



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

YOUR RIGHTS INFORMATION NOTE

DISCRIMINATION IN INSURANCE

ABOUT “YOUR RIGHTS”

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RELEVANT LEGISLATION

The Equal Status Acts 2000-2018 <https://www.ihrec.ie/documents/a-guide-to-the-equal-status-acts/> (“the ESA”) is the relevant legislation in respect of complaints for discrimination in the context of insurance. This Act prohibits certain types of discrimination in the provision of goods and services. The provision of insurance is included in the definition of a “service” provided for in section 2(1) of the ESA.

“service’ means 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,

(b) facilities for—

(i) banking, insurance, grants, loans, credit or financing,

(ii) entertainment, recreation or refreshment,

(iii) cultural activities, or

(iv) transport or travel...”

Section 5 of the ESA prohibits discrimination in the provision of goods and services which includes the provision of insurance.

“5. (1) 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.”

DISCRIMINATION

WHAT IS DISCRIMINATION?

Discrimination means less favourable treatment on one of nine protected grounds under the ESA. Section 3(1)(a) of the ESA defines it as “*where a person is treated less favourably than another person is, has been or would be treated in a comparable situation*”.

Direct discrimination involves a person being treated less favourably as compared to another person in a comparable situation on the basis of a different personal characteristic or circumstance. An **example** of direct discrimination may arise, if a person is refused insurance on account of their age, and an insurance provider had a blanket policy of refusing insurance for persons over the age of 70.

Indirect discrimination occurs where an apparently neutral provision puts a person who is protected by any of the grounds 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 (see: section below entitled, “*What are the Nine Grounds of Discrimination?*”) An **example** of indirect discrimination may be where an insurance policy excludes people with a pre-existing condition, the effect of which would be to act as a blanket ban on any person living with a disability accessing that insurance policy.

Discrimination by **imputation** occurs where a person is treated less favourably than another person would be treated in a comparable situation where one of the below protected grounds are imputed on them, i.e. where they are incorrectly assumed to be a member of one of the protected grounds under the ESA. An **example** of discrimination by imputation would be where an insurance provider quotes a higher premium to a person because they think they have a disability when the person does not have a disability.

Discrimination **by association** occurs where a person is treated less favourably because of their connection, relationship or association with another person who falls within the protected grounds. An **example** of discrimination by association would be where an insurance provider refused to provide a person with an insurance because they are married to someone of a different nationality.

WHAT ARE THE NINE GROUNDS OF DISCRIMINATION?

In order for a person to prove they have been subjected to discrimination in the provision of insurance, they must show that the discriminatory conduct related to one of the grounds of discrimination under section 3(2) of the ESA. The nine grounds of discrimination are:

Gender (male, female, transgender)

Where a complainant is one gender (male or female) and another person is another gender (male or female). You are entitled to equal treatment whether you are a man, a woman or a transgender person.

Civil status (single, married, separated, divorced, widowed or in a civil partnership)

Where a complainant has a different civil status to another person, for example, where a person is divorced while another person is married.

Family status (a pregnant person, parent or acting parent of a child, a parent or a primary carer of a person with a disability who requires continued care)

Where a complainant has a different family status as compared to another person, for example, where one is pregnant and someone else is not.

Sexual orientation (heterosexual, homosexual or bisexual orientation)

Where a person is treated less favourably because they have a different sexual orientation to another person, for example where a complainant is gay while the other person is heterosexual (straight).

Age (generally only applies to those who are aged eighteen years and over)

Where a complainant is a particular age and another person is older or younger than they are. In general, treating a person under the age of 18 less favourably or more favourably than another is not regarded as discrimination. Please note that under section 3(3)(b) of the ESA, the age ground can apply to young people under 18 if they hold a driver's licence and are buying motor vehicle insurance. This means that if a person under the age of 18 who is a licensed driver and is treated less favourably in the provision of insurance or if they are refused insurance, depending on the circumstances, it could be considered to be discrimination on the ground of age.

