggests an objective standard, but it must be applied to the facts and circumstances known to the claimant at the material time. The claimant's failure to present the claim within the six-month time limit must have been due to the reasonable cause relied upon. Hence there must be a causal link between the circumstances cited and the delay and the claimant should satisfy the Court, as a matter of probability, that had those circumstances not been present he would have initiated the claim in time."

The Complainant's representative submits that the delay in submitting the complaint was due to her hospitalisation from 29 January 2020 to 10 February 2020 and has submitted medical evidence to support this. I am of the view that there is a causal link between the hospitalisation of the Complainant and the delay in submitting the complaint referral form.

In **G v. The Department for Social Protection [2015] IEHC 419**, at para. 161, O'Malley J. described the Equal Status Act 2000 as a 'remedial social statute' requiring liberal interpretation as follows:

"...the Act is intended to cover a broad range of human life and activity, and that its overall purpose is to reduce the social wrong of discrimination based on improper considerations. Having regard to the principles applicable to remedial statutes, it should be construed widely and liberally."

Having considered the submissions on this issue, and bearing in mind the findings of O'Malley J above, I am of the view that It would be unfair to dismiss the complaint due to a delay of two days. Accordingly, I find that the Complainant has shown reasonable cause to empower me to extend the deadline for the submission of a claim for redress under the Equal Status Acts.

Taking all of the foregoing into consideration, I find that I have jurisdiction to investigate this complaint.



Substantive Issue: Alleged Discrimination on Traveller Ground

Summary of Complainant's Case:

The Complainant submits as follows:

By email dated 20 July 2019, the Complainant made an enquiry with the Respondent about the availability of dates for her and her fiancé's wedding reception. The Complainant stated that she was flexible as to dates and requested information in relation to wedding packages and available dates. The Respondent, through its Wedding Co-Ordinator, replied by email on 20 July 2019 inviting the Complainant to a wedding showcase the following day.

By email dated 20 July 2019, the Complainant agreed to attend the wedding showcase and asked about the availability of the venue in November 2019. By replying email dated 20 July 2019, the Respondent failed to provide information as to available dates but enquired as to how many guests the Complainant anticipated would be attending her wedding. By replying email dated 20 July 2019, the Complainant informed the Respondent that she expected between 100 and 120 guests.

By email dated 21 July 2019, the Complainant enquired as to the precise time she should attend the wedding showcase. By replying email of the same date, the Respondent confirmed that the Complainant could attend at any time. By further email of the same date, the Respondent enquired as to the Complainant's surname. By replying email, the Complainant provided her own and her fiancé's names.

As arranged by email, the Complainant attended the Respondent's wedding showcase on 21 July 2019. On arrival at the venue, the Complainant was directed inside where she informed a member of staff that she was there to view the venue and to speak with the Wedding Co-ordinator. The Wedding Co-ordinator was attending to another couple at that point so the Complainant waited to speak with her.

While she was waiting, the Complainant noticed that the Respondent staff members were looking in her direction a lot. The Complainant also spoke with a couple who were attending the wedding showcase who informed her that the Wedding Co-ordinator showed them the honeymoon suite. After waiting for a considerable period of time, the Complainant sought out the Wedding Co-ordinator with a view to being shown around the venue and discussing the availability of the venue for her wedding reception.

The Wedding Co-ordinator was occupied with another couple so the Complainant waited until she was finished. When the Complainant spoke with the Wedding Co-ordinator she was asked for her details and the dates she was planning to get married. The Complainant reiterated to the Wedding Co-ordinator that she and her fiancé were flexible with regards to dates. The Wedding Co-ordinator neglected to provide the Complainant with a tour of the venue and stated that she would contact the Complainant in relation to available dates. During their interaction, the Complainant noted that the Wedding Co-ordinator was aloof and rushed their discussion before leaving.

By email dated 23 July 2019, the Complainant wrote to the Respondent stating that she loved the venue and requesting information on available dates. No response was forthcoming. The Complainant resent her email of 23 July 2019 on 31 July 2019. She did not receive a response to this email. It was only on receipt on the Complainant's ES1 notification that the Respondent eventually replied to the Complainant.

