



An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission

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ADJUDICATION OFFICER DECISION

Adjudication Reference: ADJ-00033467

Parties:

	Complainant	Respondent
Parties	John Hamill	Hazel Chu

	Complainant	Respondent
Anonymised Parties		

Representatives	In person	Ms Claire Bruton BL instructed by Edel Bradley, Law Department, Dublin City Council.
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Complaint(s):

Act	Complaint/Dispute Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00044223-001	19/05/2021

Date of Adjudication Hearing: 07/03/2023

Workplace Relations Commission Adjudication Officer: Jim 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:

This complaint, made under the Equal Status Act, 2000 was received by the Workplace Relations Commission on 19th May 2021.

The hearing of the complaint was held on 7th March 2023.

Summary of Complainant's Case:

Introduction

1. This case relates to direct discrimination on the religion ground by Ms Hazel Chu. The Complainant was treated less favourably than others because others have a religious belief whereas he does not. Specifically, Ms Chu allocated public resources associated with the Lord Mayor's Garden to religious people who were members of faith groups, while denying similar public resources to the Complainant because he is not religious and is a member of a non-faith group.
2. The Dublin City Inter-Non-Faith Forum (DCINF Forum) is a body comprised of a number of non-faith groups with members in Dublin. The DCINF Forum supports the human right to the freedom of religion, including the formation of public policy that is neutral with respect to those of all faiths and none.
3. Ms Chu allocated public resources to faith-based groups in late 2020, at which time the Complainant requested that similar resources should be allocated to him and his colleagues in the DCINF Forum. For several months, Ms Chu continued to treat the Complainant less favourably by refusing to allocate public resources to him in a similar way, despite many written requests. In mid-2021 after Ms Chu finally confirmed that she would not allocate any public resources in the form of the Lord Mayor's Garden to the Complainant and his colleagues at the DCINF Forum, she proceeded to allocate these resources again to additional religious groups.
4. If the Complainant had religious beliefs and been a member of the faith groups supported by Ms Chu, he could have benefited from the allocation of public resources by Ms Chu. The reason why the Complainant was treated less favourably by being denied these public resources, was that he has no religious belief and was a member of a non-faith group.

Narrative

- On 10th December 2020, the Lord Mayor of Dublin engaged in a Twitter discussion with someone called (name redacted). The Complainant does not know (name redacted) and merely observed this interaction on the public Twitter platform. The context was that as Lord Mayor, Ms Chu had arranged for a series of different religious groups to hold services in the Lord Mayor's Garden over a period of seven days. (Name redacted) asked that the Lord Mayor might "*invite people of no faith too*".
- In response, the Lord Mayor decided not to invite anyone of no faith to her series of events but merely that she would refer to "*all faith and none*". A policy of allocating public resources to those of religious faith while merely paying lip service to those of no faith, represents less favourable treatment of those with no religious belief.
- The 10th December 2020 letter, to which the Complainant was a signatory, referred to the seven days of "Rewind 2020" events that had been advertised by the Lord Mayor. These events in the Mansion House were designed to facilitate religious groups in marking the celebrations that they had missed during the pandemic restrictions. Along with his colleagues in the DCINF Forum, the Complainant indicated that non-religious groups had also missed out on their own gatherings for the

same reasons, and he requested that similar events could be arranged at the Mansion House for non-religious groups. In order to help facilitate this, he provided a copy of the DCINF Forum Charter to indicate the type of topics that the proposed events might mention. Unfortunately, this correspondence was ignored.

- On 29th December 2020, the Complainant was a signatory on a subsequent letter from the DCINF Forum to the Lord Mayor of Dublin. This correspondence announced that a new non-religious organisation had become a member of the group. The letter also proposed that the DCINF Forum would include a donation to a charity to be nominated by the Lord Mayor, as part of the events proposed. In addition, the Complainant indicated that he would still like to arrange some events in the New Year, even if it was not possible to arrange events before Christmas. Unfortunately, this correspondence was ignored.
- On 15th January 2021, now 5 weeks after the first letter had been delivered by registered post with still no response, the Complainant sent an ES1 Form and a blank ES2 Form to the Lord Mayor of Dublin. The date of the discrimination described within that ES1 Form was 31st December 2020. Within this correspondence the Complainant described how non-faith groups were being treated less favourably than faith-based groups.
- Specifically, the Office of the Lord Mayor responded immediately to requests from the Dublin City Interfaith Forum (DCIF) for "Rewind 2020" events with religious groups, while the same Office ignored similar requests for similar events with non-religious groups such as the DCINF Forum. For example, the first time that the DCIF wrote an email to the Office of the Lord Mayor about arranging "Rewind 2020" religious events, they received a response describing that as "a lovely *idea*" within 30 minutes. In contrast, the DCINF Forum had been ignored for more than 30 days.
- The ES1 Form provided by the Complainant asked whether Ms Chu would treat the application from the DCINF Forum in the same way that she treated the application from the DCIF. That is, if a proposed event with the DCIF would be a "lovely *idea*" then why would an event with the DCINF Forum be any less "lovely"?
- The email exchange that arranged the seven days of "Rewind 2020" events, between the DCIF and the Office of the Lord Mayor, is included in Appendix 3. Within the email response from the Office of the Lord Mayor to the DCIF, it is important to note that from the moment this event was proposed the pandemic restrictions were already an issue. That is, in arranging the "Rewind 2020" events the Office of the Lord Mayor at all times made provisional bookings that were subject to change depending on the evolving pandemic restrictions.
- On 15th February 2021, the Lord Mayor responded using an ES2 Form. The only explanation offered for the discriminatory behaviour was "the extremely *busy run up to the Christmas period*". Of course, this does not explain why the same Lord Mayor's Office was able to respond promptly to faith bodies during the same extremely busy period. The ES2 Form also referring to the priorities of the Lord Mayor as including "*integration*". In fact, the DCIF represents less than one third of the religious groups registered in the greater Dublin area. In addition, the most recent Census shows that Dublin is the least religious county in the entire country, with more than 18% of the population reporting that they adhere no religion at all. Facilitating a small number of religious denominations while excluding those of other faiths and those of no faith at all, is not promoting "*integration*" but rather advancing religious discrimination.