Religious belief (including religious background and those who have no belief)

Where a person is one religion, for example, Jewish, while the other is a different religion, such as being a Roman Catholic, or has no religious belief.

Membership of the Traveller community

Where a person is a member of the Traveller community and another person is not.

Race (colour, nationality, ethnic or national origin)

Where a person is a particular colour, nationality, ethnicity or nationality compared to another person who is a different colour, nationality, ethnicity or nationality.

Disability (intellectual, mental and/or physical disability)

Where a person has a disability and another person does not. You are entitled to equal treatment if you have a disability, for example, physical, intellectual, learning, cognitive or emotional. Disability could also mean that you suffer from a particular medical condition.

WHEN CAN DISCRIMINATION IN THE PROVISION OF INSURANCE ARISE?

Some types of insurance are mandatory such as the requirement to have motor insurance if you are driving a vehicle. Members of the public sometimes choose to purchase insurance in other aspects of their life such as health insurance, house insurance, life insurance or travel insurance. Whilst there is no right per se to insurance and an insurance provider may refuse to provide insurance cover or premiums may be higher in certain circumstances depending on the assessed risk factors, the ESA prohibits discrimination in the provision of insurance. This prohibition on discrimination also covers the renewal stage of any existing insurance policy.

Discrimination can arise where any of the protected grounds:

- Exist, (Example, by reason of the person's gender)
- Existed but no longer exist, (Example, by reason of a person's civil status because they were single but are no longer single)
- May exist in the future, (Example, where a woman may become pregnant) or

- Is imputed to the person concerned (Example, where a person is thought to have a disability but they do not have a disability).

Discrimination can also occur as a result of association where a person is subjected to prohibited conduct because of their connection, relationship or association with another person who falls within the protected grounds.

WHO COULD BE HELD LIABLE FOR DISCRIMINATION IN THE PROVISION OF INSURANCE?

Insurance can be obtained directly from an insurance provider or sometimes a person might use an insurance broker or other intermediary in order to obtain insurance that meets their needs. Travel insurance is also sometimes offered by travel agents or tour operators. As insurance can be obtained from a number of sources it is possible that an insurance broker or other intermediary insurance provider could also be a named respondent in a claim relating to discrimination in the provision of insurance.

EXCEPTIONS

CAN FINANCIAL SERVICES OR INSURANCE PROVIDERS EVER TREAT A PERSON WHO FALLS WITHIN A PROTECTED GROUP DIFFERENTLY AS COMPARED TO A PERSON WHO IS NOT IN THAT PROTECTED GROUP IN THE PROVISION OF INSURANCE?

The ESA does provide for exceptions, meaning that not all differences in treatment by financial services or insurance companies will be considered to be discrimination or unlawful. Section 5(2)(d) of the ESA allows for the difference in treatment in the provision of insurance policies where there is an assessment of risk and the decision for the difference in treatment is by reference to:

- actuarial or statistical data (in other words, mathematical figures and calculations) obtained from a source on which it is reasonable to rely, or other relevant underwriting or commercial factors, and;
- is reasonable having regard to the data (such as the mathematical figures and calculations) or other relevant factors.

Any decision to treat a person applying for an insurance policy less favourably under any of the nine protected grounds, or a refusal to provide them with insurance at all, must be based on reasonable evidence, and relevant underwriting or commercial factors which are factors insurance providers will consider when assessing the risk. In this regard, where a person is refused insurance or quoted a higher premium they are entitled to seek and be provided with the reason(s) for this decision.

It is also important to note that the Courts have stated that this exemption does not apply to the gender ground. Therefore, no difference in treatment by a financial service or insurance provider can be justified on the basis of gender. For example, this means that an insurance provider is not permitted to use a person's gender as a risk factor in determining their car insurance premium and therefore cannot quote a man a higher premium than a woman just by reason of his gender even if the insurer deems that men are at a higher risk or likelihood of being in a motor collision in comparison to women. The assessment of risk and any difference in treatment has to be based on other factors but not gender. A refusal by an insurance provider to provide insurance to a woman on the basis of her pregnancy or to treat the pregnant woman less favourably would also amount to discrimination on the ground of gender.