On 23 October 2019, the Wedding Co-ordinator wrote:

"I received your communication recently and all I can do is apologies for the delayed response.

There seems to be a misunderstanding as I was waiting to hear from you from our initial meeting in July last.

Looking forward to hearing from you."

Complaint of Discrimination

The Complainant considers herself and her family (who attended the wedding showcase with her) to present, and be readily identified, as members of the Traveller Community. Furthermore, she resides in a town with a large Traveller population and she also has a surname common among Travellers.

It is the Complainant's case that the Respondent's staff became aware during the wedding showcase at the venue on 21 July 2019 that the Complainant was a member of the Traveller Community. It is submitted that this was the decisive factor in the Respondent's repeated refusal to provide information in relation to available dates thereby effectively preventing the Complainant from making a booking with the Respondent.

The Complainant submits that the Wedding Co-ordinator's email of 23 October 2019 was inadequate and illogical for a number of reasons. First, the Wedding Co-ordinator asserts that she was waiting to hear from the Complainant. The Complainant contends that this was not the arrangement reached on 21 July 2019 which was that the Wedding Co-ordinator would make contact with the Complainant. Indeed, this would make sense in circumstances where the Wedding Co-ordinator would have knowledge of available dates whereas the Complainant would not.



Second, despite her assertion that she was waiting to hear from the Complainant, the Wedding Co-ordinator did not address the fact that the Complainant did make contact. In fact, the Complainant sent three emails following her attendance at the wedding showcase requesting information as to available dates, none of which received a response. No explanation or justification for this has been provided. In that regard, it is noted that all email correspondence with the Wedding Co-ordinator in advance of the wedding showcase was conducted promptly, with replies issuing within the day.

Third, if, as she asserts, the Wedding Co-ordinator was waiting to hear from the Complainant, the question arises as to why she did not make contact herself in circumstances where she was in possession of the Complainant's name, her fiancé's name, the Complainant's email address and relevant information, such as anticipated guest numbers and desired dates for her wedding.

Fourth, the Wedding Co-ordinator, despite becoming aware of what she described as a "misunderstanding" made no effort to remedy this by offering dates to the Complainant in her email of 23 October 2019.

Legal Submission

In relation to the burden of proof and pursuant to section 38A of Equal Status Acts, the Complainant is required to establish a *prima facie* case which requires her to demonstrate (i) that she is covered by the relevant discriminatory ground (ii) that there was specific treatment by the Respondent and (iii) that the Complainant was treated less favourably than another person would have been. Once the *prima facie* case has been established, the burden of proof shifts to the Respondent to rebut the presumption of discrimination.

The Complainant is of the view that she has raised sufficient facts substantiated by evidence in the form of email correspondence to raise a *prima facie* case which requires that the Respondent prove that her status as a member of the Traveller Community was not the reason for the treatment she received.

During her attendance at the wedding showcase, the Complainant received demonstrably different treatment from other attendees. The Wedding Co-ordinator did not provide her with information on wedding packages nor did she give the Complainant a tour of venue, as was the case for other attendees to whom the Complainant spoke.

The Wedding Co-ordinator continued this pattern of behaviour by refusing to respond to the Complainant's subsequent enquiries concerning the availability as to dates.

Finally, the Wedding Co-ordinator provided an inadequate response to the Complainant's ES1 notification by way of justification for her treatment of the Complainant.

Remedy

The Complainant submits that the Respondent has breached the terms of the Equal Status Acts and the Complainant seeks compensation that is effective, proportionate and dissuasive for the effects of the prohibited conduct to which she was subjected.

Direct Evidence of the Complainant

The Complainant said that herself and her family members spent 3.5 hours at the wedding showcase, mostly waiting to speak to the Wedding Co-ordinator. The Complainant explained that, from the email prior to the wedding showcase, she understood that they would meet the Wedding Co-ordinator at the showcase.

