



SUBMISSION TO ADJUDICATION OFFICER

PARTIES: **Dundalk Institute of Technology**

-V-

Mr John Hamill

REF: **ADJ-00027156**

Equal Status Act, 2000

DATE: **05 May 2021**

VENUE: **Remote**

COMPANY REPRESENTATIVE: **Peter Flood (Ibec)**

Adjudicator

The Complainant is alleging that he was discriminated against by Dundalk Institute of Technology on the religion ground. (Copy of complaint form in appendix 1)

This is rejected by the Institute.

No proper complaint has been referred under the Act against the Institute.

Without prejudice to this argument the Institute did not directly discriminate against the Complainant on the religion ground under the Act when he was offered the opportunity to book a room for a meeting that would incur a cost.

Background

On September 17, 2018, the Complainant referred a complaint against the Institute alleging that he was discriminated against on the ground of being a member of a minority religion when he was excluded from the Chaplaincy Quiet Room. He sought to use the room for discussion with members of his religious group. He claimed he had "*approximately three members*" in this group.

That complaint was investigated by an Adjudication Officer. A decision issued on December 12, 2019, and the complaint was rejected. (Copy of decision in appendix 2)

A few days later, on December 16, 2019, the Complainant wrote to the then Chaplain at the Institute, Fr Rushe, requesting access to the Chaplaincy Quiet Room to promote his non-religious belief. (Copy of letter in appendix 3) He did not state that he had any members in this group.

In this letter he refers to the Adjudicator decision in relation to access to the Quiet Room. At that hearing the Claimant had argued that he was of a non-mainstream religious belief. In this letter he changed his position to state he is an atheist.

The Adjudicator concluded that no discrimination against the Complainant occurred on the basis he was not of the Catholic faith.

At the Adjudicator investigation the Institute stated that

"The institute will not facilitate religious and non-religious bodies attempting to use its facilities in the recruitment of students and staff."

It is the policy of the Institute that requests for religious and non-religious services must come from student or staff bodies.

Institute staff and student groups engage with a number of external organisations both on and off campus.

If student engagement with an external organisation stems from their participation in a club or society, they liaise with the Sports or Societies Officer if organising an event on campus. If engagement is part of their academic programme, they liaise with their lecturer.

If a staff member wishes to engage a guest speaker, organise a meeting for an external working group for which they participate or organise an event on campus they liaise with room bookings and take responsibility for the management of the event.

In the letter of December 16, 2019 the Claimant also states that

“It is indeed true that my intention is to use a Pastafarian Service in your Quiet Room as part of efforts to recruit students and staff.”

He also alleges in the letter that the Institute is willing to facilitate religious bodies to use its facilities to recruit students giving an example of promotion of Islam to students. However, he provides no evidence to support this statement.

In the letter he alleges that the Institute excludes events proposed by those of non-religious groups. This is not correct and again he provides no evidence to support this statement.

He refers specifically to 2 meetings attended by external people as examples of discrimination on grounds of religious belief where rooms at no charge were provided.

The first was the visit of Archbishop Eamonn Martin in December 2013 and the second the visit of Addullah al Andalusi in February 2017.

In both cases the individuals were invited by students/staff of the Institute.

Form ES 1

This Form, completed by the Claimant on January 28, 2020, names Fr Rushe as the respondent. (Copy in appendix 4)

The Form refers to the issues set out in his letter of December 16, 2019, to Fr Rushe.

In addition to what was set out in his letter he states in this Form

“It is not open to Dundalk IT to facilitate events for outside bodies because they are religious, while excluding equivalent events for other outside bodies because they are nonreligious”

Ms Linda Murphy Academic Administration and Student Affairs Manager, with the Institute, wrote to the Claimant on February 3, 2020, informing him that he could book a room through the normal channels. In this letter she refers to the Adjudication Officer decision where it is stated that that he could book a similar room to the Chaplaincy Quiet Room. (Copy of letter in appendix 5)

The Complainant responded to Ms Murphy on February 6, 2020, stating that what he was offered was the hiring of a room at his own cost and that the Roman Catholic Church has not been charged for use of Institute facilities. In this letter he changes his request from use of the Chaplaincy Quiet Room to the use of another room and that a room be provided free of charge. (Copy of letter in appendix 6)

Form ES 2

Mr Gerald O’Driscoll, Employee Relations Manager with the Institute, completed this form on behalf of the named Respondent i.e. Fr Rushe on February 18, 2020. (Copy of Form in appendix 7)

In the Form Mr O’Driscoll states that use of the Institute Quiet Room is available to those with no religious belief but request for use of that facility must come from either students or staff. The Institution has no objection to other people booking an alternative room in the normal manner.

