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## DEC-S2014-012

THE EQUALITY TRIBUNAL

EQUAL STATUS ACTS

DEC - S2014- 012

Anne Joyce

(represented by Aideen Collard B.L.

instructed by The Equality Authority)

versus

Michael Ryan Funeral Directors

(represented by Mr Shane Kelly B.L.

instructed by Murphy Coady and Company Solicitors.)

File reference: ES/2012/0027

Date of issue: 4September 2014

### Keywords

***Equal Status Acts 2000 to 2011 – Discrimination, section 3(2)(i) – Travelling Community–provision of a service, section 5(1)***

### Delegation under the Equal Status Acts

The complainant referred her complaint under the Equal Status Acts 2000 to 2011 (hereinafter referred to as "the Acts") to the Director of the Equality Tribunal on 12 March 2012. On 13 August 2013, in accordance with his powers under S. 75 of the Acts, the Director delegated the case to me, Peter Healy, an Equality Officer, for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part III of the Acts. On this date my investigation commenced. As required by S. 25(1) of the Acts and as part of my investigation, I proceeded to hold a hearing of the case on 10 October 2013 and 6 December 2013.

## 1. Dispute

1.1 The case concerns a claim by Ms Anne Joyce (hereinafter referred to as "the complainant") that Michael Ryan Funeral Directors (hereinafter referred to as "the respondent") discriminated against her on the ground of her membership of the Traveller community contrary to Section 3(2) (i) of the Equal Status Acts 2000 to 2011, in terms of refusal to provide a service within the meaning of S. 2 of the Acts by refusing to allow the deceased, Aaron Joyce (son of the complainant) to repose in his funeral home in December 2011.

## 2. Summary of the Complainant's Submission



**2.1.** The complainant submits that in December 2011 her sister had been tasked with arranging the funeral of Aaron Joyce, the complainant's 14 year old son who was recently deceased following an extended illness. The complainant submits that her sister engaged a company well known to the family (Funeral Directors A) to arrange the funeral. The complainant says that on the 28 December 2011 her sister attended the Dublin premises of Funeral Directors A to apprise them of the family requirements for the funeral and wake. The sister met with a representative A and instructed her that it was the family's wish that deceased be waked in Ashbourne close to the intended cemetery because the deceased had gone to school in the area and all his friends live there . As Representative A's company did not have a premises in Ashbourne they undertook to identify a funeral director in Ashbourne who could provide a premises for the wake.

**2.2** The complainant submits that, at that meeting on 28 December, representative A made a phone call to the respondent's company. The complainant submits that Micheal Ryan answered the phone and was asked if would "look after a local family" and make available a room at his premises for a wake on Saturday 31 December. The complaint submits that Mr Ryan told Representative A during that phone call that the room would be made available for the wake.

**2.3** The complaint submits that her sister, who was present in the office during the call, then left believing that the wake was to take place in the respondent's premises. However, the complainant submits that, about half an hour after the first call, Mr Ryan called representative A to say that he would not make the room available and that the local parish priest had a problem with the funeral.

**2.4** The complaint submits that her sister was unaware of the refusal and she visited the respondent's premises in Ashbourne the following day. The complaint submits that her sister was greeted by an unidentified person, Mr C, at the respondent's premises and invited in to an office to have a chat. The complaint says that at some point in the conversation Mr C took a phone call and became aware that the complainants' family were members of the travelling community. The complaint submits that her sister was then ushered out of the office quickly and no further conversation took place.

**2.5** The complainant submits that other arrangements were made for the wake but as it was not in Ashbourn that many friends and family were unable to attend the wake. The complainant gave direct evidence at the hearing of her extreme distress on the day of the funeral that she said was particularly exasperated by her perceived treatment by the respondent and the comments attributed to the respondent that the priest had a difficulty with the funeral. She says that on the day of the funeral she was reluctant to enter the church in light of the alleged comments.

**2.6** The complainant submits that since the events of the funeral it has been established to her satisfaction that at no time did any priest articulate any concerns about having a traveller funeral but rather that both priests concerned had been especially supportive to the family.

### 3. Summary of the Respondent's Submission

**3.1** The respondent denies that they refused to allow the complainant to access his premises on the basis that she is a member of the travelling community. He states that he has no prejudice towards the travelling community and that it was never his intention to exacerbate the family's grief.

**3.2** The respondent submits that no request for a service was actually made to the respondent by a member of the travelling community. The respondent submits that any request took place in the in the context of a commercial proposal between two people acting in the course of their business, neither one being the member of the travelling community.

**3.3** The respondent submits that the decision not to allow access to a service does not give rise to indirect discrimination as set out under the acts.

**3.4** The respondent submits that representative A was the only one to have direct interaction with the respondent and therefor the complainant can not offer any evidence of what transpired in such an exchange. The respondent disputes the evidence given by Representative A but points out that at no time did representative A mention that the deceased was a member of the travelling community.

**3.5** The respondent submits that as the original complaint was made in the name of the complainant's sister that the complaint in front of this tribunal is grounded in the ES3 form also issued by the respondent's sister, and that nowhere in that form is it claimed that the sister tried to avail of any service. Furthermore the respondent submits that there is nothing to contradict the version of events offered by the sister that she was in fact the person tasked with arranging the funeral of Aaron Joyce. Therefor the respondent submits that the claim is misconceived in nature

**3.6** The respondent argues that the respondent has a right, inter alia, to be made aware of the true nature of the complaint against him, including the identity of the complainant and the substance of the complaint and that he is entitled to prepare his case in light of that information. As the complainant did not make a request for services the complaint is misconceived.