The Complainant said that while herself and her family members were waiting to speak to the Wedding Co-ordinator at the wedding showcase, they decided to have a look at the function room. The Complainant noticed that the Wedding Co-ordinator was there speaking to a couple and she asked if she could speak to her. The Complainant explained that she was flexible with regards to dates but wanted to get married in November 2019. The Complainant said that the Wedding Co-ordinator said that she would get back to her with possible dates.

Subsequent to the wedding showcase, the Complainant emailed the hotel three times to indicate her interest in booking the venue but she did not receive any response to her emails.

In response to a suggestion from the Respondent's representative that guests at the wedding showcase could visit any part of the hotel they wished to see, the Complainant said that she was never made aware of this.

Direct Evidence of the Complainant's Sister (1)

The Complainant's Sister said that they only managed to talk to the Wedding Co-ordinator for five minutes and that she did not seem to be very enthusiastic; she seemed much happier with another couple. It was her understanding that the Wedding Co-ordinator would get back to the Complainant.

The Complainant's Sister that the Respondent put a misplaced emphasis on the fact that the Complainant did not phone the hotel following the wedding showcase when she did not receive any response from her emails. She suggested that the onus should be on the hotel to secure bookings. The Complainant's Sister also asked why the Wedding Co-ordinator did not explain the reason for her absence in her email of 23



October 2019 in response to the Complainant's ES1 form. The Complainant's Sister explained that the Complainant and her family cannot understand why the Respondent would suggest that she was not serious about making a booking with the hotel and that it does not make sense that a bride who was so enthusiastic did not receive a response to her enquiries.

Direct Evidence of the Complainant's Sister (2)

The Complainant's Sister said that even though they were waiting for a long time to talk to the Wedding Co-ordinator, the hotel staff never approached them to offer them any assistance.



Summary of Respondent's Case:

The Respondent submits as follows:

The Respondent denies that it in any way discriminated against the Complainant in the provision of services. The Respondent submits that it hosts weddings for members of the Traveller Community and that it currently employs a member of the Traveller Community.

At the Respondent's wedding showcase on 21 July 2019, the Wedding Co-Ordinator met the Complainant and members of her family and they discussed a potential booking for a wedding. In line with their previous contact via email, the Complainant was totally non-committal on a date and was not prepared to indicate a date or dates on which she wanted to get married.

In her submissions, the Complainant asserted that the Wedding Co-ordinator had shown an unidentified couple the honeymoon suite and given them or some other unidentified couple a tour of the hotel. The Respondent contends that this simply did not happen as the Wedding Co-ordinator was based around the general lobby/reception area all day, dealing with couples and the Complainant herself accepts in her submission that the Wedding Co-ordinator was very busy with other couples. There was adequate staff in place to allow couples access all areas of the hotel including the honeymoon suite. The Wedding Co-ordinator was not involved in guided tours of the Hotel nor would she be at the regular wedding showcases conducted in the Hotel where, by and large, there are hundreds of people in attendance.

Direct Evidence of the Wedding Co-ordinator

The Wedding Co-ordinator gave evidence on the process involved in accepting bookings for weddings including the various packages to be sold and agreed. She said that a date is not given out to any couple over the phone or via e-mail or "*there and then*" at a wedding showcase as there is far more to a wedding than simply booking a function room. By giving / agreeing to a date "*there and then*" she would be committing to a couple who could potentially have legal redress if a package could not be agreed subsequently. The Wedding Co-ordinator explained that after an email enquiry, she would invite a couple to visit the hotel where she would agree a package with them and where the couple would pay a deposit to secure their desired date.

The Wedding Co-ordinator explained that wedding showcases take place on a seasonal basis and that during the wedding showcase directional signs are placed around the hotel directing guests to the locations they may wish to visit. The Wedding Co-ordinator said that visits to the wedding showcase usually last between 20 and 30 minutes. She explained that she did not always meet couples at the wedding showcase. The Wedding Co-ordinator said that she had a conversation with the Complainant and her family about wedding packages and centre pieces. She said that she had no recollection of the Complainant mentioning that she wished to have her wedding in November 2019. The Wedding Co-ordinator felt that that would be very tight. The Wedding Co-ordinator confirmed that she knew that the Complainant was a member of the Traveller Community.

