



Submission to Review of Equality Legislation December 2021

Pavee Point Traveller and Roma Centre has been working to challenge racism and promote Traveller and Roma inclusion in Ireland since 1985. The organisation works from a community development perspective and promotes the realisation of human rights and equality for Travellers and Roma in Ireland. The organisation is comprised of Travellers, Roma and members of the majority population, who work together in partnership to address the needs of Travellers and Roma as minority ethnic groups experiencing exclusion, marginalisation and racism. Working for social justice, solidarity and human rights, the central aim of Pavee Point is to contribute to improvement in the quality of life and living circumstances of Irish Travellers and Roma.

Pavee Point Traveller & Roma Centre welcomes this review of Equality Legislation and considers this to be an important opportunity for Ireland to lead the way in enabling progress on the achievement of equality at this important juncture in Ireland and across Europe. Ireland's equality law must ensure that the legislation and framework for dealing with discrimination complaints are robust enough and meet European standards for such legislation as they evolve over the coming period and Ireland's human rights obligations under international instruments.

1) The functioning of the Acts and their effectiveness in combating discrimination and promoting equality

As minority ethnic groups, Travellers and Roma experience individual and systemic racism and discrimination, in intersection with discrimination on the basis of gender and all other equality grounds, such as disability, age and sexual orientation in particular. As a result, Travellers and Roma are among the most marginalised and excluded individuals and groups in Ireland.

The report "*Who experiences discrimination in Ireland? Evidence from the QNHS Equality Modules*" identified from the 2014 QNHS equality module that:

'Irish Travellers report very high rates of discrimination in seeking work, where they are ten times more likely than White Irish to experience discrimination, and extremely high rates of discrimination in private services, where they were over 22 times more likely to report discrimination, particularly in shops, pubs and restaurants¹.

¹McGinnity F., Grotti R., Kenny O., & Russel H., [Who Experiences Discrimination in Ireland? Evidence from the QNHS Equality Modules](#), IHREC and ESRI, 2017.

The EU Fundamental Rights Agency, in a survey of Travellers and Roma in six countries initiated in 2018, found that Irish Travellers' experience high levels of discrimination at 65% and do so across a range of fields – employment, education, health services, housing and other public and private services².

Discrimination impacts on the situation of Travellers across all fields, limiting Traveller participation in and contribution to society, and contributes to the high levels of stress experienced by Irish Travellers which in turn contributes to poor mental and physical health.

The Equality Legislation could be, and needs to be, much more effective in combating discrimination and promoting equality for Irish Travellers. This is the case with both Acts, and particularly the case with the Equal Status Act. The number of complaints brought on the Traveller ground under the Equal Status Act is falling while we know the incidences of discrimination remain prevalent and persistent. While it is acknowledged that Travellers remain distant from the labour market, the number of complaints brought on the Traveller ground under the Employment Equality Acts is miniscule, despite clear indications of ongoing persistent discrimination in this field³.

According to the Workplace Commission's Annual Reports 416 complaints were taken by Travellers under the Equal Status Act. In 2020 that figure was just 51. Of those who do file complaints, a significant proportion fail to even get heard because of procedural issues.

The barrier is not solely one of awareness of the relevant institutions. The 2018 EU Fundamental Rights Agency Survey of Travellers and Roma found that there is high awareness of equality bodies such as IHREC or the Ombudsman at 49% and awareness of laws against discrimination at 58%, which figures were high in relation to the other countries surveyed. Yet, high levels of under-reporting are found and only 28% filed a complaint in relation to the discrimination they experienced⁴.

As a result of the lack of complaints under the equality legislation, combined with the failure of cases to get heard, there is no critical mass of Traveller complaints about discrimination in the provision of goods and services or in employment. As a result the impact of the legislation on the situation and experience of Travellers is minimal.

Recommendation

- The current review of the equality legislation should lead to an urgent and ambitious revision of the equality legislation, to address the barriers that limit its current impact and to introduce a new ambition such that it could make its full contribution to achieving full equality in practice for Travellers and Roma.

2) The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action

²[Travellers and Roma in Six Countries](#), EU Agency for Fundamental Rights, 2020.