For example, members of the Alliance of Former Muslims in Ireland (who are part of the DCINF Forum) have experienced all of the same racism and discrimination as many believing Muslims have experienced. In addition to this abhorrent treatment, they have also experienced oppression and persecution by believing Muslims in Ireland, based on the Islamic teachings against apostasy. This includes teachings that have been promoted by some of the Muslim groups that are included within the Dublin City Interfaith Forum.

The policy of Ms Chu was to support those who preach against apostasy within the Muslim community, leading to the abuse of former Muslims in Ireland, up to and including the threat of

physical violence against many ex-Muslims within the Direct Provision system. At the same time, the policy of Ms Chu was to exclude the Alliance of Former Muslims in Ireland from events within public spaces, compounding the faith-based ostracisation that their members experience in Dublin on a daily basis.

- On 16th February 2021, the Complainant was a signatory on a subsequent letter from the DCINF Forum to the Lord Mayor of Dublin. That correspondence explained the problems with the ES2 Form. For example, whereas the position of Ms Chu was that "*Events at the Mansion House are set up at the discretion and agreement of the incumbent Lord Mayor*", the letter explained that this discretion is not absolute. That is, it is not within the discretion of the Lord Mayor to enforce policies such as, "*no black people allowed in the Mansion House*" or else "*no Jews allowed in the Mansion House*". Similarly, it is not within the discretion of the Lord Mayor to treat those of no faith less favourably than the religious. This letter also suggested a new date for our proposed event during March.
- On 17th February 2021, the Office of the Lord Mayor sent a letter referring the correspondence to the Dublin City Council Law Office, and on 4th March 2021 a letter was received from that Law Office. That correspondence responded on the basis that the Complainant had "*made a complaint*" about the DCIF event that took place in December of 2020. In fact, the Complainant was a signatory to a letter that stated, "*We the undersigned would like to congratulate you on arranging the Rewind 2020 gatherings... This is indeed a worthy initiative that reflects well on your office*".
- On 8th March 2021 the Complainant was a signatory on a subsequent letter from the DCINF Forum to the Lord Mayor of Dublin, which was also copied to the Dublin City Council Law Office. Whereas the letter from the Law Office stated that the Complainant had "*made a complaint*" about a DCIF event, he pointed out that he had explicitly congratulated the Lord Mayor on the "*Rewind 2020*" events for members of the DCIF. The Complainant's request had been merely that the Lord Mayor might make public resources available to those of all faiths and none, rather than restricting those resources exclusively to citizens who hold religious beliefs.

Moreover, the Complainant's correspondence again compared the treatment of his non-faith group to the treatment of an equivalent faith group. On 26th November 2020, the Office of the Lord Mayor wrote to the DCIF proposing an event on 8th December 2020, while qualifying this suggestion by stating that, "*we will have to await the announcement tomorrow regarding restrictions and any change in the number of people that can gather outside*". Of course, it is perfectly possible to make provisional arrangements on the understanding that they may need to change according to any subsequent government announcement. The Complainant therefore suggested a new date for the proposed event after the Level 5 restriction period ended. In doing so, the Complainant explained that he understood that this plan would be subject to any new government announcements with respect to further restrictions on the number of people who may gather outside.

The Complainant further explained that the Lord Mayor's Office had a longstanding track record in terms of treating the non-religious less favourably. As just a few examples:

- In 2016, the Lord Mayor's Office supported an event to promote the DCIF Charter. There was no equivalent support for any non-faith groups.
- In 2017, the Lord Mayor's Office supported a conference arranged by the DCIF to promote the contribution of religious faith to civil society. There was no equivalent support for any non-faith groups.
- In 2018, the Lord Mayor's Office supported a "Five Marks" event arranged by the DCIF to promote understanding of interfaith ideas. There was no equivalent support for any non-faith groups.
- In 2019, the Lord Mayor's Office continued supporting, "MEASC - A Festival of Culture, Faith and Community", which is an annual function arranged by the DCIF. There was no equivalent support

for any non-faith groups.

Many other similar examples could be included, such as the policy meetings held by Ms Chu with church leaders, whereas no equivalent meetings were held with those opposed to faith-based policy formation. In addition, WRC Adjudication Reference ADJ-00016391 refers to a complaint previously made by Atheist Ireland against the Lord Mayor's Office. The context of that case related to a DCIF banner that was manufactured and erected at public expense and supported by the Lord Mayor's Office. Atheist Ireland had sought support for an equivalent banner that would refer to non-faith perspectives and the Lord Mayor's Office refused to facilitate that request. The complaint was not upheld because a prolonged series of correspondence on the issues resulted in the complaint running out of time.

During that case, it was argued by the Lord Mayor's Office that Atheist Ireland was treated less favourably than the DCIF because Atheist Ireland is just one group and not a forum of different organisations. It was suggested that if a forum of non-faith groups were to make a similar application to the DCIF then that non-faith forum would be treated equally.

