

Appendix 7

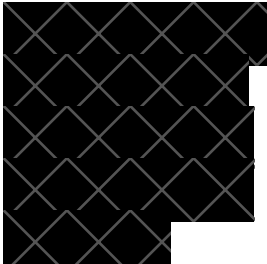
The Equal Status Acts 2000 - 2015 REPLY TO NOTIFICATION

IMPORTANT: Please read this form, and the attached Notes, carefully. The Notes explain what this document is about, and explain some of the terms used.

From: *(name and address of the “respondent”, the person or organisation that has received a notification under the Equal Status Acts)*

Name:	Fr Paddy Rushe
Address:	Dundalk Institute of Technology Dublin Road Dundalk Co Louth

To: *(name and address of the “complainant”, the person who sent the notification)*

Name:	John Hamill
Address:	

I acknowledge receipt on the *(give date)*

29th January 2020 of your notification claiming that you were treated unlawfully under the Equal Status Acts.

I note that you say the unlawful treatment took place on the 28th January 2020

A. The notification states what you say happened on that date/ those dates.

The following is what happened from my point of view:

Your letter dated 16th December 2019 was sent to Fr Paddy Rushe who no longer provides a contract for service to the Institute. The Pastoral Care (formerly Chaplaincy) Co-ordinator returned after the Christmas break on 14th January 2020 for the start of the second semester and queried, during that week, how to manage this communication for Fr Rushe. The Institute then communicated with you on 3rd February 2020 advising, as outlined in the Workplace Relations Commission Adjudication Hearing of 25/6/19 that you could book a room in the Institute and provided the contact details for which to do so.

B. My/our reasons for doing so were as follows:

As the Institute has stated on a number of previous occasions the Pastoral Care provider's primary role is to provide pastoral support to students. He has limited resources with no administrative support and often does not respond to every communication received. This is not about religious difference but about placing the student needs as the priority for the Service.

C: The following is my normal practice in such a situation:

There is no prohibition in the use of the Institute Quiet Room. Students of all faiths and none have access to and use the facility for prayer, talks and Society Meetings and those with no religious affiliation, for quiet reflection and time apart. As stated on a number of occasions the Institute Quiet Room is a facility for staff and students. Requests for the use of the Quiet Room for personal or group usage must come from students or staff

members and the Institute does not deal with requests from any outside bodies or individuals.

The Institute stated very clearly during the Workplace Relations Commission Adjudication Hearing of 25/6/19, that the Institute has no objection people applying in the normal manner to book a room for use through the normal Institute booking facility. These details have been provided to you

D: In reply to your request for information (Section 6 of Form ES.1):

(You can select answer D.1 or answer D.2, or you can use both:)

D.1: I am replying below to your question(s) number(s): 1-4 *(please fill in numbers)*

1. As previously outlined in the Workplace Relations Commission Adjudication Hearing of 25/6/2019 the Pastoral Care service (formerly Chaplaincy) provides pastoral support to students and facilitates religious and non-religious ceremonies on request by students.
2. The pastoral care service is inclusive of all students irrespective of their religious beliefs or non-religious beliefs
3. You complained to the Workplace Relations Commission on 17/9/19 contending that you were discriminated against on religious grounds. The Workplace Relations Commission found that the facts were not established to infer discrimination and your complaint was not well founded Adjudication Ref ADJ-00016879
4. The Pastoral Care service is inclusive of all students irrespective of their religious beliefs or non-religious beliefs

D.2 I am not replying to any of your questions/ to question(s) number(s)..... *(please strike out/complete as applicable)*

My reasons for not replying are as follows: *(optional)*

(Continue on separate sheet if needed)

E : I wish to make the following additional comments: (optional)

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F. (If you are using a representative, (solicitor, trade or business organisation, or other) please give their contact details below:)

Respondent's Representative

Name:	Gerald O' Driscoll
Address:	Human Resource Manager, Dundalk Institute of Technology, Dublin Road , Dundalk, Co. Louth.
Phone number:	042 9370221
Fax or email:	

Signature of Respondent / Representative:

....18th February, 2020

Date:

.....

