



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission

Mr Justice Peter Kelly  
President of the High Court  
Chair of the Review Group  
Review Group of the Administration of Civil Justice

*Email: [submissions@civiljusticereview.ie](mailto:submissions@civiljusticereview.ie)*

31 January 2018

**Re: Submission on access to justice in relation to discrimination cases brought under section 19 of the Intoxicating Liquor Act 2003**

Dear President,

I write to you, on behalf of the Irish Human Rights and Equality Commission (the 'Commission'), on foot of the Review Group's request for submissions on how to improve access to civil justice in the State.

In this instance, we wish to make a submission on how to achieve a more effective and less costly outcome for court users, particularly vulnerable court users, in one specific area, namely access to justice in relation to discrimination cases brought under section 19 of the Intoxicating Liquor Act 2003.

#### **Legal basis for such cases**

Prior to September 2003 complaints of discrimination that occurred on or at the point of entry to licensed premises could be made under the Equal Status Act (the 'ESA') and dealt with by the Equality Tribunal (now replaced by the Workplace Relations Commission, the 'WRC').

However, Section 19 of the Intoxicating Liquor Act 2003 ('ILA') transferred jurisdiction from the Equality Tribunal to the District Court in cases of prohibited conduct<sup>1</sup> on licensed

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<sup>1</sup> Section 19(1) provides that "prohibited conduct" means discrimination against, or sexual harassment or harassment of, or permitting the sexual harassment or harassment of a person in contravention of Part II (Discrimination and Related Activities) of the Act of 2000 on, or at the point of entry to, licensed premises. The Act of 2000 means the Equal Status Act 2000.

premises,<sup>2</sup> - except in relation to discrimination in the provision of accommodation or any services or amenities related to accommodation, or ceasing to provide accommodation or any such services or amenities, which remain within the remit of the WRC.

This means that individuals who consider that they have been discriminated against on one of the protected grounds under the ESA, must bring their case before the District Court and not the WRC. If the District Court is satisfied that the applicant is entitled to redress, it may make such order as it considers appropriate in the circumstances, including one or more of the following orders:<sup>3</sup>

- a) an order for compensation for the effects of the prohibited conduct to be paid to the applicant by the licensee,
- b) an order that the licensee of the licensed premises concerned take a course of action specified in the order,
- c) an order for temporary closure of the premises in accordance with section 9, which section shall have effect, with the necessary modifications, in relation to the order.

The maximum amount of compensation that may be ordered is the maximum amount that can be ordered by the District Court in civil cases in contract, currently €15,000.

### **Procedure for taking a case under section 19 ILA**

The following steps are required to be taken in order to bring a complaint of discrimination under section 19 of the ILA:

1. Identify the relevant District Court area – this is the area in which the licensed premises are situated;
2. Inspect the Register of Licenses in the relevant District Court office to ensure that the correct name and address of the licensee is identified. This requires attendance in person at the District Court office and the payment of a fee of €35;
3. Complete a Notice of Application (Schedule C, Form 80.5 of the District Court rules) setting out the details of the incident and the intention to apply for redress to the District Court and lodge same, with copies, with the District Court office along with a stamping fee of €150;
4. Serve the Notice of Application on the respondent;
5. Complete a Statutory Declaration as to service of the Notice of Application on the respondent; and
6. Attend at the relevant District Court on the date given by the District Court office for the hearing of the matter. The hearing will be adversarial in nature and heard in public. Costs may be awarded against the losing party.

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<sup>2</sup> Under section 2 of the ILA 2003, “licensed premises” means premises in respect of which a licence is in force and, in relation to a licensee, means the licensed premises of the licensee; “licence” means a licence for the sale of intoxicating liquor, whether granted on production or without production of a certificate of the Circuit Court or District Court; and “licensee” means the holder of a licence;

<sup>3</sup> Section 19(3)

## **Procedure for taking a case of discrimination in the WRC**

Whereas the above procedure for taking a complaint of discrimination to the District Court under section 19 appears cumbersome, the procedure in respect of the WRC is intended to be more straightforward for a person bringing a complaint.