Moreover, it was also argued that discrimination cannot arise when all religious denominations are treated equally. While this position is consistent with the behaviour of the Lord Mayor's Office over many years, it neglects the fact that treating different faiths equally can still involve discriminating against those with no faith.

On 23rd March 2021, the Lord Mayor wrote to the Complainant and the other members of the DCINF Forum, indicating that his request would not be facilitated due to the pandemic restrictions.

On 26th April 2021, the Complainant was a signatory on a subsequent letter from the DCINF Forum to the Lord Mayor of Dublin, which referred to the comments of the Taoiseach about lifting the pandemic restrictions during the summer. That letter proposed a non-faith event in the Lord Mayor's Garden on 1st June 2021.

On 10th May 2021, Ms Chu wrote to the Complainant indicating that she would not be facilitating his request and offering no explanatory reason. This correspondence stated that she was "*not considering any requests from external parties at present for use of the Lord Mayor's Garden*", despite the fact that the ES2 Form had stated that "*all are welcome to make an application*".

At the time that this letter was written, there were no pandemic restrictions in place on garden gatherings, and that had been known since a government announcement on 29th April 2021.

On 12th May 2021, just two days after Ms Chu had written to the Complainant informing him that that she was "*not considering any requests from external parties at present for use of the Lord Mayor's Garden*", she contacted the Dublin City Volunteer Centre to invite them to use the Lord Mayor's Garden. Whereas time could not be found for 3 people from the DCINF Forum, the invitation to the Dublin City Volunteer Centre was for 80 people and included catering, a photographer and arrangements for a press release.

It is worth noting that Ms Chu was uncertain whether 80 people could be found to fill the places she was making available, while at the same time she was telling just 3 people from the DCINF Forum that she was not considering the use of the Lord Mayor's Garden by any external parties.

The Dublin City Volunteer Centre is a very praiseworthy organisation, which is well known to work closely with local churches. For example, their events that host the "*Young Christian Workers*" and events that take place in St Patrick's Cathedral, such that they are advertised in parish newsletters.

On or before 19th May 2021, Ms Chu also contacted St Andrew's Resource Centre and invited 10 people from that organisation to the Lord Mayor's Garden for tea. St Andrew's Resource Centre is part of the Roman Catholic Archdiocese of Dublin, which appoints its priests to the Board. St Andrew's provides a range of services, including a live stream of Roman Catholic Mass from the parish.

Less favourable treatment.

The Complainant believes that he was treated less favourably in the provision of publicly funded services by Ms Chu in the following ways:

- The Office of the Lord Mayor responded immediately to requests from the Dublin City Interfaith Forum (DCIF) for "Rewind 2020" events with religious groups, while the same Office ignored similar requests for similar events with non-religious groups like the Complainant's. For example, the first time that the DCIF wrote an email to the Office of the Lord Mayor about arranging "Rewind 2020" religious events, they received a response describing that as "a lovely idea" within 30 minutes. In contrast, the DCINF Forum has been ignored for more than 30 days.
- The Lord Mayor arranged for access to the Mansion House grounds for religious groups, while neglecting to arrange similar access for any non-religious groups like the Complainant's. The Lord Mayor attended events with religious groups while neglecting to attend any events with non-religious groups.
- The Lord Mayor reviewed and issued press releases from religious groups and provided comments into those press release supporting those religious groups, while neglecting to offer such support for any non-religious groups.
- The Lord Mayor arranged for the Dublin City Council logo to appear on a poster created by religious groups, while neglecting to provide similar support to non-religious groups.
- The Office of the Lord Mayor provided for scheduling assistance, arranged for the purchase of flowers, photographers, catering, and instructed staff to provide furniture for religious groups, while offering no such support to non-religious groups.

In general terms, when the DCIF requested support from the Lord Mayor, they were immediately provided with extensive publicly funded support, including the facilitation of events at the Mansion House at which the Lord Mayor participated. In contrast, when the DCINF Forum requested equivalent support for equivalent events, this was refused. Moreover, this behaviour of the Lord Mayor's office is part of a longstanding track record of offering public funds to faith groups, while refusing similar support to non-faith groups. For these reasons, the Complainant believe that he has been treated less fairly than others, because he has no religious beliefs.

An article was published in The Irish Times on the 18th August 2021. It describes how Ms Chu's successor was the first ever Lord Mayor of Dublin to meet with Atheist Ireland after her inauguration. Every previous Lord Mayor of Dublin, up to and including Ms Chu, met only with the leaders of the mainstream religions in the city. It was open to Ms Chu to meet with people of no faith upon her inauguration, in the same way that she met with religious leaders. She opted not to do that. It was open to Ms Chu to facilitate those of no faith in the Lord Mayor's Garden in the same way that she facilitated religious groups. She opted not to do that. In this way she treated the Complainant less favourably than the religious leaders who she invited to the Lord Mayor's Garden, because those religious leaders have religious belief whereas the Complainant does not.

Conclusion.

The Complainant submits that Ms Chu treated him less favourably than others, because others have religious beliefs, and he does not. In order to demonstrate this, the Complainant has described how he and his nonfaith group was treated less favourably than religious comparators, such as the DCIF. Moreover, he has also

demonstrated that in attempting to explain this less favourable treatment, Ms Chu was aware of her obligation to treat the non-religious with full equality but in fact made materially false statements to him in order to avoid that obligation. That is, Ms Chu wrote to the Complainant on 10th May 2021 stating that she was *"not considering any requests for external parties at present for use of the Lord Mayor's Garden"*. In fact, just days later Ms Chu was considering requests for dozens of people from external religious parties to use the Lord Mayor's Garden. This is notwithstanding the fact that by this time, the Complainant had sent 6 letters by registered post over the previous 6 months requesting attendance to at a non-religious "Rewind 2020" event in the Lord Mayor's Garden.