IDENTIFICATION OF A COMPARATOR

IS IT NECESSARY TO IDENTIFY A COMPARATOR IN A COMPLAINT OF DISCRIMINATION?

In order to bring a successful complaint under the ESA, it is necessary to identify “a comparator”. That means that it is necessary to demonstrate that there has been less favourable treatment as between two persons, where the complainant falls under one of the above protected grounds, and the other (the comparator) does not but is in a similar situation. If there are a number of issues arising and allegations of discrimination relating to a number of the protected grounds arise, it may be necessary to identify a different appropriate comparator for each of the grounds.

It is usually necessary to identify a real individual as a comparator, however, in certain situations, hypothetical comparators can also be relied upon, where a complainant is not able to point to an actual person who they can compare their situation with (for more information in relation to “comparators”, please see IHREC’s standalone guide entitled [*“The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018”*](#)). For example if the complainant was an 80 year old man with a 6 years no claims bonus who was refused car insurance because of his age, the identified comparator could be a younger man with the same no claims bonus. It would be relevant to substantiate such a claim if the complainant could show two quotes from the same time and with the same insurer to his comparator.

ADMINISTRATIVE COMPLAINTS

WHERE CAN I GO IF I HAVE BEEN DECLINED MOTOR INSURANCE?

Even if a person has been refused cover, they are entitled to go to the [Declined Cases Committee of Insurance Ireland](#) who will obtain an insurance quotation for them. This exists to facilitate a motorist’s obligation to have a motor insurance policy in place. In order for the Committee to consider a person’s case, they must first have sought and been refused quotations in writing from at least three insurers and it is important to keep a note of the order in which each of the insurance companies were approached and a contemporaneous

note of the date and the details of the refusal of insurance including any reasons provided for the refusal. The Declined Cases Committee can also be contacted if you have been refused adding an additional driver to an existing policy.

Under the Declined Cases Agreement, in general, the insurer first approached will be required to provide the person with an insurance quote or if the person has held a policy with an insurance company within the previous three years, that insurance company will be obliged to provide the person with a quotation. The Committee can also decide whether a quote is so high or the terms so excessive as to make the quote tantamount to a refusal. The only ground on which an insurer can refuse cover is if to provide insurance would be contrary to public interest.

The contact details are as follows:

Insurance Ireland

Insurance Centre

5 Harbourmaster Place

IFSC

Dublin 1

DO1 E7E8

Ireland

Telephone: (01) 676 1820

Email: declined@insuranceireland.eu

If a person wishes to make an application to the Declined Cases Committee and also wishes to make a complaint under the ESA, it is important that those making use of this service do not delay taking the first step to institute any complaint under the ESA at the Workplace Relations Commission, i.e. furnishing a potential respondent with an ES1 Form within the necessary timeframe (for more information, please see IHREC's standalone guide entitled "The Process for Instituting a Case at the Workplace Relations Commission Under the

Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018). [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

CAN I MAKE A COMPLAINT TO THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN?

It is important to note that some complaints can only be dealt with by other bodies and not the **Financial Services and Pensions Ombudsman (“FSPO”)**. For example any complaint under the ESA which prohibits discrimination in the provision of services must be made to the Workplace Relations Commission or if a complaint relates to issues of data protection or data access it is a matter for the Data Protection Commission. If the complaint is a matter that can be dealt with by the FSPO it is then possible to pursue a complaint with the Financial Services and Pensions Ombudsman and further information in respect of making a complaint can be found on the website [Financial](#) It is necessary to have already made a complaint to the insurance provider and have given the provider time to try and resolve your complaint and they have failed to do so prior to making a complaint. This is a free service and there is no cost in bringing a complaint to the FSPO, however if a complainant wishes to use a legal representative in making a complaint any costs may then be incurred for using their services.