Steps to be taken in making a complaint under the ESA are as follows:

1. Within 2 months of the date of the discrimination, notify the respondent of the complaint of discrimination and the intention to seek redress under the ESA if no response or an unsatisfactory response is received within 1 month of the date of the notification. An ES1 notification form, along with explanatory notes, is available on the WRC website to assist with compliance of the notification requirement;
2. If no response is received from the respondent after 1 month, or the response is unsatisfactory, complete the online WRC complaint form within 6 months of the date of the discrimination. The complainant is asked to give details of the alleged discrimination on the form. There is no fee required to submit the form;
3. The WRC will notify the complainant and the respondent of the date and time of the hearing. In certain cases the WRC will offer mediation to the parties before setting down a hearing date<sup>4</sup>;
4. The hearing of the matter will be before an Adjudication Officer and is intended to be inquisitorial in nature. It is more informal and there is no requirement to have a legal representative; and
5. Costs are not awarded, with each party bearing their own costs.

## **Comparison to identify potential barriers to access to justice**

It can be seen from the above that the transfer of jurisdiction to the District Court has created a much more onerous process for people wishing to bring complaints involving discrimination on or at the point of entry to licensed premises.

Initiating a complaint in the District Court involves identifying and completing the correct court forms, and lodging these with the correctly identified court office along with the payment of a significant stamping fee.

Whilst the relevant court forms are available on the Courts Service website, without any legal assistance, these may be difficult to locate and even more difficult to complete to the level of detail (both legal and factual) required to ensure that no prejudice is caused to the applicant. In this regard, it is noted that, in all likelihood, the respondent licensed premises will have the benefit of legal representation.

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<sup>4</sup> Section 21 of the ESA allows for a case to be referred to a mediation officer if it appears that it may be resolved by mediation. Previously, this was another important distinction between cases taken under the ESA and those brought under section 19 of the ILA as the latter does not provide for any statutory mechanism for the provision of mediation in such cases. However, the recently commenced Mediation Act 2017 places certain obligations on solicitors to advise clients of the benefits of mediation before issuing proceedings, and allows the Court to invite the parties to engage in mediation and provide information about the benefits of same.

In contrast, the WRC online form is relatively straightforward with drop-down boxes and instructions to make the completion of same more user-friendly and capable of being completed without the need for legal representation. The ES1 form is also available to assist in the prior notification requirements under the ESA. Furthermore, there is no fee involved.

Whereas the hearing of a complaint at the WRC will be investigative in nature, informal and conducted in private, a District Court hearing will be adversarial, subject to the formal District court rules, and held in public.

In addition, whilst WRC proceedings are now generally anonymised, there is no anonymity for section 19 hearings and an applicant’s name will be noted on the District Court list on the day of the hearing. There will also often be court reporters present in court so that details of the case may be published in print and/or online. This may cause difficulties for some individuals who do not want their details to be made public.

A significant barrier in taking a case before the District Court under section 19 is the fact that costs could be awarded against a losing party. If the respondent has instructed a solicitor and counsel the amount of the costs involved could amount to several thousand euros. In contrast, each party bears their own costs in WRC proceedings.

In summary, proceedings in the District Court are more complex, involve technical court rules, may involve unwanted publicity, and carry a considerable risk of an award of costs being made against an applicant. Moreover, it is difficult to see how an individual could embark on such proceedings without the assistance of a legal representative.

**Table of comparison between District Court and WRC**

***District Court***

***WRC***

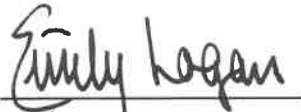
Formal nature of proceedings – subject to District Court Rules.	Informal process – Adjudication Officer decides as to conduct of hearing subject to fair procedures and the interests of justice.
Completion of technical court forms required.	Completion of WRC user-friendly form required.
Significant court fees	No fees
Adversarial	Inquisitorial
Heard in public	Heard in private
No anonymity	Possibility of anonymity
Risk of costs order	Each party bears own costs
Daunting process if no legal representation	Designed so that individuals can appear without legal representation.
District Court less familiar with equality legislation.	WRC has more experience and expertise in equality cases.
Decisions are not published.	Decisions are published on WRC website.

## Recommendation

We would ask that the Review Group would recommend the repeal of section 19 ILA and the return of the jurisdiction to hear these cases to the WRC, thereby increasing access to justice for services users who believe that they have been the subject of discrimination. The Commission hopes that you, and your colleagues, will give this matter favourable consideration and we are available to you should you wish to discuss the matter further.

Many thanks in advance for your engagement on this important equality matter.

Yours sincerely,

A handwritten signature in black ink that reads "Emily Logan". The signature is written in a cursive style and is positioned above a horizontal line.

Emily Logan  
Chief Commissioner