Section 38(A) of the Act deals with the burden of proof and states that where *"in any proceedings facts are established by or on behalf of a person from which it may be presumed that prohibited conduct has occurred in relation to him or her, it is for the respondent to prove the contrary"*.

It is submitted that a prima facie case of discrimination has been demonstrated and that the burden of proof should shift to Ms Chu to rebut this claim on the balance of probabilities. Specifically, it is submitted that it should be for Ms Chu to prove that the less favourable treatment applied to the Complainant, is based on fair and objective set of criteria, which are consistently applied to those of all faiths and none.

Summary of Respondent's Case:

Introduction

The within submissions are furnished in response of the claim of the Complainant under the Equal Status Act 2000, as amended, ('ESA') as lodged with the Workplace Relations Commission on 19 May 2021 alleging discrimination on grounds of religion. Although the claim is lodged against Ms Hazel Chu, then Lord Mayor of Dublin, the Respondent accepts it is the correct respondent to the claim (without prejudice to its position that the complaint of discrimination on grounds of religion is misconceived and not well founded).

Factual background

- The Lord Mayor permitted a week-long event organised by the Dublin City Interfaith Forum ('DCIF') known as 'Rewind 2020' from 8-14 December 2020-consisting of events for minority faiths (daily at lunch time for certain minority faiths)-to take place in the Lord Mayor's Garden. This agreement was arranged on 26 November 2020.
- On 10 December 2020, the Complainant (in his capacity as representative as Church of the Flying Spaghetti Monster) was a signatory to a letter issued in the name of Dublin City Inter-Non-Faith-Forum ('DCINFF') entitled celebrations of missed festivals. This was received by the Lord Mayors office on 14 December 2020.
- The correspondence stated that the DCINFF had been formed with the Church of the Flying Spaghetti Monster in Ireland and the Church of Naturalism in Ireland as non-religious groups and a Charter was attached.
- It requested that identical arrangements be put in place in the Lord Mayor's Garden to those of Rewind 2020 events-in place with the Dublin City Interfaith Group (DCIF) in order to celebrate non-religious celebrations.
- There was no response to this correspondence as it was sent in the busy run up period to Christmas 2020.
- On 29 December 2020, the Complainant sent further correspondence in the name of the Dublin City Inter-Non-Faith Forum (with a third member being the Alliance of Former Muslims). As this was sent to the Lord Mayor's private residence, and no staff were present,

it has not been located.

- By ES1 form dated 15 January 2021, received on 18 January 2021, the Complainant alleged discrimination on grounds of religious belief as follows:
 - The office of the Lord Mayor responded immediately to requests from the Dublin City Interfaith Forum (DCIF) for 'Rewind 2020' events with religious groups, which the same Office ignored similar requests for similar events with non-religious groups "*like mine*".
 - The Lord Mayor arranged for access to the Mansion House grounds for religious groups, while neglecting to arrange similar access for any non-religious groups "*like mine*". The Lord Mayor attended events with religious groups while neglecting to attend any events with non-religious groups "*like mine*".
 - The Lord Mayor reviewed a press release from religious groups and provided a comment into that press release supporting those religious groups, which neglecting to offer such support for any non-religious groups "*like mine*".
 - The Lord Mayor reviewed a press release from religious groups and provided a comment into that press release supporting those religious groups, while neglecting to offer such support for any non-religious groups "*like mine*".
 - The Lord Mayor arranged for the Dublin City Council logo to appear on a poster created by religious groups while neglecting to provide similar support to non-religious groups "*like mine*".
 - The Office of the Lord Mayor provided for scheduling assistance, arranged for the purchase of flowers, and instructed staff to provide furniture for religious groups, while offering no such support to non-religious groups "*like mine*".
 - The Lord Mayor issued a press release about "Rewind 2020" and listed the religious groups that she was supporting, while declining to support any non-religious groups "*like mine*".

- By ES2 form dated 15 February 2021, the Respondent replied as follows:
 - The reason for the non-reply was explained-being the busy Christmas period- and the non-location of the 29 December 2020 letter;
 - The use of Mansion House and Garden is a decision for the Lord Mayor each year and a different focus arises each year. The Lord Mayor met with the Dublin City Interfaith Group on 18 November 2020 and was asked about holding events to mark the religious celebrations and festivals missed due to the public health crisis. This was agreed to by the Lord Mayor and the Garden of the Mansion House was used to hold these events which was part of the Mansion House Christmas events.
 - It would not have been possible to deal with the request given the time of year received (and after the request from the DCIF) and no further events were planned for 2021 due to the public health pandemic and applicable public health guidelines.
 - The use of the Lord Mayor's Garden and Mansion House is a decision at the discretion for each Lord Mayor as it is a private residence

- Subsequent correspondence issued from the DCINFF dated 16 February 2021- seeking a date during March 2021 for an event for non-religious groups and requesting a charity to which a donation would be made from the Dublin City Inter-Non-Faith Forum as part of "our planned Rewind 2020 ceremony".

