



An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission

ADJUDICATION OFFICER DECISION

Adjudication Reference: ADJ-00011817

Parties:

	Complainant	Respondent
Parties	John Hamill	Dublin City Council

Representatives	None	Claire Bruton, BL instructed by Dublin City Council
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Complaint:

Act	Complaint Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00016014-001	27/11/2017

Date of Adjudication Hearing: 22/03/2018

Workplace Relations Commission Adjudication Officer: Kevin Baneham

Procedure:

On the 27th November 2017, the complainant referred a complaint pursuant to the Equal Status Act. The complaint was scheduled for adjudication on the 22nd March 2018. The complainant attended the adjudication. The respondent was represented by Claire Bruton, BL and the Lord Mayor, Brendan Carr attended as a witness.

In accordance with Section 25 of the Equal Status Act, 2000 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, an ordained Minister in the Congregationalist Church of the Flying Spaghetti Monster, claims discrimination on the religious ground. The respondent denies the claim.

Summary of Complainant's Case:

The complainant outlined that he is an ordained Minister in the Congregationalist Church of the Flying Spaghetti Monster. He stated that his congregation was a religious body within the meaning of the Equal Status Act. It was irrelevant that the definition of the religious ground was disparate. He submitted that the respondent favoured major religions to the disadvantage of minority religions. He submitted that one did not have to be religious to be the subject of religious discrimination, i.e. atheists could be discriminated against. He was outside of mainstream religions and discriminated against.

The complainant stated that congregationalism has been around for 400 years and all congregationalist bodies have similar constitutions. Congregationalism arose in opposition to a model of church authority, such as the papacy. They were not clubs and similar in structure to Methodism. The complainant accepted the definition of 'church' advanced by the respondent and submitted that his church adhered to this definition. He said that there were several secular churches in the world, for example the Ahmadi Muslim religion. The complainant relied on human rights law. All members of his church were secularists and met the definition of the religious belief.

The complainant distinguished his case from that of *Mulryan v Road Safety Authority* (ES/2014/38) as the applicant in that case had sought a special privilege based on his belief. The complainant was not seeking a privilege from the respondent. He had to establish that he was a member of a religious body. He had been discriminated against by his exclusion from the Dublin City Interfaith Forum. The complainant said that he had not met or communicated with Mr Mulryan, who was not a member of his church. The complainant said that he would not allow Mr Mulryan join his church and he would be expelled if he was already a member as Mr Mulryan's interest was parody. The complainant outlined that the respondent referred to pastafarian churches that were different to his. There is no global theological idea linking his church to these other churches. His church, for example, did not dress as pirates or do pirate-speak.

The complainant outlined that the respondent had privileged mainstream religions by installing the "Interfaith Charter" banner on the side of the Civic Offices. He submitted that every religious person not included in the Charter could take an Equal Status complaint. The complainant said he was taking this case on behalf of other members of minority religions. He submitted that it was not within the gift of the respondent to determine whether a religion is credible. He stated that his church was not interested in solemnising marriages so they were not listed as part of the civil registration service.

In July 2017 and afterwards, the complainant exchanged correspondence with the respondent about his church's exclusion. He then sent the respondent the ES1 form. The complainant outlined that the Charter included only one third of the religions practiced in Dublin and excluded two thirds. The Charter was discriminatory because it was based on the discriminatory Interfaith Forum.

The complainant accepted that there was a photograph online depicting him wearing a colander on his head. This was part of his church and united his church with other churches. The respondent had not required adherents of other religions to establish their credibility. The complainant submitted that the tenets of his church were

secularist and they did not believe in a literal spaghetti monster in the same way as Christians do not believe in God as a man with a grey beard. His church did not believe what other pastafarian churches believed in. The complainant's church believed that what has been discovered in the natural world was not discovered by science and there must be more than science. Science could say where the universe came from but could not say anything about meaning and values, beyond what is known in science. They relate to spirituality, ethics and morality. His church took inspiration from science and accepted a view of the world based on human rights. They took metaphysical inspiration from human rights, morality and ethics.