Those making use of the service of complaint to the FSPO and who also wish to make a complaint under the ESA at the Workplace Relations Commission should not delay in taking steps to institute their complaint within the necessary timeframes i.e. furnishing a potential respondent with an ES1 Form within the necessary timeframe (for more information, please see IHREC’s standalone guide entitled “The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018 [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

THE FORUMS FOR COMPLAINTS OF DISCRIMINATION

ESA

WHERE CAN A COMPLAINT UNDER THE ESA BE INSTITUTED?

[The Workplace Relations Commission](#) (“WRC”) was established by legislation, [the Workplace Relations Act 2015](#) (for more information, please see IHREC’s standalone guide entitled “*The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018*”) [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

All claims under the ESA, including complaints in respect of discrimination in the context of the provision of insurance, may be instituted at the WRC. It is also possible to bring a case to the Circuit Court instead of the WRC, where the discrimination occurs as a result of a person’s gender (for more information, please see IHREC’s Guide entitled, *The Process for Instituting a Case at the Workplace Relations Commission under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018* [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#) There are no other circumstances where a case can start in the Circuit Court when it relates to conduct prohibited by the ESA.

TIME LIMITS AT THE WRC

If a person wishes to make a complaint of discrimination to the WRC, they must first notify the person against whom the complaint is made, in writing, within **two months** of the date of the most recent occurrence of the discrimination and set out the details of the nature of the allegation and the intention to seek redress if a satisfactory response is not received. If there is no reply within **one month** or if the reply is unsatisfactory, the complaint form should be

lodged with the WRC within **six months** of the discrimination. Copies of all correspondence and proof of posting should be kept.

The written notification can be done by acquiring and filling out the complaint form, **Form ES1** (accompanied by **Form ES2** for a reply). These forms are available on the website of the Workplace Relations Commission (www.workplacelrelations.ie) under “Make a complaint in relation to equal status”. For more information, please see IHREC’s Guide entitled, *The Process for Instituting a Case at the Workplace Relations Commission under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018* [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

HEARINGS AT THE WRC

Hearings at the WRC usually take place at Landsdowne House, Landsdowne Road, Dublin 4, but they can also take place at various locations across the country to facilitate participants who live outside or far from Dublin.

When a complaint is made and a hearing date is provided, the WRC will take into account the location of the Parties.

The WRC procedure is designed to be as informal as possible. Parties do not necessarily need to engage legal representation, although many choose to do so.

Hearings and mediations at the WRC take place in boardrooms, with parties and adjudicators/mediators seated around conference tables. Unlike a courtroom, it is usual for those involved in these hearings and mediations to remain seated. Special arrangements can be made for persons with disabilities.

COMMON TERMINOLOGY

WHAT IS A “COMPLAINANT”?

In the context of discrimination under the ESA, a complainant is a person who claims they were discriminated against and who proceeds to take a claim against the person or organisation they claim was responsible for the discrimination such as an insurance provider.

WHAT IS A “RESPONDENT?”

In the context of the ESA, a respondent will be a person or organisation or company that an individual claims is guilty of discriminating against them or is responsible for others having done so. In the circumstances of complaints of discrimination in the provision of insurance the appropriate respondent would usually be the insurance provider. In some circumstances an insurance broker, travel agent or other intermediary who provides insurance may also be named as an appropriate respondent. A respondent will be required to respond or defend a claim brought by a complainant. For more information on identifying the correct respondent to bring a claim against, please see IHREC’s Guide entitled, *The Process for Instituting a Case at the Workplace Relations Commission under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018* [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

WHAT IS “EVIDENCE”?

Evidence may be introduced by a complainant or respondent at the hearing of a dispute at the WRC. Evidence may be, for example, in the form of documents such as the application form or insurance quote, text messages or emails, or it may be provided in oral testimony, by a person who witnessed events or who knew about them, commonly referred to as a “witness”.

Where complainants feel they have been subjected to discrimination, they should take a contemporaneous note of incidents as soon as possible afterwards. They should also include the date the note was taken on the document and the names of any witnesses. Where possible, complainants should also keep print outs and/or photographs of relevant information or interactions with the person who it is alleged discriminated against them.