- A response was issued from the Respondent on 4 March 2021 as follows:
 - No events were planned at that time due to government guidelines due to the Covid-19 pandemic.
 - All groups and communities are welcome to make an application for the use of the

Mansion House and Lord Mayor's Garden or to send an invitation to the Lord Mayor to attend an event-be charitable, cultural, recreational or otherwise/

- No requirement for a donation arises as a pre-requisite for the use of the Mansion House or Lord Mayor's Garden.
- Subsequent correspondence was received with the Complainant as a signatory on behalf of - again in the name of the DCINFF -on 8 March 2021 requesting access to the Lord Mayor's Garden for "our Rewind 2020" events, on exactly the same basis as those facilitated to the Dublin City Inter Faith Forum.
- The Lord Mayor issued a response on 23 March 2021 stating that due to Covid 19 restrictions, it was not possible to consider any requests for events at the Mansion House or Lord Mayor's Garden.
- A subsequent request was made by the DCINFF to use the Lord Mayor's Garden on 1 June 2021 and on 29 April 2021 the Lord Mayor responded to state that no requests were being considered at that time.
- The complaint form in the name of the Complainant was received by the WRC on 19 May 2021.

Legal submissions

Treatment not of the complainant as an individual

- The complaint falls outside the scope of the ESA because it concerns alleged discriminatory conduct against an organisation (DCINFF), rather than an individual.
- Section 21(1) of the Equal Status Acts provides: "*A person who claims that prohibited conduct has been directed against him or her may, subject to this section, seek redress...*"
- S. 2 of the ESA provides that the definition of person "as that term is used in or in relation to any provision of this Act that prohibits that person from discriminating or from committing any other act or that requires a person to comply with a provision of this Act or regulations made under it, includes an organisation, public body or other entity". Therefore only entities or public organisations can be respondents to discriminatory behaviour.
- In ***Gloria v Cork International Choral Festival*** (DEC-S2008-078), the Equality Officer found that "*the clear intention of the legislature is to protect individual persons as opposed to bodies or organisations from discrimination*" and noted only natural persons can have characteristics such as gender, marital status etc. which are established as possible grounds of discrimination under the Acts. Therefore, complainants under the Equal Status Acts can only be made by individuals.
- This finding was applied in ***Cork Deaf Club v Office of Public Works*** (DEC-S2017-039).
- In ***Worker v Health Services Provider*** (ADJ-00005333), the Respondent argued that although the complaint was made under the complainant's own name as an individual, the Complaint form and the ES.1 form submitted by the Complainant demonstrated that the complaint was really directed at the Respondent's dealings with the complainant's company. Following the approach taken in the previously mentioned decision, he held he did not have jurisdiction to consider the complaint because the complainant did not have standing to make a complaint under the Equal Status Acts.
- The same determination was reached in similar circumstances in ***Yuri Tykhovod TIA Prospera Ltd. v FBD Insurance PLC*** (ADJ-00031425).
- Therefore, it is clear that as a complaint can only be made under the ESA where the conduct complained of is directed against the complainant as an individual and that the fact that the complaint is made in the name of individual, as was done here, will not suffice where the substantive complaint is about conduct directed at by an organisation.
- Moreover, applying the reasoning followed in the above determinations to the definition of discrimination in section 3(1)(a) of the ESA as occurring "*where a person is treated less favourably than another person ...*", the fact that the complainant seeks to compare the

treatment he complains of to allegedly more favourable treatment of an organisation-DCIF (rather than an individual is equally problematic) not being a person or a suitable comparator as per s..

- In this matter, while the named complainant is an individual, the substance of the complaint concerns the Respondent's dealings with the organisation of DCINFF as a group-including in respect of two and then two, three organisations.
- This can firstly be seen in the letter of 10 December 2020. This letter was on headed "Dublin City Inter-Non-Faith Forum" letter paper and the return address was "care of" the Complainant's home address, both facts from which it can be inferred that the letter is sent on behalf of an organisation rather than from the Complainant as a private individual.
- Furthermore, the signatories, (both names redacted) are identified as representing two other organisations (the Church of Naturalism and the Church of the Flying Spaghetti Monster respectively), which are described as the inaugural members of the DCINFF. This indicates not only that the letter is from an organisation (DCINFF) but suggests also that DCINFF is an umbrella organisation or coalition of other organisations.
- Secondly, the Form ES.1 submitted on 31 December 2021, submitted by Mr Hammill, contains the following statements:
- *"I was a signatory to a letter from the Dublin City Inter-Non-Faith Forum to the Lord Mayor of Dublin".*
- *"Our group of non-religious organisations in Dublin had noticed the Rewind 2020 events advertised ..."*
- *"We provided a copy of our Charter..."*

These phrases indicate that the complaint is framed from the standpoint of DCINFF as an organisation. Indeed, the ES1 form refers to alleged discrimination against non-religious organisations *"like mine"* clearly showing that any discrimination is in the context of the DCINNF and not an individual. (In *Worker v Health Services Provider* (ADJ-00005333), the phrasing of the ES.1 form was considered in determining that the complaint was really about the treatment of the nominal complainant's company rather than of him as an individual).

At section 4 of the ES.1 form, the complainant stated, *"I believe that the Lord Mayor has treated me less favourably because others have religious beliefs and I have none."* However, the complainant has not explained why the Respondent's actions should be inferred to have anything to do with his personal beliefs when the letter and the Charter attached to it clearly set out the position, stances and aims of an organisation (DCINFF). Furthermore, in light of the complainant's previous claim that the respondent had discriminated against him on the grounds of what he claimed were a set of religious beliefs (in *Hamill v Dublin City Council* ADJ-00011817, discussed below), it is somewhat surprising, therefore, that he now claims that the respondent could have known or inferred that he now considers himself to have no religious belief.