The complainant outlined that he objected to being asked to describe his beliefs. Adherents of no other religion was asked to do this. The respondent had not asked about his church or responded to his letters and the ES1 form. The complainant said that he did not know Bobby Henderson (the founder of pastafarianism) and he would not be welcome in his church. The complainant said that the respondent had not behaved acceptably as the interfaith forum was an exclusionary group. The respondent should not have invested public money in this exclusionary group.

Summary of Respondent's Case:

The respondent denies the claim of discrimination and raises several preliminary points. It pointed to a newspaper article in the Irish Times where the Minister for Social Protection had refused to admit pastafarianism to the civil registration list because each member held different beliefs. The respondent was at a loss to establish what the complainant's beliefs were. It submitted that pastafarianism is a philosophy based on parody. It referred to the *Eweida v United Kingdom* [2013] I.R.L.R. 231 and *R (Williamson) v Secretary of State for Education and Employment* [2005] 2 A.C. 246, which held that a degree of cogency was required for a set of beliefs to be a religion. It submitted that pastafarianism was established to mock religion and designed to look like a religion. There is a concept in pastafarianism of heaven as a beer factory and with 'strippers/prostitutes'. Hell was stale beer and 'strippers' with STDs. The respondent referred to documentation from the First Ireland Pastafarian Church regarding an invisible spaghetti monster. Its references to "R'amen" was a parody of Amen and "pastism", a parody of baptism.

The respondent submitted that the documentation evidenced by the complainant showed that the congregation was more like a club, as a religion would not excommunicate members for participating in parody. This congregation was more like a club where one was accepted in, as opposed to a religion, where one would normally ascribe and go through a ceremony. It submitted that the complainant has not put forward any of his beliefs and has just said that he does not do certain things.

In *Cavanaugh v Randy Bartlet* (14-CV-3183), the District Court for the District of Nebraska considered what a religion is and referred to the plaintiff not providing details of his beliefs, just as the complainant had not done here. As held in *Eweida* and *Williamson*, while there is no definition of religion in the European Convention on Human Rights, there must be an element of credibility and cogency of deep and imponderable matters. The complainant has not offered any details to find that his beliefs amount to a religion. It was for the complainant to establish that he holds a

religious belief in order to make the claim. The complainant was not claiming he was an atheist. The respondent outlined that there are basic beliefs, for example across the Catholic churches, for example, there was belief in certain things and ceremonies. The complainant, however, only stated he was different to other strands of pastafarianism. The respondent outlined that pastafarians wore colanders on their heads and referred to photographs depicting the complainant also wearing one.

The respondent submitted that the complainant had sought to bring this case on behalf of a group. It submitted that he had to show discrimination against him. Section 3(2) of the Equal Status Act required discrimination between persons and section 21 requires discrimination against an individual. The respondent submitted that the banner did not refer to any religion and referred to the Dublin Interfaith Forum. The respondent had no responsibility for the Charter, which was written by the Lord Mayor on the basis of human rights principles. The complainant was welcome to sign up to the Charter. The Dublin City Interfaith Forum, however, determined who its members were.

In evidence, the Lord Mayor outlined that in his time in office, he met with religious leaders and on speaking with leaders of Islam, identified the problem of discrimination against Muslims. He approached the Interfaith forum as they were the only body where religions met. He wanted to promulgate the message that religions do not tolerate discrimination and he wrote the Charter and asked religious leaders to sign up to it. He had also drafted Charters to promote supports for people working on low pay and people with disabilities. The Charter in respect of religion was a response to a request to do something about discrimination. It was not about favouring one religion over another. They had been asked to replicate this in Jerusalem and Norway. He outlined that neither he, nor the respondent, had discriminated against anyone. It was open to anyone to sign up to the Charter and they had liaised with many religions. This was an inclusive and tolerant initiative. The Charter encourages dialogue with people of all religions, including the complainant.

