

ODEI - the equality tribunal

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Equal Status Act 2000

EQUALITY OFFICER'S DECISION NOs: DEC-S2002- 106/111

**Michael and Helen O'Brien, Jim and Christina Sherlock
and John and Margaret McDonagh**
(represented by the Equality Authority)

V

Grand Liqueur Ltd (Scruples Niteclub)
(represented by Mason, Hayes and Curran, Solicitors)

File No. ES/2001/229-234

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Equal Status Act 2000**Summary of Decisions DEC-S2002-106/111**

**Michael and Helen O'Brien, Jim and Christina Sherlock
and John and Margaret McDonagh**
(represented by the Equality Authority)

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Grand Liquer Ltd (Scruples Niteclub)
(represented by Mason, Hayes and Curran, Solicitors)

Key words

Equal Status Act 2000 - Direct discrimination, section 3(1)(a) - Membership of the Traveller community, section 3(2)(i) - Supply of goods and services, section 5(1) - Refusal of admission to nightclub - Membership scheme in place

Dispute

This dispute concerns a complaint by Michael and Helen O'Brien, Jim and Christina Sherlock and John and Margaret McDonagh that they were discriminated against, contrary to the Equal Status Act 2000, by Scruples Nightclub. The complainants maintain that they were discriminated against on the Traveller community ground in terms of sections 3(1)(a) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

Complaint

The complainants state that they were refused admission to Scruples Nightclub on 14 December 2000 on the grounds of their membership of the Traveller community.

The respondents totally reject that they operated a discriminatory policy against Travellers. They maintain that the complainants was refused admission because they operate a membership scheme and the complainants were not members of the nightclub.

Decision

The Equality Officer found that there was insufficient evidence to show that the complainants were treated less favourably than other non-members, who were not Travellers, were treated on 14 December 2000 in seeking admission to Scruples.

Accordingly, he found that a prima facie case has not been established and found in favour of the respondents in the matter.

Decisions DEC-2002-106/111

**Michael and Helen O'Brien, Jim and Christina Sherlock
and John and Margaret McDonagh**
(represented by the Equality Authority)

V

Grand Liqueur Ltd (Scruples Niteclub)
(represented by Mason, Hayes and Curran, Solicitors)

1. Dispute

This dispute concerns a complaint by Michael and Helen O'Brien, Jim and Christina Sherlock and John and Margaret McDonagh that they were discriminated against, contrary to the Equal Status Act 2000, by Scruples Nightclub. The complainants maintain that they were discriminated against on the Traveller community ground in terms of sections 3(1)(a) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

2. Summary of the Complainant's Case

2.1 The complainants state that they were refused admission to Scruples Nightclub on 14 December 2000 on the grounds of their membership of the Traveller community.

3.. Summary of Respondent's Case

3.1 The respondents totally reject that they operated a discriminatory policy against Travellers. They maintain that the complainants were refused admission because they operate a membership scheme and the complainants were not members of the nightclub

4 Delegation under the Equal Status Act, 2000

4.1 These complaints were referred to the Director of Equality Investigations under the Equal Status Act 2000. In accordance with her powers under section 75 of the Employment Equality Act 1998 and under the Equal Status Act 2000, the Director has delegated these complaints to myself, Brian O'Byrne, an Equality Officer, for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part III of the Equal Status Act, 2000.