³Mullen R., Kelly B., & Crowley N., Mincéir Misl'ér a Tom Tober - [Travellers in Mainstream Labour Market](#), St. Stephens Green Trust, 2021.

⁴Op. Cit. EU Agency for Fundamental Rights, 2020.

While awareness is not the core impediment to Travellers making use of the equality legislation, awareness and understanding remain at issue. Traveller organisations play a key role in filling this gap.

Pavee Point Traveller & Roma Centre regularly receives calls from Travellers who describe incidences of discrimination and ask for information on what they can do about it. Travellers are also not aware of, and can be intimidated by, the procedures involved in taking a case.

Pavee Point sends out information and necessary notification documents on the complaint process to Travellers. This can be difficult to do electronically as many Travellers do not have access to email and often use other people's email addresses. Most Travellers access the internet on phones only - where it is difficult to read long explanations and documentation.

A number of more specific obstacles are evident in blocking Traveller access to justice in relation to cases of discrimination. These relate to venues, procedures, and resources.

Venues

The introduction of the change of venue in 2003 that complaints against licenced premises are dealt with by the District Court is a severe impediment to Travellers taking cases. Casework in relation to issues of discrimination in this area has almost disappeared without any evident improvement in the operations of the organisations involved. The very low level of discrimination claims made in the District Court under the 2003 Act demonstrates that Section 19 does not provide an effective remedy.

This venue has proven inaccessible for cases being brought by Travellers. A significant amount of legal expertise is required to initiate these complaints – ie lodging a Section 19 Application with the District Court Clerk's office. To ensure the correct name is on this application it is necessary to do a legal search. Both of these actions are generally outside the realm of possibility for people without legal experience or representation. Once before the District Court, Traveller complainants are often faced with significant levels of legal representation on the other side and a District Court judge dealing with an equality matter, without any training or guidance available for District Court Judges in these matters. The subtleties of discrimination can sometimes be lost on District Court Judges and others who lack awareness of current and changing dynamics of discrimination.

In 2019, the UN Committee on the Elimination of Racial Discrimination expressed its concern at the disproportionate impact, of the transfer of jurisdiction to the District Court for certain discrimination complaints, on Travellers and Roma. They noted that unlike other discrimination complaints, which are heard by WRC, it was necessary to initiate "complex court proceedings" to make a discrimination complaint against a licenced premises. This, they concluded, "may effectively hinder Travellers and Roma from accessing justice and remedies for the racial discrimination they have experienced". The committee recommended that complaints in relation to discrimination that occurs on or at the point of entry to licensed premises should be heard by the WRC.

The incorporation of the former Equality Tribunal as a part of the Workplace Relations Commission has also acted as an impediment to access to justice. The Workplace Relations Commission does not enjoy any profile within the Traveller community as a venue for equality issues. There is a risk of dilution and loss, in this amalgamated setting, of the specialist expertise required to hear and decide on cases of discrimination. The Workplace Relations Commission has not been experienced by Travellers as an accessible venue, whereas the Equality Tribunal had served this purpose well.

The Workplace Relations Commission has become an increasingly formal venue, in particular given the level of legal representation on the side of the respondent. It has become increasingly adversarial, with a loss in the investigative function formerly deployed by the Equality Tribunal. The investigative function is key in contexts of inequality of arms between respondent and complainant.

There is a lack of follow-up of decisions made by the Workplace Relations Commission in cases of discrimination, in particular where a course of action is required from the respondent. This limits and undermines the impact of the legislation.

Recommendations

- Repeal Section 19 of the Intoxicating Liquor Act 2003 and bring all cases under the Equal Status Acts under the one specialist venue.
- Make provision for follow-up of decisions in cases of discrimination with requirements on respondents to report to the body that made the decision on the steps taken, and powers for that body to seek further action and redress where such steps as required are not taken.
- Remove jurisdiction for equality cases from the Workplace Relations Commission and re-establish a venue akin to the Equality Tribunal with a clear investigative function.

