



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

Review of Section 19 of the Intoxicating Liquor Act

Second Review under Section 30 of the Irish Human Rights and
Equality Commission Act 2014



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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

Contents

The Irish Human Rights and Equality Commission	1
Section 30 reviews	2
Methodology	3
Summary	5
Background	8
Section 19 in practice	11
Data provided by the Legal Aid Board and the Courts Service	11
Experiences of Travellers as litigants	12
Quotes from Travellers and representatives	14
Thematic issues arising	15
Legal uncertainty	21
Jurisdiction	21
Reversal of the burden of proof	23
Does Section 19 comply with EU Law?	32
Principle of non-regression	32
Principle of effectiveness	34
Principle of equivalence	35
Approaches in other jurisdictions	37
Response of the EU and international community	39
Affected business groups and trade bodies	46
Impact of discrimination	49
Recommendations	52
Appendices	55

The Irish Human Rights and Equality Commission

The Irish Human Rights and Equality Commission (the Commission) is Ireland's independent National Human Rights Institution and National Equality Body.¹ We protect and promote human rights and equality in Ireland.²

We are the Independent Monitoring Mechanism for Ireland under the United Nations Convention on the Rights of Persons with Disabilities³ and the independent National Rapporteur on the Trafficking of Human Beings,⁴ and we will be assigned the role of the Co-ordinating National Preventive Mechanism under the Optional Protocol to the Convention against Torture,⁵ pending ratification. Alongside Northern Ireland's human rights and equality bodies, we have a mandate to consider and report on human rights and equality issues with an island of Ireland dimension.⁶ We also have legal powers under the Gender Pay Gap Information Act 2021,⁷ and a fundamental rights role in relation to the EU Artificial Intelligence Act.⁸

The purpose of the Commission is to protect and promote human rights and equality in Ireland and to build a culture of respect for human rights, equality and intercultural understanding in the State. To realise these objectives, the Commission has been conferred with the power to review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality.

¹ Established under the [Irish Human Rights and Equality Commission Act 2014](#).

² See our recently published Strategy Statement 2025–2027: IHREC, [Strategy Statement 2025-2027](#) (2025).

³ Section 103 of the [Assisted Decision-Making \(Capacity\) \(Amendment\) Act 2022](#).

⁴ IHREC, [Commission Takes on New Role as Ireland's National Rapporteur on the Trafficking of Human Beings](#) (2020).

⁵ To be provided under the Inspection of Places of Detention Bill, when enacted.

⁶ We work with the Northern Ireland Human Rights Commission (NIHRC) in the Joint Committee, as set out in the Belfast Good Friday Agreement. Following the UK's withdrawal from the EU, we also comprise the Article 2(1) Working Group of the Dedicated Mechanism, along with the NIHRC and the Equality Commission for Northern Ireland (ECNI).

⁷ Gender Pay Gap Information Act 2021.

⁸ Article 77 of the [European Union Artificial Intelligence Act](#). Department of Enterprise, Trade and Employment, [Minister Calleary announces key milestone in the implementation of the EU regulation on AI](#) (31 October 2024).

A Section 30 Review

In publishing this Review, the Commission is exercising its powers pursuant to Section 30 of the Irish Human Rights and Equality Commission Act 2014 (IHREC Act).⁹ The provision bestows specific discretionary powers and/or obligations upon the Commission to review the working and effect of any legislation which relates to the protection and promotion of human rights and equality.¹⁰

For the purpose of carrying out such reviews and making recommendations to the Minister for Children, Equality and Disability (the Minister), the Commission may liaise with persons, groups and organisations, as it deems appropriate.

Section 30(2), IHREC Act 2014 provides that:

The Commission may, if it thinks fit, and shall, if requested by the Minister, carry out a review of the working or effect of any enactment referred to in subsection (1) and may make such recommendations as it sees fit following such review.

Section 30(5), IHREC Act 2014 states that:

For the purposes of assisting it in carrying out a review under this section, the Commission shall consult such persons, groups and organisations (including organisations of trade unions and of employers) as it considers appropriate.

Objective of this Review

The objective of this Review is two-fold. The first aim of the Review is to provide information to the public in relation to the application of Section 19 of the Intoxicating Liquor Act 2003 (Section 19). Second, the Review has been carried out to examine the effectiveness of the statutory provision and to ensure that it protects and promotes equality, with a view to making recommendations to the Minister in respect of how that can be achieved.

⁹ Section 30 IHREC Act 2014, available at:

<https://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>

¹⁰ Section 30(1)(b), IHREC Act 2014.

A licensed premises is defined as being an establishment that has a licence for the sale of intoxicating liquor (alcohol).

By virtue of Section 19, complaints of discrimination on or at the point of entry to ‘licensed premises’ are governed by that provision and are adjudicated upon in the District Court.