"Complaint should be dismissed as complainant's belief already been held not to meet definition of religious belief or lack of religious belief under section 3(2)(e) ESA"

- It is submitted that this complaint should be dismissed pursuant to section 22 ESA, which allows for a claim to be dismissed, *inter alia*, where it is *"frivolous, vexatious or misconceived"*. This would be an appropriate action in this matter because an

Adjudication Officer has already determined that Mr Hamill's belief as regards the "Church of the Flying Spaghetti Monster" are not capable of coming within the ground of discrimination of religious belief or absence thereof as provided for in section 3(2)(e) in *Hamill v Dublin City Council* ADJ-00011817. In this case, Mr Hamill alleged discrimination on grounds of religious belief in the context of the alleged failure of Dublin City Council to include his alleged religion in the Interfaith Charter on the site of the Civic Offices. This was unsuccessful.

- By way of background, it is noted that Mr Hamill had previously made a complaint to the WRC against Dublin City Council on the grounds that he is an ordained minister in the "Congregationalist Church of the Flying Spaghetti Monster" and that he had been discriminated against on the grounds of his religion; at that time he presented what was described as the "Articles" of this church and outlined its beliefs and practices in detail, including who would or would not be allowed to join. However, the Adjudication Officer concluded that the complainant did not fall within the scope of section 3(2)(e) of the ESA because the complainant's position did not amount to a religious belief or a lack of religious belief.
- It is submitted that the ESA provides that a decision of an Adjudication Officer in a complaint under this legislation can be appealed to the Circuit Court within 42 days of the decision; no further appeal lies other than to the High Court on a point of law (section 28). Having chosen not to pursue either of these routes, the complainant cannot now make another complaint which depends upon a re-statement of a claim which was considered in full and has been rejected, i.e. that his beliefs are included under section 3(2)(e).
- The claim of the Complainant is frivolous and misconceived as follows:
- It amounts to the same issue litigated previously-where the Complainant alleged discrimination on grounds of religious beliefs and the alleged favouring of mainstream beliefs by the Respondent
- The circumstances in which the DCINFF became operative are questionable- and its Charter lacks cogency or any meaning. They also must be seen in the context of the unsuccessful claim by Mr Hamill on the same issue in the past: his organisation's exclusion from a religious event involving the DCIF.
- The within proceedings are effectively an abuse of process as the Complainant seeks to litigate the proceedings where the proper complainant is the DCINFF which is not a proper party or entity who can bring such proceedings.

Scope of the Equal Status Act: "providing a service"

Firstly, it is submitted that the matters raised by the Complainant do not fall within the remit of the ESA as amended and thus the WRC has no basis for considering the complaint.

Section 5 of the ESA provides:

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 1 of the Act defines "service" as "a service or facility of any nature which is available to the public generally or a section of the public ..." and goes on to provide some specific examples of services which fall within this definition.

- It is submitted that informal events in the Lord Mayor's garden such as that in issue here do not amount to a "service" provided to the public or a section of the public. They are organised at the discretion of the Lord Mayor of the day, who is free to decide which civil society groups, organisations, and causes, and indeed which individuals, to invite, in much the same way that TDs and Senators are entitled to choose which groups and individuals to meet with or host, including in official, State-funded facilities provided for their use such as the Dail bar or their Oireachtas offices.
- It is noted that Dublin City Council is a local authority to which councillors are directly elected as representatives of their local community. Such local authorities have a direct constitutional foundation. The Local Government Act 2001 as amended provides a statutory basis for the operation of local authorities such as Dublin City Council and lays out the legal obligations of these bodies.
- The 2001 Act provides that the councillors of each local authority shall elect one of their number to act as a chairperson, known as the Cathaoirleach (see section 31, 36(1)). In the case of Dublin City Council, the Act specifically provides that the holder of this office may use the title "Lord Mayor of the City of Dublin" (section 32(3)(b)).
- The Mansion House is owned by Dublin City Council and is provided to the Lord Mayor of the City of Dublin as an official residence. Some areas, such as the Round Room, are made available to the general public to book for conferences and events, and it is submitted that applications or enquiries regarding events in such spaces would indeed fall within the scope of the Equal Status Act.
- However, this can be clearly distinguished from what is in issue in this case, which is about a decision well within the discretion of the Lord Mayor of the day regarding her political role and priorities and her use of the private residence which is provided to her while in office.
- It is noted that it would be utterly unworkable, not to mention a serious interference with the personal rights of the Lord Mayor - who lives in the Mansion House during her term of office - if every meeting or interaction that took place there were to be subject to review under the ESA.
- It is further submitted that as an elected political representative, after fulfilling the legal obligations of her office under the Local Government Act as amended and other legislation and regulations, the Lord Mayor is directly accountable to both voters and fellow councillors as regard how she chooses to spend her time, the causes she wishes to support, and so on. It is clearly not the intention of the Oireachtas in the framing of the ESA to make every decision of elected representatives in choosing which constituents to meet with subject to scrutiny by the WRC. In this area, the accountability of public representatives to those whom they represent is promoted at the ballot box, not by adjudicators.
- Therefore, it is submitted that there is no jurisdiction to consider the substantive complaint as it falls outside the scope of the ESA

Definition of discrimination

Furthermore, or in the alternative, it is submitted that the matters complained of do not fall within the definition of discrimination as provided by the Equal Status Acts. Section 3(1) of the Act provides that discrimination shall be taken to occur

"(a) 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 (38)... (which-

- *exists,*
 - *existed but no longer exists,*
 - *may exist in the future, or*
 - *is imputed to the person concerned,*
- ... or...*

(c) where an apparently neutral provision would put a person referred to in any paragraph of section 3(2) at a particular disadvantage compared with other persons, unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary"

The claimant alleges that he was discriminated against on the ground of religion. Section 3(2)(e) of the Act defines this ground of discrimination as follows:

"(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")"

Section 2(1) of the Act further provides:

"Religious belief" includes religious background or outlook."