INFORMATION ON RECEIVING FORM ES.1 (OR USING FORM ES.2)

Please note that this Form and Information Notes are not legal advice, nor a legal interpretation. They are provided as a practical plain-language aid, to help both parties to have clear information about the issues in dispute. They remain subject to the exact wording of the Acts in every case. ¹

1. What is this form about?

Form ES.1 is the first step in someone making a legal claim that you treated them unlawfully under the Equal Status Acts 2000-2015. You should read it carefully, and consider what it says happened.

Under the Equal Status Acts 2000-2015, it is generally unlawful in Ireland to discriminate when providing goods, services or facilities, on the basis of a person's gender, civil status, family status, sexual orientation, religion, age, disability, race, or membership of the Traveller community and in certain cases where a person is in receipt of a rent supplement.

Some related conduct is also unlawful:

- harassment based on any of these factors, or sexual harassment,
- victimising a person for seeking rights protected by the Equal Status Acts, -
- failing to provide "reasonable accommodation" (explained at point 9) for a person with a disability.

The Acts provide for a number of specific exceptions to these general rules.

Under the Equal Status Acts, a person who is thinking of bringing a complaint ("the **complainant**") *must* first send a written Notification to the person they wish to complain against ("the **respondent**"). The Notification must contain specific information, and must be sent within a specific time limit. Form ES.1 is a Notification. It is designed to help both parties comply with the legal requirements about notification and reply. However, this

^{1 1} The full text of the Equal Status Acts 2000 – 2015 is available at www.workplacerelements.ie, or from irishstatutebook.ie. Some of the relevant definitions from the Act are also set out below, at point 9.

form is not obligatory. A complainant can write their own Notification, provided it complies with the requirements of the Acts.

2. What is the “request for information” (point 6 in form ES.1)?

Under the Equal Status Acts, the complainant is entitled to question you, in their Notification, so as to obtain information which is relevant to their case. They can use point 6 in Form ES.1 to do this.

You are not obliged to reply to these questions. The Acts say that you may do so if you wish. However, if you do not reply, or if you give false or misleading information, the Acts also provide that an Adjudication Officer may, if appropriate, take account of this when they are deciding your case.

If you wish to reply, Form ES.2 is designed to help in giving both parties clear information on why you say you did not act unlawfully.

3. Do I have to use Form ES.2 to reply?

No. There is no obligation to use this particular form. Form ES.2 is designed to facilitate a respondent who wishes to reply to notification, but you can write your own reply if you prefer.

4. What do I do about sending the reply?

Send it direct to the complainant or their representative (that is, the person who sent you the notification.) Please do not send this form to the WRC.

Keep a copy of the reply you send. You should also send it by registered post, or get a **certificate of posting** from the Post Office.

5. Is there any time limit for sending the notification?

Yes. This is important. The Equal Status Acts provide that the complainant must send the Notification to you within two months of the incident they are

complaining about (or within two months of the last such incident, if there is more than one). If they do not do this in time, any complaint they make afterwards may not be valid.

In some circumstances, the Equal Status Acts provide for the time limit for notification can be extended to a maximum of four months from the incident. The complainant must apply to an Adjudication Officer of the WRC to extend time, and satisfy them that there is reasonable cause to do so.

In very limited circumstances only, the Equal Status Acts allow an Adjudication Officer in the WRC to dispense with some or all of the conditions for notification, (for example, to accept a complaint even though notification was not given within the time limits allowed). However, the Acts state that this can only be done:

- *exceptionally*
- *where the Director General is satisfied that it is fair and reasonable in the particular circumstances*
- *having regard to all the relevant circumstances, including:*
 - *the extent to which the respondent is or is likely to be aware of the circumstances in which the prohibited conduct occurred*
 - *and the extent of any risk of prejudice to the respondent's ability to deal adequately with the complaint.*

7. What happens next?

If you do not reply within one month, or if you reply but the complainant is not satisfied with it, he or she can then make a complaint under the Equal Status Acts to the WRC. In that case you will be sent a copy of the complaint and information about the procedures for mediation or investigation.

8. What do the legal terms in forms ES.1 and ES.2 mean?

The Equal Status Acts define the terms below as follows:

“age” : The Equal Status Acts provide that it is not discrimination on the *age* ground to treat a person under 18 years old more, or less, favourably than another person

However, it may still be unlawful to discriminate against a person aged under 18 on any of the *other* protected grounds, e.g. based on race or disability.