In closing comments, the respondent submitted that there was no semblance of discrimination. This was a fair, reasonable and tolerant banner that did not prefer one religion over another. The respondent was entitled to look at what pastafarianism is and the complainant accepted he wears a colander. This was a parody of religious garb. This is a secular, philosophical group and philosophies are not covered by the Equal Status Act. The *Cavanaugh* case looked at the origins of pastafarianism and how it was designed from a secular basis. It is a secular philosophy and not a religion. It further submitted that the complainant did not have locus standi to bring the claim. The banner was not exclusionary and makes no reference to any religion. The complainant has accepted that the forum was entitled to exclude certain religions but criticises the respondent. He has accepted that a flying spaghetti monster is part of his religion. This and the colander are parodies.

Findings and Conclusions:

The complainant outlines that he is an ordained Minister of a Congregationalist pastafarian church entitled the Congregationalist Church of the Flying Spaghetti Monster. He exhibits the Articles of the church, which specifically prohibit humour, parody and satire. The document contains the covenant "We, this Congregationalist Church of the Flying Spaghetti Monster, have given ourselves to one another, according to His will, do promise and covenant and dedicate ourselves in the presence of His

Noodleness to walk together in love and in all His laws and ordinances, through the power of the Flying Spaghetti Monster. R'amen."

In July 2017, the respondent installed a large banner entitled "Dublin City Interfaith Charter" on the prominent façade of the Civic Offices, detailing eight commitments made by representatives of faiths, communities and organisations, members of the Dublin City Interfaith Forum. The respondent also publicised the initiative online and in other resources. The Charter was composed by the then Lord Mayor.

The complainant had previously sought to join the Dublin City Interfaith Forum, but this body declined the application made on behalf of the Congregationalist Church of the Flying Spaghetti Monster.

The complainant asserts that the respondent's promulgation of the Charter on behalf of the Dublin City Interfaith Forum discriminated against him, his church and minority religions. The respondent asserts that the complainant lacks locus standi and he cannot assert that he was discriminated against for his religious belief as his belief is philosophical, rather than religious.

The relevant parts of the Equal Status Act provide:

"[section 3(1)]

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') which —

(i) exists,

(ii) existed but no longer exists,

(iii) may exist in the future, or

(iv) is imputed to the person concerned,

[section 3(2)]

(2) As between any two persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are:

(e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (the "religion ground")"

The religious ground is a disparate discriminatory ground (as opposed to a binary ground such as gender); there are multiple forms of religious beliefs and none. It prohibits discrimination on grounds of religious belief and covers those without religious belief. The complainant asserts that he has a religious belief and this is a minority religion and excluded by the Interfaith Forum.

In assessing such a complaint, the role of the adjudication officer is to assess whether there has been less favourable treatment on the grounds of the claimant's religious belief or lack of such belief. In carrying out the assessment, the adjudication officer must be satisfied that the claimant has a religious belief (or no religious belief) in order to consider the question of less favourable treatment. This is not a theological assessment of the religious belief. The stated belief must, however, constitute religious belief.

In *R (Williamson) v Secretary of State for Education and Employment*, the House of Lords held, at paragraph 23:

"Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of 'manifestation' arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention"

In *Mulryan v RSA*, the Equality Officer held:

"The main limitation for the purposes of Article 9 [of the European Convention] is that the religion must have a clear structure and belief system. The criteria for determining what is a 'philosophical belief' are that it must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour, attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not in conflict with the fundamental rights of others."