- In addition it is clear that the burden of proof which the Complainant must meet, pursuant to section 38A of the Equal Status Acts 2000-2015 (referred to as the Acts) is to demonstrate *"facts are established by or on behalf of a person from which it may be presumed that prohibited conduct has occurred in relation to him or her".*
- It is submitted that the definition of discrimination does not apply to the matters raised by the Complainant because his position was not comparable to that of those he claims received more favourable treatment than him; or, putting it another way, the difference in treatment arose from factors other than a difference in religious belief between the complainant and those to whom he seeks to compare himself.
- The "Dublin City Inter-Non-Faith Forum" (DCINFF) is not directly comparable to the Dublin City Interfaith Forum (DCIF), for a number of reasons. To compare DCINFF to DCIF is not comparing like with like. DCIF has existed for over a decade and has been active in organising and promoting events across Dublin throughout that period. It has a regularly updated website, Facebook and Twitter account. It is a registered charity (No. 20202705) and employs a full-time staff member. Twenty-one members are profiled on DCIF's website.

- In contrast, there is a degree of artificiality to DCINFF and its existence appears to revolve almost entirely around the matters complained of in this case. The complaint has not provided details of any event organised by the group or indeed any activity other than that concerned in this complaint. The only evidence of its activity online is a Twitter account which appears to have been set up on 11 December 2020 (i.e., the day after the first letter was sent to the respondent.)¹
- Furthermore, the DCINFF Charter is clearly directly modelled on DCIF's. The DCIF Charter's opening statement is: *"We, as representatives of our respective faiths, communities and organisations members of Dublin City Interfaith Forum, commit to the following aims ..."* and the opening statement of DCINFF reads: *"We, as representatives of our respective non-faith groups, including our Dublin-based adherents, and as members of the Dublin City Inter-Non-Faith Forum, commit to the following aims ..."*. The remainder of DCIF's Charter describes the aims to which the members commit; its format and phrasing is has been directly copied into the DCINFF Charter (*"To commit to ... To dedicate ... To promote ... To share To encourage ... To focus ... To develop ... To create"* (DCIF Charter) versus *"We commit ... We dedicate ... We promote ... We share ... We encourage ... We focus... We develop ... We create..."* (DCINFF Charter).
- However, despite the superficial similarities to the DCIF's Charter, the substantive aims and purposes which the DCINFF outlines in its Charter demonstrate that it is essentially a political group. Five of the eight aims in its Charter specifically refer to the organisation's views as to how public bodies should act, and a sixth states *"we encourage public representatives to make non-faith based and evidence based decision, instead of relying on faith, on authority, on divine intervention or the supernatural"*. In contrast, none of the DCIF's charter's eight aims refer to public bodies or public representatives. Rather, its aims are framed as personal commitments made by the communities and individuals which take part, such as *"To commit to, and freely practice, our religious beliefs, customs and practices and accept the freedom of others to do likewise," "To dedicate ourselves to the values of peace, justice, solidarity and defence of the dignity of each human being ..."* *"To promote dialogue between the different communities of belief co-existing in our city"* *"To share our experiences, and strengthen our collaboration and partnership"*. It is submitted that the difference in focus between the two groups -for example, the more explicitly political stances of the DCINFF, or the specific commitment of the DCIF to inter-community dialogue - provide a more than adequate basis for distinguishing between the two groups.
- In elaborating upon the allegation of less favourable treatment on the ground of his lack of religious belief, the complainant stated *"The Office of the Lord Mayor responded immediately to requests from the Dublin City Interfaith Forum for "Rewind 2020" events with religious groups, while the same Office ignored similar requests for similar events with non-religious groups like mine"*. However, there were several highly relevant differences between the request from DCIF and the contents of the letter sent by DCINFF.
- Firstly, it is noted that its email of 26 November the DCIF made a specific, detailed proposal for an event, suggesting the name "Rewind 2020", and a format of several very small, brief "mini-celebrations", outdoors, with only around 15-20 attendees,

taking place over the course of a week. In light of the very strict regulations then in place regarding gatherings and social distancing, this would be the only practical way of allowing each of the religions represented in DCIF to take part in the event. As an interfaith forum which seeks to promote co-operation and greater understanding between members of different religions, it is obvious that one of DCIF's priorities would be allowing each of its member organisations an opportunity to take part in such an event. It would therefore be more accurate to say that DCIF made a single request for a single event, which was split up over a series of days for reasons of practicality.