Procedures

The obligation on the complainant to send a written notification to the respondent within a specific timeframe, in particular under the Equal Status Acts, is an impediment for people with poor literacy skills, limited access to computers, and little knowledge of the law. An analysis, undertaken by FLAC, of all published WRC decisions on Equal Status complaints between 2015 and 2019, shows that the number of complaints which were unsuccessful on the basis of a failure to comply with the notification requirement is increasing year on year. There is no clear purpose served by this notification requirement.

The time limits for making a complaint under the Equality Acts are restrictive especially given current notification requirements. Travellers have to get support and advice on these issues and this can take time, which often stretches beyond the time limits in place.

Recommendation

- The notification requirement for complaints under the Equal Status Act should be removed or made optional.

- New flexibilities should be introduced in relation to time limits for making a complaint, including that time limits should be extended where there is reasonable cause for delay in bringing the complaint.

Resources

Taking a case under equality legislation is a demanding challenge, one that is increasingly demanding as the Workplace Relations Commission becomes an increasingly formal venue, and in contexts where respondents have the resources to secure high level legal representation. Travellers do not have access to the resources to mount legal cases under the equality legislation and the necessary supports are not sufficiently available. This is a major impediment to using the equality legislation.

If a complainant manages to get to an adjudication hearing, they are almost always met with significant numbers of legal professionals on the side of the respondents. This inequality of arms puts a complainant at a significant disadvantage in an adjudication hearing. It means the complainant is more likely to be unsuccessful as they can lose out due to a legal technicality and can be intimidating for complainants.

The IHREC has a function to provide legal advice and support but its implementation of this function has been limited, and it cannot be envisaged that it would support all such cases. However, there is no civil legal aid available in these matters.

Recommendations

- Introduce civil legal aid for complaints under Equality Legislation.
- Introduce the possibility of class actions being taken by designated representative organisations.

3) The scope of the current definitions of the nine equality grounds. This will include consideration of the gender ground, the disability ground and whether new grounds should be added, such as the ground of socio-economic discrimination;

A) Traveller ethnicity

Travellers should be recognised in the equality legislation as an ethnic group, while retaining the Traveller ground. This recognition is proposed in the 'interpretation' section of the current Criminal Justice (Hate Crime) Bill 2021. Here it states – "ethnicity" includes membership of the Traveller community. This could be accomplished in amending the definition of the Traveller ground.

B) Socio-economic status.

Travellers live in areas of socio-economic deprivation, they are aware of the discrimination experienced by people on the basis of their socio-economic status. In a context where Travellers are protected under equality legislation, and their neighbours are not, this is a gap in the equality legislation that feed the divides that already limit Traveller inclusion in their wider community.

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Many groups who currently need to avail of the protection of the Acts, including Travellers, also experience disproportionate levels of socio-economic disadvantage and exclusion. They experience intersectional discrimination on the basis of socio-economic status (and another ground or grounds), which is a further argument for introducing a socio-economic status ground.

C) Gender ground

The gender ground in the equality legislation should be extended to include a prohibition on discrimination based on gender identity, gender expression and sex characteristics. The *European Network of Legal Experts in Gender Equality and Non-Discrimination* note that there are multiple advantages to a single, "broad" gender ground (as opposed to the addition of "separate" protected grounds relating to gender identity and expression)

Recommendation

- Traveller ethnic identity and culture should be acknowledged in the definition of the Traveller ground.
- Include an additional ground to prohibit discrimination on the ground of socio-economic status, defined in terms to protect those experiencing discrimination on the basis of socio-economic disadvantage.
- Include gender identity, gender expression, and sex characteristics in the definition of the gender ground and in the protections that it offers.

4) Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds;

While it is possible to make a complaint on more than one ground, the Acts appear to require that discrimination on each ground has to be proven separately. In effect, this may exclude complaints on the basis of more than one ground where the discrimination occurred on the basis of a combination of grounds or at the intersections between these grounds.

The Equality Acts do not adequately provide for such situations and, as a result, are out of step with many people's lived experiences of discrimination, which often occur as a response to their identity as a whole and cannot be distinctly and artificially categorised into separate grounds.⁵

Recommendation

- Amend the Equality Acts to provide for multiple and intersectional discrimination.