5.1 Evidence of Complainants

- The complainants went for a night out to the Kingston Hotel on 14 December 2000 with Ms Ann Griffin, who worked with them on a training course for Traveller women.
- None of the complainants had been in Scruples nightclub, which is attached to the hotel, before and had no plans to go there that night on their arrival in the hotel.
- The four women sat together in the hotel bar while the three men sat separately.
- The women had 2 or 3 drinks each while the men may have had four drinks each between 8 pm and 11 pm.
- While Ms Griffin was in the Ladies, the three female complainants noticed a member of staff, Ms Hegarty giving passes for Scruples to a nearby group of customers from a legal firm. They asked Ms Hegarty whether they could gain admission to the nightclub and were told that it was “Ladies Free” night. They think that Ms Hegarty gave them passes but do not recall producing them at the entrance to the nightclub.
- Ms Griffin, who appeared as a witness for the complainants, left around 11 pm to meet some other friends nearby. Before she left, she heard the other three women discussing going to Scruples
- Ms Griffin described how she had visited Scruples on a number of occasions over the previous years and had not been asked for proof of membership. She recalled that some nights had been particularly busy but could not remember whether any of her visits had been during the Christmas period.
- The six complainants decided to go to Scruples. The ladies left the hotel bar ahead of the three men. This was shortly after 11 pm
- When the women arrived at the nightclub entrance, Mr Norris was on the door and allowed them enter without question.
- As soon as they had gone up the steps into the foyer, the women say that Mr Norris caught up with them and shouted “Out Out” in an aggressive manner. He quickly escorted them out saying that it was “members only”. He acted in a hostile manner to them throughout.
- After being refused, the complainants questioned Mr Norris as to whether the refusal was related to their Traveller identity
- The women cannot recall whether their husbands were standing outside when they were escorted out. However, they remember meeting them around this point and all agreeing to return to the hotel to order taxis.

- The three male complainants say they approached the door after the women had entered. They were asked for membership by Mr Norris. They explained that they had not got any but that their wives had gone in ahead of them.
- At that point, the men say that Mr Norris immediately ran up the steps, after the three women.
- The men were asked to step aside by another doorman who they started to engage in conversation. They cannot specifically recall seeing their wives being escorted from the nightclub.
- Other people were allowed access without being asked to produce membership cards
- The six complainants re-entered the hotel, explained to Ms Hegarty what had occurred, ordered taxis and had another couple of drinks while they were waiting. They were all back home by 12.30 am.

5.2 At the Hearing on 26 September 2002, the complainants introduced an Expert Witness, Ms Catherine Joyce, a Co-ordinator with the Irish Traveller Movement. Ms Joyce provided the Hearing with a detailed and informative insight into Traveller characteristics and Traveller culture.

5.3 Evidence of Respondents

- Mr James Walsh took over as Managing Director of Scruples in 1996
- A membership scheme was in place when he took over.
- Scruples is situated in a residential area and objections have been lodged to the club's dance licence in recent years as a result of noise and disturbances on the street after closing time.
- As a result, Scruples has had conditions attached to its dance licence by the courts.
- In order to comply with these conditions, the club was required to be vigilant with regard to the customers admitted, increasingly so in recent years.
- To comply with the conditions, the club has enforced its membership scheme more vigorously in recent years, particularly at weekends and during holiday periods.
- In July 2000, the club introduced a computerised membership system to ensure that proper records were kept of its members.
- In December 2000, the club had an approximate membership of 1000. The membership fee was £60 at the time.

- The nightclub's "free list" was suspended in the run-up to Christmas 2000. Many people were turned away on 14 December 2000.
- On busy nights, it is the custom of doorstaff to restrict access to members and regular customers only. Customer numbers are monitored on a nightly basis and refusals are made in accordance with available capacity.
- The maximum number of people permitted under fire regulations is 440 although management state that a comfortable capacity is 350.
- Computer receipts for 14 December 2000 show that 410 customers were admitted that night. This figure was broken down as 195 members, 105 concessions and 110 non-members.
- On the night in question, the nightclub was expecting a big crowd. Advance telephone bookings from three groups (100 people) had been received and a group of 14 from a local legal firm, who were in the hotel bar, had arranged to visit the nightclub later.
- Doorstaff were alerted to this fact and told to restrict the numbers being admitted.
- Neither the hotel nor nightclub discriminates against Travellers. While, the hotel has had problems with some Travellers before, Travellers do visit the hotel and nightclub from time to time and are welcomed.
- The nightclub closed temporarily in April 2002 to review its situation and future direction.
- On 14 December 2000, Ms Catherine Hegarty, Hotel Manageress, was on duty. She recalls talking to the three female complainants who were on their own at that point, and saying that she thought it was a "Ladies Free" night in the nightclub. She now accepts that this was not the case on the night. She did not, however, provide them with passes.
- Ms Hegarty recalls the six complainants returning to the hotel bar from the nightclub before 12.30 closing time and ordering a double round of drinks. They were the last to leave the bar that night, some time after 1 am.
- Mr John Norris, Head Doorman, recalls that he was on a walkie-talkie, when the women entered the foyer. He recalls following them in and asking whether they were members. On receiving a negative reply, he explained that he could not admit them as it was a very busy night.
- He only recalls seeing the male complainants after escorting the women out of the foyer.
- Ms Carol Tuite was working at the ticket desk that night. The club was expecting a big crowd that night as a few office block bookings had been made.

