



An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission

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ADJUDICATION OFFICER DECISION

Adjudication Reference: ADJ-00027156

Parties:

	Complainant	Respondent
Parties	John Hamill	Dundalk Institute Of Technology

	Complainant	Respondent
Anonymised Parties		

Representatives	Self-Represented	Mr. Peter Flood, IBEC
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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-00034750-001	20/02/2020

Date of Adjudication Hearing: 03/02/2022

Workplace Relations Commission Adjudication Officer: Brian Dolan

Procedure:

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 referred the present complaint to the Commission on 20th February 2020. Herein, he alleged that he had been discriminated against on the grounds of "religion" with the most recent date of alleged discrimination being 3rd February 2020. By subsequent submission, the Complainant alleged that the Respondent discriminated against him by failing to arrange a non-religious service. In defending this allegation, the Respondent submitted that the Complainant, and by extension his

group, were treated in the same manner as every other user of the Respondent's services.

At the outset of the hearing the Respondent raised a preliminary issue as to my jurisdiction to hear the complaint as referred. This objection will be considered prior to the substantive complaint.

Preliminary Issue:

At the outset of the hearing, the Respondent submitted that the Complainant had not complied with the requirements imposed by Section 21(2) of the Act. In particular, the Respondent submitted that the form used to notify the Respondent of the allegation was addressed to the chaplain engaged by the Respondent. In these circumstances, it was submitted that the notification of the alleged dispute was not issued to the Respondent impleaded by the complaint form. In such circumstances, the Complainant did not meet the strict notification requirements imposed by virtue of Section 21(2) and consequent, the Complainant did not enjoy jurisdiction under the Act

By response, the Complainant submitted that he had fully complied with the requirements of Section 21(2). In particular, he submitted that he addressed form ES1 to the chaplain of the Respondent organisation as that was the person that represented the organisation. He submitted that the form was in fact addressed to the Respondent organisation, the first line of the same referred to the chaplain as this was the person within the organisation that the form should have been passed to. Finally, the Complainant submitted that the Respondent responded to the form utilising form ES2, attended and fully defended the present complaint. In such circumstances, he submitted that the Respondent could demonstrate no prejudice on foot of the issue raised.

Section 21(2) of the Act (as amended) provides that,

"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 after 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 under this Act".

In the present case, the notification stipulated above was addressed to the chaplain, with the address of the impleaded Respondent set out thereafter. In these circumstances, the Respondent has submitted that a separate legal entity received the notification and the requirements of Section 21(2) were not met.

It should be noted that Section 41(1) of the Act provides that,

"Anything done by a person in the course of his or her employment shall, in any proceedings brought under this Act, be treated for the purposes of this Act as done also by that person's employer, whether or not it was done with the employer's knowledge or approval."

Having regard to the same, it is apparent that the instant cause of action does not accrue against the

chaplain but his employer, the impleaded Respondent. In such circumstances notification issued to the chaplain is, for these purposes, notification to the Respondent.

Notwithstanding the above, I note that the notification was in fact addressed to the Respondent, with the chaplain being listed as the person within the organisation that should receive the same. Such a practice is not uncommon, in an employment context correspondence may issued to a HR representative on behalf of an organisation. In this regard, I accept the Complainant's submission that the notification was addressed to the Respondent and sent to the chaplain as a practical measure.

In light of the foregoing points, and in the absence of any other issues arising as to notification, I find that the requirements of Section 21(2) have been met and consequently accept jurisdiction to hear the substantive complaint.

Summary of Complainant's Case:

On 16th December 2019, the Complainant issued correspondence to the Respondent, requesting that a non-religious service should be arranged according to his beliefs. By response, the Respondent declined to facilitate this non-religious service. Following this refusal, the Complainant issued notification via Form ES1, alleging that the Respondent had discriminated against him in refusing to allow him access to their facilities.