WHAT IS AN “ADJUDICATION OFFICER”?

An Adjudication Officer is a person appointed by the WRC to investigate disputes and decide on claims that individuals make under the ESA. They chair the hearing of disputes, investigate the dispute and then come to a decision in relation to whether a complainant’s case has a basis or not.

An Adjudication Officer carries out a similar role to a judge in a normal court case, but they are likely to act in a less formal manner, and they should be addressed as “Chair” or “Adjudication Officer”.

WHAT IS THE BURDEN OF PROOF?

The burden of proof that applies in a claim of discrimination is set out at Section 38A of the ESA where in proceedings facts are established by a complainant from which it can be presumed that prohibited conduct such as discrimination has occurred, it is for the respondent (e.g. the insurance provider) to prove to the contrary.

That means that a complainant must first establish a *prima facie* case of discrimination where equal treatment has not been applied to them and prove the primary facts which they rely on in alleging discrimination. *Prima facie* means for the facts to establish on their face at the first impression a case of discrimination. The onus then shifts to the respondent to prove, on the balance of probabilities, that there has been no discrimination and no infringement of the principle of equal treatment.

WHAT IS “OBJECTIVE JUSTIFICATION”?

Where a complainant has established a *prima facie* case of indirect discrimination (where the facts establish on their face at the first impression a case of discrimination), the respondent must objectively justify any difference in treatment and provide evidence that there was a legitimate aim, and that the means of achieving that aim are appropriate and necessary and proportionate to achieve that objective.

If there is a clear case of direct discrimination, it can only be “justified” by the insurance provider if it falls within one of the exceptions provided for in the ESA. Section 5(2)(d) of the ESA allows for the difference in treatment by insurance providers when they are providing insurance policies where there is an assessment of risk and the treatment is effected by reference to:

- actuarial or statistical data (in other words, mathematical figures and calculations used by insurance providers to assess the level of risk in providing insurance and the likelihood of a claim) obtained from a source on which it is reasonable to rely, or other relevant underwriting or commercial factors, and;
- is reasonable having regard to the data (such as the mathematical figures and calculations) or other relevant factors.

This means that in certain circumstances different factors are taken into account by an insurance provider when they are assessing the risk. These factors can vary depending on the type of insurance being considered but might include factors such as age or the location of a vehicle.

CASE STUDIES

CASE STUDY 1

https://www.workplacerelations.ie/en/equality_tribunal_import/database-of-decisions/2003/equal-status-decisions/

A complaint was made by a 77 year old man who alleged that he was discriminated against by an insurance provider on the ground of his age. The man had sought a car insurance quotation from the insurance provider by telephone but he was refused a quotation because of his age and he was informed that the company did not quote for new business for people over 70. The claimant had a 7 year "No Claims Bonus" at the time but he was not asked about it.

The respondent insurance provider disputed the claim and rejected that they operated a discriminatory policy on the grounds of age. It was acknowledged that the man was refused a quotation but it was argued that the refusal was not unlawful as it fell within the exception provided under section 5(2)(d) of the ESA. This exception allows for a difference in treatment of persons in relation to insurance policies "it is effected by reference to actuarial or statistical data obtained from a source on which it is reasonable to rely, or other relevant underwriting or commercial factors, and is reasonable having regard to the data or other relevant factors."

The decision maker (the Equality Officer at the Equality Tribunal) decided that a *prima facie* case had been established by the complainant, where the facts appeared to demonstrate discrimination on the grounds of age. The Equality Officer then had to assess the evidence heard and decide whether the difference in treatment fell within the exception under section 5(2)(d). The decision maker decided that there was insufficient evidence before him to convince him that the actuarial or statistical data, which guided the respondent's over-70s policy, "was obtained from a source on which it is reasonable to rely" or that their decision was "reasonable having regard to the data or other relevant factors".

