

**A Prospective Customer**  
**v**  
**A Hotel/Wedding Venue**

Adjudication Reference: ADJ-00026881

Date of Adjudication Hearing: 28/09/2020

Workplace Relations Commission Adjudication Officer: Ray Flaherty

## **Procedure:**

In accordance with Section 25 of the Equal Status Act, 2000, and 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, who was a member of the Traveller Community, engaged with the Respondent, a hotel, with a view to holding her wedding reception at the Respondent's venue.

The Complainant's engagement with the Respondent commenced on 29 July 2019 and concluded on 23 October 2019, when she received correspondence from the Respondent, in reply to an ES1 Form, which had been submitted on 1 October 2019.

On 5 February 2020, the Complainant submitted a complaint, under Section 21 of the Equal Status Act, 2000, to the Workplace Relations Commission, contending that she was discriminated against, by the Respondent, by reason of her membership of the Traveller Community with regard to the provision of goods and services.

That complaint is the subject of this investigation/adjudication, having been delegated to me by the Director General of the WRC.

## **Summary of Complainant's Case:**

### *Introduction:*

The Complainant submitted that the Respondent, through its Wedding Coordinator (Ms A), discriminated against her in the provision of services, on the grounds of her

membership of the Traveller Community. In this regard, the Complainant relies on Section 42 of the Equal Status Acts to fix the Respondent with liability for the actions of its employee.

The Complainant submitted that she was treated less favourably than others on the grounds of membership of the Traveller community by the fact that the Respondent prevented a booking being made for a wedding reception by refusing to provide available dates in response to repeated requests for same.

*Factual Background:*

On 20 July 2019, the Complainant emailed the Respondent with regard to its availability to host the wedding reception for her and her fiancé.

On the same date, the Respondent's Wedding Coordinator (Ms A) sent an email invitation to the Complainant to attend a Wedding Showcase which was taking place in the hotel on the following day, 21 July 2019.

Further email exchanges between the Complainant and Ms A took place later on 20 July 2019 in relation to available dates and guest numbers.

On 21 July 2019, the Complainant enquired, by email, as to the precise time she should attend the Wedding Showcase later that day. The Complainant received an immediate response from Ms A indicating that she could attend as any time between 2:00 and 5:00pm that afternoon. In a further email later that morning, Ms A enquired as to the Complainant's surname. The Complainant replied to this request, by return, providing her and her fiancé's surnames.

According to the Complainant's evidence, when she attended the Wedding Showcase on 21 July 2019, Ms A was already attending to another couple. The Complainant submitted that while she was waiting for her opportunity to speak with Ms A, she noticed other members of staff looking in her direction. According to the Complainant, after waiting for a considerable period of time, she sought out Ms A with a view to being shown around the venue and discussing the availability of the venue for her wedding reception.

The Complainant further stated that when she eventually got to speak to Ms A, she was not provided with a tour of the venue. In this regard, the Complainant submitted that she had a brief discussion with the couple who had already been attended to by Ms A and was informed that they had received a full tour of the venue, including the honeymoon suite.

The Complainant stated that her session with Ms A concluded on the basis that the latter would be in contact in relation to available dates. According to the Complainant's submission, Ms A was "*aloof and rushed*" during their discussion.

By way of email dated 23 July 2019, the Complainant informed Ms A that they were very satisfied with the venue and sought available dates for the reception. The Complainant did not receive a response to this, or subsequent follow-up emails sent on 31 July and 4 August 2019.

On 1 October 2019, the Complainant submitted an ES1 Form, under the Equal Status Acts, 2000 - 2015, to Ms A, seeking an explanation as to why she (the Complainant) had not received a response in relation to the availability of dates for hosting her wedding at the Respondent's hotel.

On 23 October 2019, the Complainant received an email, from Ms A, acknowledging receipt of the ES1 Form. In this communication, Ms A apologised for the delayed response and indicated that there seemed to have been a misunderstanding as she (Ms A) was waiting to hear from the Complainant following their initial meeting on 21 July 2019.

*Arguments in support of the complaint:*

The Complainant submitted that she and her family members, who attended the Wedding Showcase with her, present as and are readily identifiable as members of the Traveller Community. It was further submitted by the Complainant that her surname was common among Travellers and that the town where she resides has the highest proportional Traveller population in the State.

In her submission, the Complainant contended that the Respondent's staff became aware, during their meeting at the venue on 21 July 2019, that she was a member of the Traveller Community. According to the Complainant, this was the decisive factor in the Respondent's repeated refusal to provide information in relation to available dates, thereby effectively preventing her from making a booking with the Respondent.