- Secondly, it was not reasonable or realistic for the complainant to seek, as he did in his letter of 10 December 2020, that *"identical arrangements should be made in the Lord Mayor's garden to those for Rewind 2020, in order to facilitate non-religious celebrations"*. The Dublin City Interfaith Forum is an established organisation in which representatives of seven major religions participate (namely, Christianity, Judaism, Islam, Baha'i, Hinduism, Sikhism and Buddhism), with participation from a number of different denominations and organisations of each religion. Each of these participating groups celebrate various holy days / festivals on particular days during the year, which involve set rituals and observances specific to that celebration.
- During 2020, for reasons of public health, very strict legal restrictions were imposed on all public gatherings, with no exceptions made for religious gatherings. This was a very significant limitation and hardship on religious communities which must be acknowledged in light of Article 44 of the Constitution's explicit statement that the State shall "respect and honour religion" and that its guarantee that "freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen". Furthermore, while some activities which were curtailed by public health legislation could make use of the Internet or other communications technology to continue their activities (e.g., having a panel discussion on Zoom or watching a livestream of a concert), many specific rituals which are vital to the practice of religion could not take place at all without in-person gatherings. Moreover, while events such as political meetings or discussion groups are generally not tied to specific days or times, many religious festivals occur on set days in the year which are of great significance to believers.
- This important context to the "Rewind 2020" event means that it was simply not reasonable for DCINFF to ask for "identical" events to celebrate "non-religious celebrations", because the "Rewind 2020" event was in fact motivated by a challenge which was specifically faced by religious communities.
- Furthermore, the DCINFF's letter did not explain what "non-religious celebrations" would look like, what would take place at such celebrations, or what would be celebrated. The DCIF had explained in its email of 26 November 2020 what would take place at the its proposed events (*"a prayer/reading/reflection from scripture and an explanation of the event; a piece of music or traditional singing and a story told by children to signify the event"*), and the respondent was familiar with the DCIF as the organizer and the aware of the seven religions who were represented in its events. The DCINFF did not explain what the non-religious equivalent to these ceremonies would be. Again, there is no need to infer a discriminatory motive for a difference in treatment when - like any politician - the Lord

Mayor (or her office on her behalf) is more likely to attend and/or facilitate an event where someone else has already put in the planning and organising work.

Conclusions:

- It is submitted that this complaint should be dismissed as misconceived under section 28 of the Equal Status Acts as amended (hereinafter "the ESA") because the complainant relies on assertions which have already been considered in full and rejected by an Adjudication Officer in *Hamill v Dublin City Council* (ADJ- 00011817).
- Furthermore, or in the alternative, it is submitted that this matter falls outside the scope of the ESA because it does not relate to a service which is provided to the public or a section of the public.
- Furthermore, or in the alternative, it is submitted that the complainant does not have standing to make a complaint under the ESA because the treatment of which he complains did not relate to him as an individual, but rather to an organisation (the Dublin City Inter-Non-Faith Forum, hereinafter "DCINFF"). The comparator to whom he seeks to compare himself (the Dublin City Interfaith Forum, hereinafter "DCIF") is also an organisation rather than an individual.
- Furthermore, or in the alternative, it is submitted that the complainant has not provided evidence to establish facts from which it may be presumed that discrimination occurred and thus has failed to shift the burden of proof to **the** respondent.
- Furthermore, or in the alternative, it is submitted that any difference in treatment by the respondent is fully explained by reasons other than the ground of alleged discrimination and thus any inference of a discrimination is rebutted.

Findings and Conclusions:

The "Dublin City Inter-Non-Faith Forum" (DCINFF) is not directly comparable to the Dublin City Interfaith Forum (DCIF), for a number of reasons. To compare DCINFF to DCIF is not comparing like with like. DCIF has existed for over a decade and has been active in organising and promoting events across Dublin throughout that period. It has a regularly updated website, Facebook and Twitter account. It is a registered charity (No. 20202705) and employs a full-time staff member. Twenty-one members are profiled on DCIF's website.

The DCINFF had been formed with the Church of the Flying Spaghetti Monster in Ireland, the Church of Naturalism in Ireland and the Alliance of Former Muslims as non-religious groups. It is unclear as when exactly this alliance was formed.

I accept that the complaint is made by one named individual, the Complainant. It is obvious that when one reads the actual papers that any redress being sought is for the aforementioned alliance.

The Representative for the Respondent has made the following comments which I find impossible to disagree with:

- *Furthermore, or in the alternative, it is submitted that this matter falls outside the scope of the ESA because it does not relate to a service which is provided to the public or a section of the public.*
- *Furthermore, or in the alternative, it is submitted that the complainant does not have standing to make a complaint under the ESA because the treatment of which he complains did not relate to him as an individual, but rather to an organisation (the Dublin City Inter-Non-Faith Forum, hereinafter "DCINFF"). The comparator to whom he seeks to compare himself (the Dublin City Interfaith Forum, hereinafter "DCIF") is also an organisation rather than an individual.*
- *Furthermore, or in the alternative, it is submitted that the complainant has not provided evidence to establish facts from which it may be presumed that discrimination occurred and thus has failed to shift the burden of proof to **the** respondent.*

In addition to the points made by the Respondent there is included ample case law to support the Respondent's arguments:

- In ***Gloria v Cork International Choral Festival*** (DEC-S2008-078), the Equality Officer found that "*the clear intention of the legislature is to protect individual persons as opposed to bodies or organisations from discrimination*" and noted only natural persons can have characteristics such as gender, marital status etc. which are established as possible grounds of discrimination under the Acts. Therefore, complainants under the Equal Status Acts can only be made by individuals.
- This finding was applied in ***Cork Deaf Club v Office of Public Works*** (DEC-S2017-039).

I find that I agree with the Respondent and on consideration of these arguments I conclude that the complaint presented by one named individual is not well founded and the complaint fails.

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 conclude that the complaint presented by one named individual is not well founded and the complaint fails.

Dated: 27th August 2024.

Workplace Relations Commission Adjudication Officer: Jim Dolan

Key Words:

Equal Status Act, 2000.