The Equality Officer concluded that the blanket policy of refusing quotations to persons over 70 years of age, with no regard for a person's particular circumstances or the company's own obligations under the Declined Cases Agreement was not permitted and the Equality Officer did not accept that the company's policy was reasonable to fall within the exemption section.

“In my opinion, there are many other considerations, apart from those identified above, that should be taken into account when assessing a person's suitability for insurance cover. These considerations include, among others, the person's health, their driving experience, their previous claims history and the condition/age of their car. These to me are ‘other relevant factors’ that should be taken into account in making such decisions. Another ‘relevant underwriting or commercial factor’ which I consider needs to be taken into account is the fact that insurance companies have signed up to the Declined Cases Agreement which specifically states that ‘No Insurer shall decline a risk on the grounds of age of driver alone’. In the case before me, it is clear that the [insurance provider] does not take into account all of the relevant factors referred to above nor does it address the individuality of each request for a quotation. Instead, the [insurance provider] applies an “across the board” policy of refusing quotations to persons over 70 years of age, with no regard for a person's particular circumstances or the company's own obligations under the Declined Cases Agreement. For these reasons, I find that I cannot accept that the company's policy “is reasonable having regard to ... other relevant factors”. Accordingly, I find that the respondents have also failed to satisfy the test at (2) above and I have concluded that their over-70s policy does not fall within the exemption provided for under Section 5(2)(d) of the Equal Status Act 2000.”

The Equality Officer did note that actuarial and statistical data is essential to the insurance industry in conducting risk assessment and the evidence before it did indicate that higher claim costs are more likely to arise from accidents involving elderly drivers than those involving middle-aged drivers. The Equality Officer considered that there was a case to be made for a company quoting proportionately higher premiums to older drivers, based on the results of their actuarial reviews but that a complete refusal of a quotation based solely on a person's age was not permissible.

CASE STUDY 2

[*A Complainant v A Life Insurance Provider DEC-S2009-033*](#)

CASE STUDY 2

https://www.workplacerelations.ie/en/equality_tribunal_import/database-of-decisions/2004/equal-status-decisions/

The complainant alleged that he was discriminated on the ground of age when he sought two motor insurance quotations using two different ages on the insurance provider's on-line motor insurance quotation facility. At the time the complainant was 31 years old and he used that age in one of his applications. The Complainant had sought another quotation and in a subsequent application he inserted the age of 41 with all of the other factors in the application remaining the same. The results showed a difference of 21% in the premiums being charged with the lower quotation for the older proposer.

The respondent argued that the different quotations reflected the element of risk which was assessed and calculated through their actuarial modelling system and that the difference in the quotations arose from commercial factors and relied upon section 5(2)(d) of the ESA. The decision maker determined that the complainant had established a prima facie case, he considered the evidence submitted by the respondent and also the Motor Insurance Advisory Board Report and data that the Complainant relied on. The decision maker considered that it was reasonable that MIAB data would not be the source data drawn upon by the company in relation to quotation requests made by the complainant and it was reasonable for the company to utilise its own claims history and it provided actuarial evidence of the decision. The decision maker determined that the insurance quotation fell within the exception under section 5(2)(d) and the complainant was not successful in his complaint.

CASE STUDY 3

[John Wolfe v Allianz Insurance ADJ-00026183 –29 November 2021](#)

The complainant had contacted the respondent to renew his travel insurance for a cruise and the respondent refused to offer him insurance cover in respect of a number of pre-existing conditions. The complainant also asserted that his premium increased significantly because of his age. The complainant alleged that the screening exercise fell far short of assessing his

actual current general health and did not ask details about the pre-existing conditions that he reported. The respondent informed him that he was not covered for his pre-existing conditions and he was not permitted to pay extra to cover these conditions. The complainant also claimed that the premium he was charged was an increase of 646% as compared to a similar trip he had taken two years previously. He claimed that the reason for the increase was that he was now in the 81-99 age category. He further asserted that a travel insurance premium should be based on his current and past health record and not solely on a wide age band.