With regard to the Respondent's reply to the ES1 Notification, the Complainant submitted that Ms A's email was self-evidently inadequate and illogical for a number of reasons. Firstly, the Complainant submitted that while Ms A asserts that she was waiting to hear from her (the Complainant), this was not the arrangement reached on 21 July 2019, when Ms A was to make contact. The Complainant further submitted, in this regard, that it made sense, in the circumstances, that Ms A would be the person to make contact given that she had knowledge of available dates, whereas the Complainant did not.

Secondly, the Complainant submitted that, despite her assertion that she was waiting to hear from the Complainant, Ms A did not address the fact that she (the Complainant) had made contact, by sending three emails, following her attendance at the Wedding Showcase, requesting information on available dates. The Complainant submitted that she did not receive a reply to any of those emails nor was she provided with any explanation or justification for this. The Complainant further submitted that all correspondence with Ms A, in advance of the Wedding Showcase, was conducted properly, with replies issuing within the day.

Thirdly, the Complainant submitted that if, as she asserts, Ms A 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, email address and relevant information such as anticipated guest numbers and desired dates, regarding the proposed wedding.

Fourthly, the Complainant submits that Ms A, despite ostensibly 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 Submissions:*

In submitting her complaint, the Complainant relies on the definition of "*discrimination*" as set out in Section 3 (1)(a) of the Equal Status Acts and on the "*Traveller Community*" ground as provided for under Section 3 (2)(i) of the said Acts.

The Complainant also cited Section 38A of the Acts, which sets out the provisions in relation to the matter of "*burden of proof*". Accordingly, the Complainant submitted that she has raised sufficient facts, substantiated by evidence in the form of email correspondence, to raise a *prima facie* case, which requires the Respondent to prove that her status as a member of the Traveller Community was not the reason for the treatment she received.

According to the Complainant, during her attendance at the Wedding Showcase, she received demonstrably different treatment from other attendees. The Complainant submitted that Ms A did not provide her with information on wedding packages nor did she give her tour of the venue, as was the case for other attendees to whom she (the Complainant) spoke to on the day.

The Complainant further submitted that Ms A continued this pattern of behaviour by refusing to respond to her subsequent enquiries as to the availability of dates.

Finally, in this regard, the Complainant submitted that Ms A provided an inadequate response to the ES1 Notification by way of justification for the treatment of the

Complainant. According to the Complainant, these justifications have been shown to be illogical and lacking in credibility, as set out above.

*Remedy:*

Pursuant to Section 27 of the Equal Status Acts, the Complainant requested to be compensated for the effects of the discrimination she experienced.

In this regard, the Complainant submitted that, in accordance with Article 15 Council Directive 2000/43/EC, implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin and accounting for the recognition of the Traveller Community as a distinct ethnic group by the State, such compensation should be of an amount that is “*effective, proportionate and dissuasive*”.

According to the Complainant, as she had stated in her email correspondence to the Respondent, she “*absolutely loved the venue*”. She further submitted that she was excited at the prospect of getting married at the Respondent’s venue and was dismayed when Ms A refused to provide her with the information required to secure a date. The Complainant submitted that the experience left her feeling devastated, humiliated and like a second-class citizen.

*Conclusion:*

In concluding her submission, the Complainant stated that the Respondent had discriminated against her and, in that regard, had treated her less favourably than a person who was not a member of the Traveller Community. According to the Complainant, she was refused service on account of her membership of the Traveller Community and that was the sole reason for treatment.

Finally, it was submitted by the Complainant that the Respondent had breached the terms of the Equal Status Acts and, as a result, she was seeking appropriate remedies as provided by the terms of the Acts.

## Summary of Respondent’s Case:

The Respondent did not provide any response to the Complainant’s complaint. This included failure to engage, by way of correspondence or otherwise, with the WRC, having been duly notified of the complaint and provided with all supporting documentation.

In addition, the Respondent failed to attend the Oral Hearing scheduled for the specific purpose of adjudicating on the Complainant’s complaint, including hearing any response the Respondent might wish to submit in reply to the complaint. In this regard,

I am satisfied that the Respondent was duly notified of the date and arrangements for the Oral Hearing.

## Findings and Conclusions:

With regard to the issues arising in relation to this complaint, the Complainant made written submission and also provided oral evidence at the Oral Hearing. As already set out above, the Respondent did not provide any submission, oral or written, in reply to the Complainant's complaint.

Therefore, my consideration and evaluation of the complaint and my determinations based thereon, are confined to the uncontested evidence and submissions of the Complainant.