On 3rd January 2020, the Respondent replied to the Complainant. Herein, they stated that the Complainant would be entitled to access the Respondent's facilities in the similar manner to a commercial organisation. Such an arrangement would involve a fee for renting out certain rooms on the campus, a charge the Complainant believed was not applied to certain religious dominations.

On 6th February 2020, the Complainant correspondence with the Respondent. Herein, he stated that the chaplain of the Respondent had organised numerous Roman Catholic services in the recent past. In such circumstances, he submitted that *"it does not seem like an especially onerous request to seek just one non-religious service that would include content opposed to those Roman Catholic teachings"*.

On 18th February 2019, the Respondent issued a rely to the Complainant's notification via means of Form ES2. Herein, they stated that the matter had already been adjudicated by the Workplace Relations Commission under a decision bearing reference ADJ-00016879. Notwithstanding the same, no objective reason was given for the less favourable treatment imposed on the Complainant. Again on 19th February 2019, the Respondent confirmed that the Complainant was welcome to book a room on the campus on payment of the relative fee.

By submission the Complainant stated that the *"Performance Compact"* between the Respondent and the Higher Education Authority refers to *"its distinctive mission and commitment to the educational, economic, social and cultural development of the North"*. The Complainant also referred to the job description of the chaplain which included *"connecting with local religious and non-religious communities"*. The Complainant compared the treatment he received, as a non-religious person, to the various arrangements made for a visit by an Archbishop to the Respondent premises. In summary, the Complaint submitted that when he sought to engage with the Respondent, he was

met with a prohibitive cost barrier and no assistance on an organisational level.

Regarding the point raised by the Respondent, the Complainant submitted that the criterion imposed was not universally applied. In this respect, the Complainant opened correspondence from a student requesting that his group be invited onto campus to deliver a presentation.

Summary of Respondent's Case:

By response, the Respondent denied that the Complainant had been treated less favourably as alleged. They submitted that the Respondent's policy is that it does not facilitate any external body to use its facilities free of charge without being invited by students or staff to do so. In the present case, no student requested the Complainant's attendance and consequently a fee attached to the booking of the rooms for his prospective discussion. Regarding the other matter referred to by the Complainant, these parties visited the campus on behalf of a significant number of students.

Having regard to the foregoing, the Respondent submitted that the Complainant was not treated differently to any other person in respect of his access to the Respondent's facilities.

Findings and Conclusions:

In the instant case, the Complainant has alleged that he was not facilitated in the use of the Respondent's facilities and that a cost barrier was placed in respect of this use of the same. He has submitted that the Respondent has treated him differently to others on the basis of his religious views or, more accurately, his lack thereof.

In this regard, Section 5(1) of the Act provides that,

"A person shall not discriminate in disposing of goods to the public generally or a section of the public or in providing a service, whether the disposal or provision is for consideration or otherwise and whether the service provided can be availed of only by a section of the public."

Section 2 of the Act defines "service" as follows,

"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".

Section 3(1)(a) of the Act provides that 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)"

Section 3(2)(e) specifies the following as such a ground,

"...where one has a different religious belief from the other, or that one has a religious belief and the other has not."

Section 38A of the Act places the burden of proof on the Complainant to establish, in the first

instance, facts from which the discrimination alleged may be inferred. It is only where such a prima facie case has been established that the onus shifts to the Respondent to rebut the inference of discrimination.

In the case of *Olumide Smith -v- The Office of the Ombudsman [2020] IEHC 51*, Simmons J. stated that,

“The effect of these legislative provisions is that a complainant is required to discharge a reduced burden of proof, and once this is done, the burden of proof is reversed. As explained by Advocate General Mengozzi in Case C415/10, Meister ECLI:EU:C:2012:8, [22], the effect of the burden of proof provisions under the Racial Equality Directive (and other related Directives) is that a measure of balance is maintained between the parties, enabling the complainant to claim his or her right to equal treatment but preventing proceedings from being brought against a respondent solely on the basis of the complainant’s assertions.”