The respondent argued that advancing age carries a higher risk of illness or accident. The assertion was supported by considerable analysis and research provided by the Respondent, who argued that an older person is more likely to make a claim against an insurance company than someone of a younger age and that the older a person gets, the higher the likelihood of a claim and the cost of such a claim. The respondent said that given the higher risk involved in insuring an older than a younger person, the premium payable for an older person will therefore inevitably be greater as it was in the instant case.

The adjudication officer was not satisfied that a prima facie case had been made out in respect of the refusal to offer him cover for the pre-existing conditions. In respect of the allegation that he was discriminated against because of his age, the Complainant stated and the Respondent acknowledged that he was charged a higher premium than someone under 80 because he was aged between 81 and 99. The Adjudication Officer was satisfied that the respondent had met the exemption under section 5(2)(d).

“Having been presented by the Respondent with the options available to travel insurance underwriters, I note that no evidence was provided by the Complainant to suggest that it would be commercially viable to offer flat rate premiums regardless of age. I also find that it is not reasonable or practicable for the Respondent to be expected to medically assess each of its applicants for health insurance and apply a different premium for each one or even ask its customers to pay for their own medical checks, as the Complainant suggests, especially when the weight of uncontradicted

evidence presented by the Respondent clearly shows that the cost of claims increases when customers gets older.”

CASE STUDY 4

<https://legalguide.ie/equal-status-act/4/#jordan-v-marsh-ireland-ltd>

The Complainant claimed that he was discriminated against by the respondent insurance provider when he sought to cash in an insurance policy after an accident where he broke his wrist and was not able to work for 6 months. The complainant was told by the respondent that he was disqualified from the Payment Protection Scheme because he was not in good health when the insurance commenced two years previously and he was not in fact eligible for the plan when it was sold to him. The Complainant’s insurance premiums for the previous two years were returned to him. The Complainant had an ongoing back problem as a result of a car accident several years previously. The Respondent was satisfied that the complainant had failed to satisfy the eligibility criteria set by the insurers as he had a pre-existing back condition.

The decision maker determined that the fact the respondent stated that any pre-existing condition would exclude a person from the insurance policy at issue amounted to imposing a blanket ban on any person living with a disability and that it was a step too far.

“While I have not been presented with any evidence of actuarial or statistical data nor of any relevant underwriting or commercial factors, I note that the complainant had a history of an on-going back problem and that his claim for the purposes of this insurance was in relation to a broken wrist. I have been presented with no evidence that the on-going back problem was in any way linked with the acquired injury. Therefore, I cannot find that it is essential for the insurer to exclude the complainant from this insurance plan in the manner in which it has.

5.15. The respondent, as an agent for the insurer, has failed to demonstrate that there were no alternative means, having less discriminatory effect, in which the objective in

view could have been achieved. It is clear that no consideration has been given to alternative ways of selling the insurance, although an obvious one immediately presents itself. I cannot therefore be said that there were no alternative less discriminatory means by which the respondent's objective of making commercially advantageous decisions when taking on customers could have been achieved.

5.16. The respondent in this case clearly states that any pre-existing condition would exclude a person from this insurance. I find that this imposes a blanket ban on any person who lives with a disability as defined under section 2(1) of the Acts. While section 5(2)(d) defences may apply to some of these disabilities I find that the current conditions under which this insurance cover is sold are a step too far. If I were to accept the current wording, and the respondent's interpretation of them, I would be accepting a condition that excludes any person who lives with a chronic condition, that is, a health related concern that can be managed from any insurance at all. This condition, which may appear to be neutral, puts a person, such as the complainant, at a particular disadvantage compared with persons who live without his condition. I do not find that the provision is objectively justified by a legitimate aim as the insurer has clearly indicated that it refuses to insure any person, regardless of data or any other relevant factors, with any health issues at all."