### *Time Limits:*

The first issue to be considered in relation to this complaint is whether or not it was submitted within the timeframe set out in the Equal Status Acts. Section 21, subsections (6) and (7) of the Acts detail the provisions with regard to claims for redress in respect of prohibited conduct as follows:

*“(6) Subject to subsection (7), a claim for redress in respect of prohibited conduct may not be referred under this section after the end of the period of six 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.*

*(7) If, on application by the complainant, the Director is satisfied that exceptional circumstances prevented the complainant's case from being referred within the time limit specified in subsection (6)-*

*a) the Director may direct that, in relation to that case, subsection (6) shall have effect as if for the reference to a period of six months there were substituted a reference to such a period not exceeding 12 months as is specified in the direction, and*

*b) where such a direction is given, this Part shall have effect accordingly.*

The Complainant is alleging that the Respondent treated her less favourably than others, on the grounds of her membership of the Traveller Community, by failing to provide her with available dates, thereby preventing a booking being made.

Based on the evidence submitted by the Complainant, I am satisfied that the date of the most recent occurrence of the alleged prohibited conduct was 4 August 2019, that being the date on which the Complainant corresponded with the Respondent and sought

information in relation to available dates for her wedding reception. Consequently, in order to comply with the timeframes, set out in subsection (6) of the Acts, a complaint of alleged prohibited conduct in this regard would have to be received by the Workplace Relations Commission on or before 3 February 2020. The Complainant's complaint against the Respondent in this regard was received by the WRC on 5 February 2020 and was, therefore, outside the timeframes set down in subsection (6) of the Acts.

However, the Complainant provided evidence to show that she had spent the period between 29 January 2020 and 10 February 2020 as an inpatient in hospital. According to the Complainant, this occurred at the time she was submitting her complaint and had resulted in a slight delay in its submission.

Having carefully considered the evidence adduced in this regard, I am satisfied that the Complainant's hospitalisation represented exceptional circumstances, which prevented her complaint being referred within the time limit specified in subsection (6) of the Acts, to the extent that the extended period of 12 months, as set out in subsection (7) applies in this case.

Consequently, I find that the Complainant's complaint is in time and her claim for redress in respect of the prohibited conduct can, therefore, be fully considered.

*Establishing a prima facie case of Discrimination:*

Section 38A of the Equal Status Acts (2000 – 2011) sets out, as follows, the burden of proof which applies in a claim of discrimination or:

*“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 a complainant to provide evidence from which it may be presumed that the prohibited conduct occurred. This concept is commonly referred to as establishing a *prima facie* case. It requires a complainant to establish, in the first instance, facts upon which they can rely in asserting that prohibited conduct has occurred in their particular situation. Should a complainant be successful in establishing a *prima facie* case of discrimination, the burden of proof then shifts to the Respondent to rebut the inference of discrimination raised by the complainant.

The requirements placed on a complainant in establishing a *prima facie* case of discrimination 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 direct discrimination, the Complainant must, therefore, establish (a) that they are covered by the relevant discriminatory ground and (b) 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 first point above, I am satisfied that the Complainant, in the within case, is a member of the Traveller Community and is therefore covered by the relevant discriminatory grounds – *Membership of the Traveller Community*.

Discrimination under the protected ground of membership of the Traveller Community 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 evidence presented by the Complainant shows that her first contact with the Respondent took place on 20 July 2019, when she sent an email requesting *“information on wedding packages and available dates.”*



It is noted, with interest, that the email address from which the Complainant communicated was in generic format, which did not identify the name of the sender. On that basis, I am satisfied that the Respondent would have been unaware at that point in the process that the Complainant was a member of the Traveller Community.

The Respondent, in the person of their Wedding Coordinator, Ms A, responded by return to the Complainant's communication. This correspondence, which was positive and congratulatory in tone, advised the Complainant that a Wedding Showcase was taking place in the hotel the following afternoon between 2:00 and 5 :00pm. The Complainant was invited to attend this event and to meet with Ms A to discuss the matter further.

The Complainant replied, again by return, indicating that she was delighted with the opportunity to "*come and see the venue set up*". In addition, the Complainant requested Ms A to, in the meantime, provide her with available dates in November 2019 for a wedding function. The Complainant received an immediate response from Ms A, querying the number of guests who would be attending, to which she immediately replied indicating expected numbers between 100 and 120.

On the following morning, 21 July 2019, the Complainant emailed Ms A querying what time she should attend the Wedding Showcase that afternoon. Ms A responded, by return, indicating that they could attend at any time between 2:00 and 5 :00pm. The Complainant acknowledged this correspondence.

However, a short time later the Complainant received an email from Ms A seeking details of her surname. The Complainant responded by return and provided her full name and that of her fiancé. This correspondence and the detail contained therein was not acknowledged or responded to. The evidence adduced clearly demonstrates that the final correspondence from Ms A, or anybody within the Respondent's organisation, was that which requested the detail of the Complainant's surname.