In the present case, the Respondent has submitted that the Complainant was not, in any way, barred from using their premises but that he would have to discharge a set fee for the same. They have submitted that this is standard practice for external bodies that wish to use the premises, in most instances these are commercial bodies seeking an external meeting space. They have submitted that this fee may be waived in circumstances whereby a student, or student body, invites a party to the campus, presumably for the purpose of delivering an instructive discussion. They submit that this is what occurred in the present circumstance, the Complainant was welcome to use the services, however as he was a third party he would be required to discharge a fee for the use of the same.

By response, the Complainant stated that this rule is not expressly enumerated anywhere in the Respondent’s guidelines. He has submitted that the chaplaincy service has a remit to connect with both religious and non-religious groups. In failing to arrange his discussion, the Complainant has submitted that the chaplain, and by extension the Respondent, is failing in this duty.

In this regard, the Complainant’s *locus standi* should be examined in relation to this element of the complaint. It is common case that the Complainant is not a student or staff member of the Respondent organisation. Having regard to the evidence tendered, it appears that the only connection he has to the Respondent is that he resides within the same regional area. As such, the Complainant does not have standing to make the complaint that the Respondent is failing to provide non-religious services for its students or staff members. In this regard, the Respondent does not have a duty or remit to provide access to religious and non-religious services for the entire population of the north-east region.

Notwithstanding the foregoing, the Respondent does provide a service to the Complainant as regards access to its facilities for the purposes of arranging prospective meetings. Having regard to the evidence tendered, I find that the Respondent’s explanation regarding the booking policy to be reasonable. The Respondent is a third level institute charged with educating a cohort of students. Naturally, this is not the sole function of the Respondent, such organisations engage in research and have some community functions. What the Respondent is not, however, is a public forum whereby anyone without any connection to the organisation may advocate their particular set of views or opinions. As such, the rule that a person or group unconnected with the institute must discharge a fee to utilise their services is reasonable in the circumstances. The Complainant has raised issue with

the fact that this criterion is not expressly set out anywhere within the institute's procedures. Whilst this is unfortunate, the Respondent's failure in this regard does not negate the fact that it is a reasonable position to take regarding the access of third parties to their services.

In the present case, the Respondent has submitted that the Complainant was not invited to the Respondent by a member of staff, student or student body. In opposing this the Complainant opened correspondence from a student requesting that the group to which he belongs be asked on campus to deliver a presentation. On foot of the same, the Complainant has alleged that the Respondent's position in respect of the same is not universally applied and was imposed as a barrier to prevent him from attending. Having reviewed the correspondence in question, it is apparent that the student requested that the Complainant's group, along with groups with Pagan and Druidic beliefs be permitted to attend the campus. It is apparent that no invitation was extended on foot of the same. The first point to note is that this communication occurred in 2018, a good deal of time prior to the events leading to this complaint. Secondly, it is unreasonable to assume that every request for attendance automatically leads to an invitation to do so. In this particular instance, the Complainant's group was listed with another of other bodies. In this regard the Respondent is within its rights to review the same and decline to invite based on the anticipated requirements of the student and staff populations. Regarding the present factual matrix, it would also be unreasonable to expect the Respondent to examine every request made by the entire student body, going back a number of years, prior to issuing a decision.

Having regard to the totality of the foregoing points, I find that the Complainant has not established a prima facie case from which a inference of discrimination may be inferred. As a consequence of the same, I find that the Respondent did not engage in discriminatory conduct and the complaint is duly not well-founded.

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.

I find that the Complainant has not established a prima facie case from which a inference of discrimination may be inferred. As a consequence of the same, I find that the Respondent did not engage in discriminatory conduct and the complaint is duly not well-founded.

Dated: 7th November 2022

Workplace Relations Commission Adjudication Officer: Brian Dolan

Key Words:

Access to Services, Non-Religious