- She recalls that it was after midnight when Mr Norris followed the three women into the foyer. The club was over half-full at that time. She says that Mr Norris acted in a calm and courteous manner in asking for memberships and then refusing the women access. She also described Ms O'Brien as being very polite in her dealings with Mr Norris.

6 Matters for Consideration

6.1 Section 3(1) of the Equal Status Act 2000 states that discrimination shall be taken to occur where, on any of the grounds specified in the Act, a person is treated less favourably than another person is, has been or would be treated. Section 3(2)(i) of the Act specifies the Traveller community ground as one of the grounds covered by the Act. Under Section 5(1) of the Act it is unlawful to discriminate against an individual in the provision of a service which is generally available to the public.

In this particular instance, the complainants claim that they were discriminated against on the grounds of their membership of the Traveller community contrary to Sections 3(1), 3(2)(i) and 5(1) of the Equal Status Act, 2000 in being refused admission to Scruples Nightclub on 14 December 2000.

6.2 In cases such as this, the burden of proof lies with the complainants who are required to demonstrate that a prima facie case of discrimination exists. If established, the burden of proof then shifts to the respondent who, in order to successfully defend his case, must show that his actions were driven by factors which were non-discriminatory.

6.3 In considering the approach to be taken with regard to the shifting of the burden of proof, I have been guided by the manner in which this issue has been dealt with previously at High Court and Supreme Court level and I can see no obvious reason why the principle of shifting the burden of proof should be limited to employment discrimination or to the gender ground (see references in **Collins, Dinneen & McDonagh V Drogheda Lodge Pub DEC-S2002-097/100**)

7 Conclusions of the Equality Officer

7.1 Prima facie case

At the outset, I must first consider whether the existence of a prima facie case has been established by the complainants.

There are three key elements which need to be established to show that a prima facie case exists. These are:

- (a) Membership of a discriminatory ground (e.g. the Traveller community ground)
- (b) Evidence of specific treatment by the respondent
- (c) Evidence that the treatment received by the complainants was less favourable than the treatment someone, not covered by that ground, would have received in similar circumstances.

If and when those elements are established, the burden of proof shifts, meaning that the difference in treatment is assumed to be discriminatory on the relevant ground. In such cases the claimant does not need to prove that there is a link between the difference and the membership of the ground, instead the respondent has to prove that there is not.

7.2 What constitutes “prima facie evidence” and how a “prima facie case” is established has been documented and considered in previous cases such as **Sweeney v Equinox Nightclub DEC-S2002-031**.

7.3 With regard to (a) above, the complainants have satisfied me that they are members of the Traveller community. In relation to (b), the respondents accept that the complainants were refused admission on 14 December 2000. To determine whether a prima facie case exists, I must, therefore, consider whether the treatment afforded the complainants on 14 December 2000 was less favourable than the treatment non-Travellers would have received, in similar circumstances.

7.4 The complainants’ allegation that they were discriminated against on the Traveller community ground is based on their claim that the three male complainants were recognised as Travellers when they approached Mr Norris.