In her evidence, the Complainant contended that her surname readily identifies her as a member of the Traveller Community. In all the circumstances, I am satisfied that the Complainant's contentions in this regard have both validity and credibility.

The Complainant, in her submission, as set out above, goes into detail with regard to what transpired when she and her two sisters attended the Wedding Showcase on the afternoon of 21 July 2019. This included, inter alia, having to wait a considerable length of time before Ms A engaged with them, other staff constantly looking in their direction while they waited, being dealt with in a rushed and abrupt manner by Ms A when she finally engaged with them, which it was alleged was in direct contrast to the amount of time spent with the previous couple and failure to provide the Complainant with a tour

of the venue or the honeymoon suite, as had been provided to the previous couple. In summary, the Complainant stated in evidence that the entire interaction with Ms A made her feel extremely uncomfortable.

According to the Complainant's evidence, when she enquired as to availability of dates, Ms A indicated that they had only a few days left but that she would get back to her (the Complainant) with the dates that were available.

The evidence adduced clearly shows that neither Ms A nor anybody representing the Respondent's organisation responded to the Complainant on foot of the commitments given at the Wedding Showcase on 21 July 2019 to revert with available dates. In addition, three follow-up emails from the Complainant to Ms A, seeking a response and/or details of available dates were not responded to.

The evidence further shows that Ms A sent an email to the Complainant on 23 October 2019, in response to the latter's submission of an ES1 Form. In this response, Ms A apologised for the delay in responding, which she explained as a "*misunderstanding as I was waiting to hear from you from our initial meeting in July last*".

The Complainant's evidence, which is corroborated by those in attendance with her on the day of the Wedding Showcase, indicates that Ms A undertook to respond with dates. This clearly undermines the veracity of the response contained in Ms A's email of 23 October 2019. However, even if the benefit of the doubt were extended to Ms A, in that the onus was on the Complainant to revert, the evidence shows that the Complainant did respond to Ms A on 23 July 2019 and followed it up with two further emails on 31 July and 4 August 2019.

In addition, it is difficult to understand why, when she was presented with a further opportunity in October 2019, Ms A did not seek to properly engage with the Complainant with regard to the provision of dates, which would have allowed for the possibility that the wedding function could have been held in the Respondent's venue.

In a context where weddings constitute a significant proportion of hotel business, with many providers, including the Respondent, promoting their venues in this regard, it is surprising that the Respondent failed to follow up on a significant business opportunity, which a wedding of 100/120 guests clearly represented, either initially in July or again in October 2019 when the matter was brought to their attention.

Taking all of the above into consideration, I am satisfied that there was a clear and definite disengagement by the Respondent from discussions with the Complainant in relation to the holding of her wedding at the Respondent's venue. The evidence clearly shows that the disengagement coincided with Ms A being made aware of the

Complainant's surname on the morning of 21 July 2019, some hours in advance of the Complainant's attendance at the Wedding Showcase.

Having carefully reviewed and considered all of the evidence adduced, I find there to be no other plausible or logical explanation for this disengagement other than the fact that the Complainant was a member of the Traveller Community. Consequently, I find that the Complainant has established, not just a *prima facie* case of discrimination, but a strong and valid claim that she was discriminated against on the grounds of her membership of the Traveller Community.

In the absence of any evidence from the Respondent, in rebuttal of the Complainant's complaint in this regard, I find that the Complainant was discriminated against as set out in sections 3(1) and 3(2)(i) of the Equal Status Acts.

In her submission, the Complainant is seeking compensation for the effects of the discrimination on her, in line with Section 27 of the Equal Status Acts. In considering the amount of compensation to be awarded in this case, I am cognisant of the principles set out in Article 15 of the Council Directive (2000/43/EC), which states that "*the sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.*"

Given the dismissive nature of the Respondent's disengagement with the Complainant, following the provision of information which would have identified her as a member of the Traveller Community and the subsequent failure to appropriately engage with the investigation of the complaint by the WRC, I am satisfied that the level of the compensation awarded in the within case must be reflective of these factors and must be such that it dissuades the Respondent from repeating such discrimination in the future.

## 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.

Having carefully considered all of the evidence adduced and based on the considerations/findings as detailed above, I find that the Complainant was discriminated against, contrary to Sections 3(1) and

3(2)(i) of the Equal Status Act 2000, by the Respondent on the grounds of her membership of the

Traveller Community.

Consequently, I award the Complainant the sum of €15,000 in compensation for the effects of the discrimination involved.

Dated: 6th January 2021

Workplace Relations Commission Adjudication Officer: Ray Flaherty

Key Words:

Equal Status Acts

Membership of the Traveller Community

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