“disability” means—

- “(a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,*
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,*
- (c) the malfunction, malformation or disfigurement of a part of a person's body,*
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or*
- (e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour”.*

“direct discrimination”: takes place *“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 protected grounds (gender, disability, race, etc). For example, if a man is treated more or less favourably than a woman is treated in similar circumstances, and it appears that he was treated differently because he was male, there may be direct discrimination based on gender.

“discrimination”: The Equal Status Acts prohibit various forms of discrimination, including *direct discrimination, indirect discrimination, failure to provide “reasonable accommodation”* for a person with a disability (explained below), and *discrimination by association* (where a person is treated less favourably because they are associated with another person under a protected ground, for example because of the other person’s colour, disability, nationality, etc). *Victimisation* is also treated as a type of discrimination.

“housing assistance” means being in receipt of a rent supplement or any payment under the Social Welfare Acts

“family status” means *“being pregnant or having responsibility—*

- (a) *as a parent or as a person in loco parentis in relation to a person who has not attained the age of 18 years, or*
- (b) *as a parent or the resident primary carer in relation to a person of or over that age with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis, and, for the purposes of paragraph (b), a primary carer is a resident primary carer in relation to a person with a disability if the primary carer resides with the person with the disability”,*

“goods” means any articles of movable property.

“ground” means the basis on which discrimination may occur: the “grounds” protected under the Equal Status Acts are ***gender, civil status, family status, sexual orientation, religion, age, disability, race, membership of the Traveller community, or victimisation.***

“harassment” means *“any form of unwanted conduct¹ related to any of the discriminatory grounds ...[which] has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person”,*

“indirect discrimination” may take place where *“an apparently neutral provision puts a person, [as a member of a group covered by a particular protected ground], at a particular disadvantage compared with other persons”* who are not a member of that group. (For example, a height requirement) The rule is apparently neutral: it does not discriminate directly on any of the protected grounds, since it applies irrespective of gender, nationality, age, etc. However, women could argue that the rule, which is apparently neutral as regards gender, actually disadvantages women far more than men and hence discriminates indirectly against women.

Indirect discrimination is subject to a further test: it may still be lawful if it is *“objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”*

¹ “Such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material”.

“civil status” means *“being single, married, separated, divorced, widowed or in a civil partnership”*;

“reasonable accommodation”: The Acts define discrimination as including *“a refusal or failure by the [respondent] to do all that is reasonable to accommodate the needs of a person with a disability by providing [or allowing] special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service”*. However, this is not unlawful if providing the special treatment or facilities *“would give rise to a cost, other than a nominal cost, to the provider of the service in question.”*

“religious belief” includes *“religious background or outlook”*;

“sexual harassment” means *“any form of unwanted verbal, non-verbal or physical conduct² of a sexual nature ...[which] has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person”*,

“service” means *“a service or facility of any nature which is available to the public generally or a section of the public, and, without prejudice to the generality of the foregoing, includes— (a) access to and the use of any place,*

(b) facilities for—

(i) banking, insurance, grants, loans, credit or financing

(ii) entertainment, recreation or refreshment,

(iii) cultural activities, or (iv) transport or travel

(c) a service or facility provided by a club (whether or not it is a club holding a certificate of registration under the Registration of Clubs Acts, 1904 to 1999) which is available to the public generally or a section of the public, whether on payment or without payment, and (d) a professional or trade service, but does not include

² “Such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material”.

pension rights within the meaning of the Employment Equality Act 1998, or a service or facility in relation to which that Act applies”

"sexual orientation" means *“heterosexual, homosexual or bisexual orientation”*;

“Traveller community” means *“the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland”*,

“victimisation” means that a person who —

- “(i) has in good faith applied for any determination or redress provided for in the Equal Status Acts,*
- (ii) has attended as a witness before the IHREC, an Adjudication Officer or a court in connection with any inquiry or proceedings under the Acts,*
- (iii) given evidence in any criminal or other proceedings under the Acts*
- (iv) has opposed by lawful means an act which is unlawful under the Acts, or*
- (v) has given notice of an intention to take” any of the above actions”*,

is treated less favourably on that account, than a person who has not done so is treated, has been treated or would be treated in otherwise similar circumstances.