On February 19, 2020, Ms Murphy again wrote to the Claimant giving details on where to require about room bookings in the Institute. (Copy of letter in appendix 8)

Complaint to the WRC

On February 20, 2020, the Claimant registered a complaint under the Equal Status Act naming Dundalk Institute of Technology as the Respondent.

Chaplaincy Service

A chaplaincy service is provided to staff and students. This service is provided on a contract for service basis to the Institute. Every 2 years the contract goes out to tender. In June 2016 the Institute invited tenders for the Chaplaincy Service and the Archdiocese of Armagh obtained the contract. The service was delivered through Fr Rushe.

In 2019 the Institute sought tenders for a Pastoral Care Coordinator. Although the Archdiocese of Armagh tendered for the contract it was unsuccessful on that occasion. A lay chaplain successfully tendered for the contract. Management at the Institute is not aware of the religious belief of this individual.

Thus, in December 2019 when the Complainant wrote to Fr Rushe he was no longer the Chaplain at the Institute.

Preliminary Point – No Proper Complaint Referred Against the Institute

Section 21(2) of the Act sets out the requirements to refer a complaint under the Act

“Before seeking redress under this section the complainant

(a) shall, within 2 months after the prohibited conduct is alleged to have occurred, or, where more than one incident of prohibited conduct is alleged to have occurred, within 2 months of the last such occurrence, notify the respondent in writing of

(i) the nature of the allegation,

(ii) the complainant’s intention, if not satisfied with the respondent’s response to the allegation, to seek redress by referring the case to the Director

The “respondent” is defined in the Act as “a person who is alleged by a complainant in a case under section 21(1) to have engaged in prohibited conduct”

Thus, the Complainant’s allegation is against Fr Rushe as that is the person he has named in the ES 1 Form as the respondent.

The Complainant cannot change the respondent to the Institute if he had not done so prior to the referral of his complaint in line with Section 21 of the Act.

Fr Rushe is a separate legal person/entity to the Institute.

The ES 1 Form is very clear in requiring the Complainant to name the person or organisation who the Complainant thinks discriminated against them or treated them unlawfully.

He chose to name Fr Rushe and thus no proper complaint has been referred against the Institute and therefore it has no case to answer.

Discrimination Allegation

Without prejudice to its argument that no proper claim has been referred against the Institute, no discrimination on the ground alleged occurred in this case.

Section 3 of the Equal Status Act defines discrimination as

“For the purposes of this Act discrimination shall be taken to occur

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)

One of the grounds listed in subsection (2) is religious belief i.e.

“one has a different religious belief from the other, or that one has a religious belief and the other does not”

The Complainant is alleging that he has no religious belief and that he has been treated less favourably than religious groups (specifically referring to the Roman Catholic Church and Islam) in obtaining a room free of charge to facilitate his recruitment of students and staff to his particular belief.

In an employment equality case Hill & Stapleton v The Revenue Commissioners & Department of Finance (C-243/95) the Court of Justice of the EU stated the following on discrimination

“Discrimination can only arise through the application of different rules to comparable situations or the application of the same rule to different situations.”

The definition of discrimination in the Equal Status Act refers to ‘*comparable situations*’ as the basis for alleging less favourable treatment.

Different rules have not been applied to “*comparable situations*” in this case.

The Claimant has stated in the letter of December 16, 2019, to Fr Rushe that the use of the Pastafarian Service was part of his efforts to recruit students and staff. This was repeated in his WRC Complaint Form.

The comparisons he makes are with events organised involving Archbishop Martin and the Institute’s Islamic Society.

In December 2013 Archbishop Martin visited the Institute to *speak about Pope Francis, the Church in Ireland and (of course) Christmas*. (Copy of notice in appendix 9)

The Institute Islamic Society organised a visit by Abdullah al Andalusi in February 2017. (Copy of notice in appendix 10)

However, neither of these events were organised for the purpose of recruiting staff and students to a particular religious belief.

In fact, the Institute does not facilitate any external group to use its facilities for the purpose of recruiting students and staff. This applies to both religious and non-religious groups/individuals. Any

external group must be invited by either students or staff to access its facilities free of charge. Otherwise, the group or individual must reserve a room through the Institute's normal channels which does incur a fee.

There is no evidence to demonstrate that the Complainant was discriminated against on the basis of no religious belief in this case. The Complainant wished to recruit students and staff to his particular belief. The Institute does not facilitate any external body to use its facilities free of charge without being invited by students or staff to do so. No such invitation occurred in this case. Thus, his comparisons with the examples in 2013 and 2017 do not substantiate a complaint of discrimination on the religion ground.

Conclusion

No proper complaint as required by the Act has been referred against the Institute in this case.

Without prejudice to that argument no discrimination on the ground alleged occurred in this case.