The Wedding Co-ordinator explained that immediately after the wedding showcase she went on compassionate leave due to serious personal difficulties and that she did not return until October 2019. While the compassionate leave had been anticipated, it occurred earlier than expected due to a sudden change in the Wedding Co-ordinator's personal circumstances. The Wedding Co-ordinator indicated that her email account was not monitored during her absence. The Wedding Co-ordinator confirmed that she attended the hotel for a number of weddings during her compassionate leave but that she did not check her emails during that time. She also confirmed that she contacted couples who had made bookings and asked them to contact Reception in her absence.

The Wedding Co-ordinator said that on her return from extended leave, she responded to the Complainant and apologised for the delay. She noted that the Complainant had not phoned the hotel in her absence.

Direct Evidence of the General Manager

The General Manager said that the Wedding Co-ordinator's compassionate leave was brought forward due to a change in her personal circumstances. He made a decision to prioritise weddings that had already been booked. The General Manager said that he was very comfortable with the arrangements that had been put in place to cover the Wedding Co-ordinator's absence as that was not a busy time for enquiries. The General Manager said that the hotel would hold between 100 and 120 weddings per year and had no difficulty filling these dates.

The General Manager said that some couples contacted him when they could not get in touch with the Wedding Co-ordinator during her absence.



Findings and Conclusions:

In making my decision I must consider whether the existence of a *prima facie* case has been established by the Complainant. Section 38A of the Equal Status Acts sets out the burden of proof which applies in a claim of discrimination. 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. In making my decision, I have taken into account all of the evidence, written and oral, made to me by the parties to the case.

Section 38A of the Equal Status Acts (2000 – 2015) states as follows:

"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."

"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."

This provision clearly puts an onus on the Complainant to provide evidence from which it may be presumed that prohibited conduct has occurred. This concept is commonly referred to as establishing a *prima facie* case. The requirements placed on a Complainant in this regard were set out by the Labour Court in the case of **Mitchell v Southern Health Board [2001] ELR201**, where the Court stated as follows:

"A claimant must prove, on the balance of probabilities, the primary facts on which they rely seeking to raise a presumption of unlawful discrimination. It is only if those primary facts are established to the satisfaction of the Court, and they are regarded by the Court as being of sufficient significance to raise a presumption of discrimination, that the onus shifts to the respondent to prove that there was no infringement of the principle of equal treatment."

In establishing a *prima facie* case of discrimination, the Complainant must, therefore, establish that they are covered by the relevant discriminatory ground and that there was specific treatment by the Respondent which could reasonably give rise to the presumption that less favourable treatment of the Complainant had occurred.

With regard to the within case, I am satisfied that the Complainant is a member of the Travelling Community and is therefore covered by the relevant discriminatory ground.

The Complainant alleges that she suffered discrimination at the wedding showcase and in her follow-up with the Respondent.

In considering this matter, I am conscious of the decisions of the Labour Court in **Nevins, Murphy, Flood v Portroe Stevedores Limited [2005] 16 E.L.R. 282** confirming the English position that discrimination can be conscious or sub-conscious and can therefore be difficult to prove.

"Discrimination is usually covert and often rooted in the subconscious of the discriminator. Sometimes a person may discriminate as a result of inbuilt and unrecognised prejudice of which he or she is unaware. Thus, a person accused of discrimination may give seemingly honest evidence in rebuttal of what is alleged against them. Nonetheless, the court must be alert to the possibility of unconscious or inadvertent discrimination and mere denials of a discriminatory motive, in the absence of independent corroboration, must be approached with caution."

Wedding Showcase

I note that that the Complainant and her sisters and the Wedding Co-ordinator have a differing recollection and understanding of what happened at the wedding showcase. The Complainant and her sisters believed that they would meet with the Wedding Co-ordinator and would have the opportunity to have a meaningful discussion with her about the Complainant's wedding. They also believed that they would be shown around the venue.