5) Whether existing exemptions in the legislation should be modified or removed;

The Equal Status Acts do not currently apply to Government Departments and public bodies carrying out their functions. This has a particular impact on Travellers for

⁵Judy Walsh, *Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services* (Lonsdale Law Publishing, 2013) P. 142. "a legislative amendment could explicitly allow for a flexible approach by specifying that dual or even multiple grounds could be applied with reference to a single hypothetical comparator

example in relation to raising complaints relating to An Garda Síochána. Complaints to the Garda Ombudsman, in the case of discrimination by Gardaí, is an inadequate mechanism. There is no remedy for incidents of discrimination by Gardaí experienced by Travellers or other groups. This is also a barrier in building better relations between Gardaí and Travellers or Roma.

The Equal Status Acts exempt any action taken on foot of legislation, a provision that in effect offers an exemption of extraordinary breadth to the public sector and opens up the potential for Government to legislate in a way that discriminates.

Recommendation

- The Equal Status Acts should be amended so that the definition of “services” includes the functions of public bodies.
- The exemptions for the State under section 14 of the Equal Status Acts should be removed.

6) Any other issues arising from the legislation.

Public Sector Equality and Human Rights Duty

The Irish Human Rights and Equality Commission Act 2014 held the promise of new energy from the State with its provision for a statutory duty on public bodies to have regard to the need to eliminate discrimination, promote equality of opportunity, and protect human rights in the implementation of all of their functions.

The Public Sector Equality and Human Rights Duty has now been in effect for over seven years. There is limited evidence, to date, of the Duty having been widely implemented in the public sector nor of the Duty having delivered on its potential to create a shift in culture within public bodies and the delivery of public services. It is now timely to review and further develop the leverage that can be applied behind the Duty to ensure its implementation and its implementation to the standards set by the IHREC.

It is the experience of Pavee Point, that where the Duty is being implemented, full and effective implementation of the Duty is being hindered by lack of data, and in particular the failure to introduce an ethnic identifier. This is particularly evident in the report step of the Duty.

Recommendations

- An awareness campaign should be developed across the public sector in relation to the Duty, its requirements and its potential, with Government Departments acting to ensure public bodies that fall under their remit are guided and instructed to implement the Duty.
- Stronger sanctions should be provided in the equality legislation for failure to implement the Duty to the appropriate standard and IHREC should be afforded the necessary powers of enforcement.
- Expand provisions in relation to the report step of the Duty to include a requirement to strengthen data systems to enable this step, including introduction of an ethnic identifier.

Reasonable Accommodation

The reasonable accommodation provisions in the equality legislation are an important recognition, on the disability ground alone, that difference has practical implications, which if not addressed lead to exclusion and, in effect, discrimination. It would be important that these provisions are improved, up at least to the level set in the Employment Equality Acts, and that they are extended to other grounds.

Reasonable accommodation on the Traveller ground, requiring an accommodation of the specific needs that arise due to cultural difference, are central if Traveller participation is to be secured across all fields and if the more systemic forms of discrimination are to be dismantled.

Recommendation

- Extend the provisions in equal treatment legislation in relation to reasonable accommodation to the other grounds, in particular to the Traveller ground to ensure the practical implications of cultural difference and the specific needs that arise are adequately addressed.

Sanctions

A cap on sanctions that can be applied in cases where discrimination is found to have occurred is currently provided for. This is in contravention of the EU equal treatment Directives which require sanctions to be proportionate, appropriate and dissuasive. The current sanctions regime is not adequately dissuasive.

Orders made on respondents found to have discriminated are an important stimulus for and enabler of the prevention of discrimination. Currently the Workplace Relations Commission appears to be constrained in the orders it can apply. This limits the effectiveness of the equality legislation.

Recommendation

- Remove the caps provided for in relation to sanctions that can be applied under the equality legislation.
- Make provision for a broad range of orders that can be made on respondents found to have discriminated to prevent future discrimination and to advance the achievement of equality.

**FOR FURTHER INFORMATION PLEASE CONTACT
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