Similar to the *Mulryan* case, the Dutch Council of State considered pastafarianism in the context of an application in the district of Nijmegen for a person to wear a colander for their driving licence photograph (case no. 201707148/1, 15th August 2018). The Court held:

"in the current situation Pastafarianism cannot be regarded as a religion within the meaning of Article 9 ECHR and Article 6 of the Constitution. The Administrative Jurisdiction division recognises the considerable significance of being able to freely express satirical criticism of religious dogmas, institutions and religions. Such criticism itself however, even if it also relates to religion, cannot yet be considered as a religion itself, which is covered by the fundamental rights as mentioned above. In accordance with the ruling of the district court of Oost-Brabant of 15 February 2017, ECLI:NL:RBOR:2017:762, the Administrative Jurisdiction Division considers that the satirical element in Pastafarianism - not only the form but also the content of the vision being communicated - not only constitutes an additional aspect, but is so dominant that the preconditions formulated in the case law of the ECHR are not met, meaning that it cannot be considered as a religion or belief. In particular, there is a lack of the required seriousness and cohesion."

As opened by the respondent, the Nebraska District Court held in *Cavanaugh v Bartlet*:

*"the Court can start with these indicia: First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs. Love v. Reed, 216 F.3d 682, 687 (8th Cir. 2000) (quoting Africa v. Pennsylvania, 662 F.2d 1025, 1032 (3rd Cir.1981)); accord Meyers, 95 F.3d at 1483. Such deep and imponderable matters may include existential matters, such as humankind's sense of being; teleological matters, such as humankind's purpose in life; and cosmological matters, such as humankind's place in the universe. Meyers, 95 F.3d at 1483; accord Quaintance, 471 F.Supp.2d at 1156; see also Zielinski, 2013 WL 2636104, at *13 (citing Patrick v. LeFevre, 745 F.2d 153, 158 (2d Cir.1984)). But that is not a rigid test for defining a religion, and flexibility and careful consideration of each belief system are needed. Love, 216 F.3d at 687. This case is difficult because FSMism, as a parody, is designed to look very much like a religion. Candidly, propositions from existing caselaw are not particularly well-suited for such a situation, because they developed to address more ad hoc creeds, not a comprehensive but plainly satirical doctrine. Nonetheless, it is evident to the Court that FSMism is not a belief system addressing deep and imponderable matters: it is, as explained above, a satirical rejoinder to a certain strain of religious argument. Nor, however, does FSMism advocate for humanism or atheism, which the Court acknowledges have been found to be religious for similar purposes."*

I accept the complainant's evidence that he is not associated with certain uncouth statements attributed to pastafarianism or FSM elsewhere. I note that the complainant emphasised that his church did not engage in humour, satire or parody. He said that his church did not use pirate-speak or wear pirate garb. He, however, acknowledged wearing a colander at home and that the flying spaghetti monster was part of his belief system. While the complainant sought to distinguish his beliefs from other pastafarian churches, ultimately the core belief presented by the complainant was in a flying monster bearing some resemblance to a foodstuff consisting of semolina and durum wheat flour. The covenant refers to "His Noodleness ... through the power of the Flying Spaghetti Monster." Despite the protestation to the contrary, this is parody and satire. The complainant has not demonstrated how the belief system addresses fundamental and ultimate questions related to deep and imponderable matters. It was not shown how it reached any level of cogency, seriousness, cohesion or importance. In fact, very little was set out of any belief related to any of the fundamental problems normally considered by majority or minority religions. The complainant is perfectly entitled to assert his adherence to "His Noodleness" but this does not mean that this espousal of pastafarianism constitutes religious belief. It follows that the complaint of discrimination on the religious ground is not well founded.

For completeness, I have not acceded to the respondent's submission that this report should be anonymised.

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.

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In reaching my decision, I have taken into account all the submissions, written and oral, made by the parties. In accordance with section 25(4) of the Equal Status Acts, I conclude this investigation and issue the following decision: the complainant has failed to establish that he has a religious belief or no religious belief within the ambit of section 3(2) of the Act. The complaint is, therefore, not well founded as the complainant cannot show adverse treatment required in section 3.

Dated:

Workplace Relations Commission Adjudication Officer: Kevin Baneham

Key Words: 31/10/2018

Equal Status Act / religious ground

Pastafarianism