The Wedding Co-ordinator, on the other hand, said that the wedding showcase was an opportunity for engaged couples to view the venue but, due to the numbers in attendance, it would not be possible for her to have an in-depth conversation with any attendees or to give them a personal tour of the venue. The Wedding Co-ordinator explained that, if a couple wished to make further enquires about the Respondent's hotel as a possible venue for their wedding reception, they would make an appointment to meet with her on a one-to-one basis.

The Complainant and her sisters also mentioned that they felt that they were treated differently by hotel staff and that they were not afforded sufficient attention.

Communication between the parties after the wedding showcase

In an ES1 dated 4 August 2019 the Complainant queried why she had not received a response to her email enquiry in relation to the availability of dates for the Respondent's hotel and why the Wedding Co-ordinator had not got back to her despite undertaking to do so at the wedding showcase.



Due to her absence on compassionate leave, the Wedding Co-ordinator did not respond to the Complainant until 23 October 2019 when she wrote as follows:

"... I received your communication recently and all I can do is apologies for the delayed response.

There seems to be a misunderstanding as I was waiting to hear from you from our initial meeting in July last.

Looking forward to hearing from you."

I am aware that the Wedding Co-ordinator was absent on compassionate leave due to very traumatic events in her personal life and I accept that this caused the delay in her response to the Complainant. However, her response to the Complainant on the 23 October 2019 surprises me since the Complainant had contacted the Wedding Co-ordinator on 23 July 2019, very shortly after the wedding showcase, as follows:

... It was nice meeting you Sunday. We absolutely loved the venue. What dates have you available?"

The Wedding Co-ordinator did not seem to be aware of this email. Nor did she appear to be aware of the Complainant's follow-up emails of 31 July 2019 and 4 August 2019. I am also at loss to understand why the Wedding Co-ordinator concluded her email of 23 October 2019 with the phrase "*Looking forward to hearing from you.*" She was, after all, responding to an ES1 form the Complainant in which the Complainant voiced her dissatisfaction about the treatment she received from the Respondent and indicated her intention to seek redress under the Equal Status Acts if she was not satisfied with the response she received or if the Respondent failed to reply within a month of receiving the ES1 form.

At the hearing, the Wedding Co-ordinator said that the Complainant had never indicated the date on which she wished to hold her wedding reception. In this regard, I note the following email in a thread of emails to the hotel prior to the wedding showcase, in which the Complainant wrote as follows:

" ... In the meantime can you give me an idea of what dates you have for November 2019."

At the hearing, the Wedding Co-ordinator noted that it was very short notice for a couple to make an enquiry about a November wedding in July and that it would be unlikely that the Respondent could facilitate such a request. If this was the case, I am surprised that the Wedding Co-ordinator did not make the Complainant aware of this preliminary issue when she received the Complainant's email enquiring about the availability of a date in November.

From the evidence adduced in relation to the wedding showcase, it is not possible for me to find that the Complainant has raised a *prima facie* of discrimination. However, from the evidence adduced in relation to the communication between the parties afterwards, I find that the Complainant has successfully established a *prima facie* case and that, as a result, the burden of proof switches to the Respondent.

Having carefully considered all the evidence adduced and bearing in mind the findings of the Labour Court referred to above, I am satisfied that, on the balance of probabilities, it is most likely that the Complainant was denied the opportunity to use the Respondent's facilities on the basis of her membership of the Traveller Community.

Consequently, I find that the Complainant has been discriminated against on the said ground and the Respondent is in breach of the Equal Status Acts.



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.

I find that the Complainant was discriminated against, contrary to Sections 3(1) and 3(2)(i) of the Equal Status Acts 2000 - 2015, by the Respondent on the grounds of her membership of the Traveller Community.

Accordingly, I award the Complainant the sum of €5,000 in compensation for the effects of the discrimination involved.

Dated: 6th May 2022

Key Words:

Membership of the Traveller Community – Hotel – Wedding Reception



The Labour Court

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