CASE STUDY 5

<https://www.lexology.com/library/detail.aspx?q=61fbbaa4-bd89-4f1d-a49c-36279ae6462a>

The complainant alleged that he had been discriminated against on the ground of race relating to a quote for car insurance. The complainant was a Polish national residing in Ireland for a number of years and he held a full Polish driving licence and had a no claim bonus discount of four years earned solely in Ireland. The respondent was provided with a quote on the website of €942 for car insurance taking into account that he had a full EU driving licence. Using the same method he obtained a quote for €768 when he indicated that he had a full Irish driving licence and €760.17 if he had a full UK licence. He said that the difference in

quotes seemed to be caused solely by the fact that the issuing authority of the driving licence was outside Ireland/or the United Kingdom.

The respondent said that the higher quote for insurance was based on his licence type and not by virtue of his race or nationality and on the website potential customers are not asked to state their nationality. It was argued that it was incorrect to state that the Complainant had been treated less favourably than an Irish national. The respondent asserted that an Irish national with an EU licence will be quoted the same premium as a non-Irish national with an EU licence when all other factors are the same. The respondent said similarly an Irish national with an Irish licence would be quoted the same premium as a non-Irish national with an Irish licence. The respondent also said that a person with an EU driving licence can exchange it for an Irish driving licence and it was a simple and easy process. The respondent argued that the complaint must fail as there was no difference between Irish and non-Irish nationals. The respondent also provided evidence of the actuarial and statistical data explaining the difference in the premium.

The Complainant was not successful in the claim of indirect discrimination on the grounds of race as it was successfully rebutted by the respondent. The decision maker considered that it was appropriate (in light of the submitted data and analysis) for the Respondent to consider the type of licence an individual holds as one of the many factors it uses to fairly assess risk and determine premiums.

DECISION AND REDRESS

HOW DOES THE WRC DELIVER THE DECISION?

The WRC will deliver its decision in writing and will usually include a statement of the reasons why the decision was reached. A copy of the decision will be given to both the complainant and the respondent and it is published on the internet on the WRC website.

IF A COMPLAINANT SUCCESSFULLY DEMONSTRATES THAT THEY HAVE BEEN DISCRIMINATED AGAINST AND THAT A RESPONDENT IS RESPONSIBLE FOR IT, WHAT REDRESS CAN THEY EXPECT TO OBTAIN?

The outcome of a successful discrimination case can vary, depending on the circumstances of the case itself. The WRC can make an order for compensation and/or an order that the respondent take a specified course of action.

The maximum amount of compensation, or money, that can be awarded by the Workplace Relations Commission for discrimination under the ESA is the equivalent of the maximum amount that can be awarded by the District Court which is €15,000.

The WRC does not have any power in the enforcement of decisions or the award of compensations and that is a matter for the parties to arrange any implementation of the award. The District Court has the power to enforce decisions of the WRC.

CAN THE WRC AWARD COSTS?

No the WRC cannot award costs such as legal costs to a successful party but the WRC does have the power to award expenses such as travel expenses.

APPEALS PROCESS

IF A COMPLAINANT IS NOT SATISFIED WITH THE DECISION MADE AT THE WRC BY AN ADJUDICATION OFFICER, WHAT CAN THEY DO?

Both complainants and respondents are entitled to appeal an adjudication officer's decision, and to seek a fresh decision.

The appeal must be lodged with the Circuit Court and this must be done strictly within forty-two days of the date of the Adjudication Officer's decision being communicated to a complainant and respondent. This time limit cannot be extended. There is no further appeal possible except to the High Court on a point of law.

A claim instituted in the Circuit Court may also be appealed to the High Court on a point of law, and a notice of appeal must be filed within 10 days of the Circuit Court having made an order or a judgment. The [Courts Service website](#) provides more information.

For more information, please see the IHREC's standalone guide entitled "The Process for Instituting a Case at the Workplace Relations Commission Under the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018").

CONTACT DETAILS FOR THE IHREC "YOUR RIGHTS" SERVICE

- Call us on 018583000
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You can also write to us at: Your Rights, Irish Human Rights and Equality Commission, 16-22 Green Street, Dublin 7.