They maintain that this knowledge, together with hearing that their wives had already entered the nightclub, prompted Mr Norris to review his decision to grant the women access, resulting in him pursuing the women and telling them that they could not be admitted. The complainants maintain that Mr Norris’s actions on the night constituted discrimination on the Traveller community ground.

7.5 Of interest in this case is that no impartial independent witnesses have been produced to substantiate either party’s report of what occurred on 14 December 2000 and, therefore, I must decide for myself what I consider actually happened, based on the evidence before me.

7.6 Key Points and Factors

In deliberating on this matter, I consider the following points to be the most important and persuasive:

- Mr Norris denies speaking with the male complainants and says that he only noticed them outside the nightclub when they joined the three women who had been refused, as they were returning to the hotel.
- The male complainants have said that they do not remember seeing the women being escorted out of the nightclub by Mr Norris. For their part, the women have said that they do not remember the men standing at the nightclub door when they were leaving.

Taken together, the above evidence would seem to cast a doubt over the proximity of the three male complainants to the nightclub entrance at the time the women were refused.

7.7 There is also much confusion over the timing of the nights events:

- The complainants state that they went to the nightclub shortly after 11 pm, were refused admission, returned to the hotel to order taxis, had a couple more drinks and were all home(in Ballybrack and Sandyford) between 12 midnight and 12.30 am.
- The respondents state that the nightclub would not have opened until 11.20 pm at the earliest, that the complainants sought admission after midnight, were refused entry because the nightclub was already half-full and there were other advance bookings, that they ordered a double round of drinks at closing time (12.30 am) on arriving back in the hotel, and did not leave the premises until after 1 am.

In considering the above timeframes, I feel that the former is very tight and I am inclined to favour the latter as being the more realistic of the two timeframes identified.

7.8 In deciding on this case, I have also given much consideration to the role the complainants' Traveller identity may have played in them being refused. In this regard, I consider that the following pieces of evidence are particularly relevant:

- There is general agreement that the complainants Traveller identity was not raised in conversation until after the refusal.
- Mr Norris, who was Head of Security for both the hotel and nightclub, had no difficulty with the complainants returning to the hotel for a drink.
- While the respondents have had difficulty with Travellers before, no evidence has been produced to show that they operate a discriminatory policy against Travellers in general.

There is, therefore, little or no evidence to suggest that a policy to discriminate against Travellers was in place at the time of the incident on 14 December 2000.

7.9 As stated earlier, one of the three key elements which need to be established to show that a prima facie case exists is evidence that the treatment received by the complainants was less favourable than the treatment someone, not covered by that ground, would have received in similar circumstances.

I, therefore, must decide in this case, whether I consider that the complainants were treated less favourably than other non-members, who were not Travellers, were treated on the same night.

7.10 The evidence before me suggests that the complainants sought to gain access to Scruples around midnight on a night when a large crowd of Christmas party-goers had

already pre-booked the nightclub. In such circumstances, I consider that the onus would have been on nightclub staff to ensure that the club did not exceed its permitted capacity and, in my opinion, the simplest way of doing this was to restrict entry to existing members only, from early on in the night, which the club states it did.

7.11 Having considered all the evidence before me, I, therefore, find that there is insufficient evidence to show that the complainants were treated less favourably than other non-members, who were not Travellers, on 14 December 2000.

I, therefore, consider that a prima facie case has not been established to show that the complainants received less favourable treatment than non-Travellers in seeking admission to Scruples on 14 December 2000.

8 Decision

8.1 I find that a prima facie case of discrimination has not been made by the complainants in establishing that they were discriminated against on the Traveller community ground in terms of sections 3(1) and 3(2)(i) of the Equal Status Act 2000 in not being provided with a service which is generally available to the public contrary to Section 5(1) of the Act.

8.2 Accordingly, I find in favour of the respondents in the matter.

Brian O'Byrne
Equality Officer
9 October 2002