Prior to the introduction of Section 19, complaints of discrimination that occurred on or at the point of entry to licensed premises could be made under the Equal Status Acts (ESA),¹¹ and were dealt with by the specialist Equality Tribunal (the precursor to the Workplace Relations Commission).¹²

Methodology

This Review combines a legal analysis with a consultation process. People who were discriminated against on or at the point of entry to a licensed premises formed a central role in the consultation process; their engagement brought experiential knowledge to bear on the legal analysis.

The consultation process involved the following organisations:

- Irish Traveller Movement;
- Traveller Equality & Justice Project (TJEP);
- Department of Children, Disability and Equality (the Department);
- Pavee Point;
- Legal Aid Board;
- Licensed Vinters Association;
- Vinters’ Federation of Ireland (VFI);
- Irish Hotels Federation (IHF);
- National Advocacy Service for People with Disabilities;
- Free Legal Advice Centres (FLAC); and

¹¹ Law Reform Commission, Equal Status Act 2000 (Consolidated), available at: <https://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html>

¹² Claims under the Equal Status Acts 2000–2018 are now heard and adjudicated upon by the Workplace Relations Commission as opposed to the Equality Tribunal.

→ EU regional equality bodies.

The consultation process also included Judy Walsh BL, a leading academic in the field, who is Assistant Professor and Head of Subject for Social Justice at University College Dublin's School of Social Policy, Social Work and Social Justice.

The Commission is grateful to everyone who participated in this Review and, in particular, to those who have experienced discrimination at licensed premises.

Summary

In February 2022, the Commission published a Review of Section 19,¹³ which was carried out pursuant to Section 30 of the IHREC Act, detailing the impact of this statutory provision (the ‘First Review’).

The Commission identified a number of features of Section 19 which resulted in the promotion of equality and protection from discrimination being undermined, particularly for members of the Traveller Community.

These include:

- The issue of where to issue proceedings.
- Complex jurisdictional issues.
- The fact that no mediation service is provided.
- Challenges and complexities associated with filing and serving legal proceedings including notices of application.
- Complex discovery processes.
- Costs associated with filing legal proceedings.
- The fact that courts do not have an investigative function.
- Ambiguity in respect of the applicability of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Race Equality Directive) and in particular the reversal of the burden of proof; and
- The risk of costs orders being made against Complainants by the District Court.

On foot of the First Review, the Commission made a number of recommendations. The principal recommendation was to repeal Section 19 and to provide for all complaints of discrimination in accessing services, including on or at licensed premises, to be

¹³ Report of a review of Section 19 of the Intoxicating Liquor Act 2005 carried out pursuant to Section 30 of the Irish Human Rights and Equality Commission Act 2014, available at: <https://www.ihrec.ie/publications/report-of-a-review-of-section-19-of-the-intoxicating-liquor-act-2005-carried-out-pursuant-to-section-30-of-the-irish-human-rights-and-equality-commission-act-2014>

brought within the ESA and adjudicated upon at the Workplace Relations Commission (WRC).

The First Review was submitted to the Minister on 9 February 2022 and no response was received.

In November 2024, the Government committed to repealing Section 19 and bringing claims of discrimination on or at the point of entry to a licensed premises within the jurisdiction of the WRC.¹⁴

At the time of publication of this Review, in October 2025, the proposed Equality and Family Leaves (Miscellaneous Provisions) Bill¹⁵ is in the Government's legislative programme, with priority status. The failure by the State to repeal Section 19 results in the above-outlined challenges for people seeking to vindicate their rights but it also calls into question the State's compliance with the Race Equality Directive and in particular Article 8 thereof, which provides for a reversal of the burden of proof in certain circumstances (as set out in more detail below).

Since the publication of the First Review, the Commission has undertaken considerable work in this area, including providing legal representation to individuals refused entry to or service in licensed premises. The Commission has also engaged in national and international advocacy to protect and vindicate the rights of those discriminated against on or at a licensed premises.

This Review examines and reflects on Section 19 in practice. It considers the detrimental impact of Section 19 on protected or structurally vulnerable groups,¹⁶

¹⁴ Dáil Éireann Joint Committee on Children and Equality, *General Scheme of the Equality (Miscellaneous Provisions) Bill 2024: Discussion*, 8 July 2025, available at: https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_children_and_equality/2025-07-08/debate/mul@/main.pdf

¹⁵ The title of the Bill which it is proposed would lead to the repeal of Section 19 has changed to the Equality and Family Leaves (Miscellaneous Provisions) Bill.