3.7 The respondent accepts that communication by way of conversation occurred between Representative A and himself on 28 December 2011. The respondent says that Representative A was pushy and demanded use of his funeral home. The respondent submits that he terminated the call as he was busy and that he would call back.

3.8 The respondent says that he called back later as a matter of courtesy and explained that it was not his practice to let out his premises in the manner specified. The respondent submits that Representative A then became very aggressive demanding use of the premises and emphasizing it was for a child's funeral.

3.9 The respondent submits that his reasons for refusing to provide a service are as follows.

- That it is not his practice to hire or rent out his funeral home to any person or funeral director.
- That he only deals with funerals that he is personally charged with.

## 4. Conclusions of the Equality Officer

4.1 The issues for decision in this case are whether the complainant was discriminated against within the meaning of the Acts.

4.2 The burden of proof is set out in Section 38A which provides that:



*"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."*



Although the instant case is taken under the Equal Status Acts, Section 38A is analogous to Section 85A of the Employment Equality Acts. In this regard, I consider that it is appropriate for me to consider the Labour Courts comments in examining the circumstances in which the probative burden of proof applies in employment equality cases. In the case of Dyflen Publications Limited and Ivana Spasic (ADE/08/7) the Court adopted the approach of Mummery LJ in *Madrassy v Nomura International plc* [2007] IRLR 246, and stated that



*"... the court should consider the primary facts which are relied upon by the complainant in their proper context. It also indicates that in considering if the burden of proof shifts the court should consider any evidence adduced by the respondent ...".*

4.3 The complainant identifies herself as a member of the Travelling community and the respondent does not dispute this.

4.4 The respondent has made the arguments that the complaint has been taken by the wrong person and that no request for a service was actually made to the respondent by a member of the travelling community.

Sections 20 and 21 of the equal status act set out the following definitions of a complainant,

*20.—In this Part, unless the context otherwise requires—*

*"complainant" means—*

*(a) a person referred to in section 21(1), or*

*21.—(1) A person who claims that prohibited conduct has been*

*directed against him or her may, subject to this section, seek redress*

*by referring the case to the Director.*

In the instant case the prohibited conduct was the withdrawal of a service on the traveller ground. I am certain that in this case the prohibited conduct was directed at the complainant, specifically provision of services to facilitate the funeral of a child were clearly for the benefit of the relatives and specifically the parents. The complainant was also the intended payee for the withdrawn service. I am also satisfied that there is no prejudice to the respondent as he was aware at the very outset, on the 28th December 2011, of the details of the service required and that the service was for a member of the travelling community.



The requirement to give notice to the respondent has already been dealt with by a previous Equality Tribunal direction (DIR-S2012-008).



**4.5** The two core issues under consideration in this case are



1. Is whether or not the respondent agreed to provide a service to the complainant?



2. Is whether or not the respondent then withdrew that provision on the basis that the complainant was a member of the travelling community?

**4.6** The issue of whether the respondent agreed to provide a service is based on what transpired over either two or three phone calls (the respondent was unsure of the number) on the 28th December 2011 between representative A and Mr Ryan both of whom gave direct evidence at the hearing. I found Representative A to be a rational, consistent and credible witness. Based on both witnesses account of the dialogue I find nothing to support the respondent's assertion that Representative A was pushy or demanding but rather that she behaved in a professional manner. I accept Representative A's account that the respondent agreed to provide a service during the first call. The complainant's sister was in the office for the first call and gave evidence that the first call ended with Mr Ryan agreeing use of the room. I do not find it probable that representative A would directly lie to the sister in the manner suggest by the respondent taking into account the distress that would result for the family and the additional work that would fall to her in attempting to make alternative arrangements at the last moment.

**4.7** The respondent's account of the phones calls was not consistent. At the outset of his evidence he was adamant that the first phone call was simply to say I will call you back and that the second call was simply to state that he does not sub let his room. Later during the hearing his account of these calls changed and it also emerged that he rang the parish priest between calls enquiring about the funeral. The fact of the call to the parish priest is consistent with the complainant's version of events and contradicts the respondents. I did not find his account credible and cannot rely on his evidence in this regard.

**4.8** During the hearing when asked if he knew if the complaint was a member of the travelling community, the respondent offered the statement that " everyone knows the Joyce family are travellers". I must conclude that the respondent believed that the complaint was a member of the travelling community as soon as her was provided with her name during the call to the parish priest.

**4.9** I found the complainant, her sister and the Representative A all to be credible witnesses and I believe Representative A's assertion that the respondent agreed initially to provide a service. As I find the respondent had agreed to provide a service, his arguments that he would not do so on the commercial grounds presented are moot. Accordingly, the complainant is entitled to succeed in her complaint.

## 5. Decision

**5.1** In accordance with Section 25(4) of these Acts, I conclude this investigation and issue the following decision:

- That the complainant has established a prima facie case of direct discrimination on the ground of membership of the Travelling community and this has not been rebutted by the respondent.

**5.2** Therefore, as per Section 27(1) (a) I order the respondent to pay to the complainant the maximum sum allowable under the Acts of €6,384 in compensation for the effects of the prohibited conduct. In awarding the maximum allowable I am taking into consideration the extreme distress caused to the complainant.

**5.3** I note that at the hearing the complaint requested that any compensation should be paid directly to a named charity. It is not the normal practice for this Tribunal to direct payment to third parties and it is therefore a matter for the complainant to make such a payment.

**Peter Healy**

Equality Officer

4 September 2014



The Labour  
Court