¹⁶ We define a structurally vulnerable person as someone who is particularly vulnerable to violations of their rights due to political, economic, social and cultural structures. Instead of focusing on the personal characteristics of individuals and groups and viewing them as lacking agency, 'structural vulnerability' refers to the structures in place which render certain sectors of the population particularly vulnerable to human rights abuses.

particularly Travellers, and the challenges that they face in taking legal action to vindicate their rights.

Given the damaging impact of Section 19 on structurally vulnerable groups on a daily basis and, in particular, on Travellers, the Commission calls on the Government to urgently repeal Section 19 and to bring all complaints of discrimination arising out of a person(s) accessing or seeking to access services, including on or at licensed premises under the ESA.¹⁷

¹⁷ <https://www.ihrec.ie/publications/letter-to-dcediy-on-the-general-scheme-of-the-equality-miscellaneous-provisions-bill-2024>
https://data.oireachtas.ie/ie/oireachtas/committee/dail/34/joint_committee_on_children_and_equality/submissions/2025/2025-07-08_opening-statement-liam-herrick-chief-commissioner-irish-human-rights-and-equality-commission_en.pdf

Background

Prior to September 2003, complaints of discrimination that occurred on or at the point of entry to licensed premises could be made under the ESA,¹⁸ and were dealt with by the specialist Equality Tribunal (which has since been replaced by the WRC).¹⁹

Section 19 transferred jurisdiction from the Equality Tribunal to the District Court in cases of prohibited conduct²⁰ on licensed premises,²¹ except in relation to discrimination and accommodation.

In 2017, the National Traveller Community Survey²² asked Travellers whether they had ever experienced discrimination from a range of sources, and whether they had experienced this in the past year. Overall, 90% of Travellers reported that they had ‘ever’ experienced discrimination, with 77% reporting that they had experienced discrimination ‘in the past year’.

Over half reported experiencing discrimination from pub staff.²³

The problems associated with Section 19 are not new; they have been well-known for some time, with concerns having been expressed even at the time of the legislation’s enactment.

For example, in 2002 an Editorial in the *Irish Examiner* stated:

¹⁸ Law Reform Commission, Equal Status Act 2000 (Consolidated), available at:

<https://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html>

¹⁹ Claims under the Equal Status Acts 2000–2018 are now heard and decided by the Workplace Relations Commission as opposed to the Equality Tribunal.

²⁰ 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 reference to the Act of 2000 means the ESA 2000–2018.

²¹ Under Section 2 ILA 2003, “‘licensed premises’ means a 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’.”

²² Traveller Community National Survey July 2017

https://www.exchangehouse.ie/userfiles/file/reports/research/National_Traveller_Community_Survey_2017_07.pdf

²³ Government of Ireland, Experiences and Perceptions of Discrimination in Ireland, 2022, page 36.

Worrying signs of creeping authoritarianism, mixed with a growing disregard for the interests of minority groups, are manifest in the proposal... the Minister now intends ramming legislation through the house to remove publicans from the remit of the Equality Tribunal. Instead, they would be subject to the District Court in discrimination cases.

Astonishingly, no action group, including the [Equality] tribunal itself, was consulted... Understandably, this proposal is causing grave concern among disabled people, Travellers, women, the Irish Council of Civil Liberties, gays, lesbians, and other minority groups.²⁴

Even prior to the enactment of Section 19, it was evident that this change would have a particularly adverse impact on Travellers.

In his 2006 book, *An Ambition for Equality*, Niall Crowley, the first Chief Executive of the Equality Authority (a predecessor body to the Commission), put Section 19 into context, detailing the actions and targeted campaigns undertaken by publican representative bodies to undermine the ESA, and to criticise Travellers.²⁵

For example, in 2002 the Chief Executive of the Vintners' Federation of Ireland stated:

Instead of equality we now have special status for some members in society who are supported actively by the Equality Authority under the Equal Status Act. The decisions that are being handed down are ludicrous... It is state sponsored extortion, state sponsored blackmail.

The difficulties we experience with Travellers under the Equal Status Act are huge. It is being used and abused as a tool for blackmail and extortion – it is a gravy train.

²⁴ *Irish Examiner*, Equality legislation – McDowell's dangerous precedent, 12 June 2003, available at: <https://www.irishexaminer.com/opinion/ourview/arid-10093593.html>

²⁵ Crowley, *An Ambition for Equality* (2006, Irish Academic Press), pages 101–106.

The Minister at the time extended the terms of reference of the Commission on Liquor Licensing to examine the rights of licence holders to refuse admission. Crowley noted that:

The Equality Authority pointed out that the Commission was made up predominantly of vintner, hotelier and restaurant organisations without equality or human rights interests present.

It [the Commission on Liquor Licensing] also stated that ‘The Commission in general advocates recourse to the District Court when dealing with all licensing issues’... The Government responded positively to the suggestion by the Commission in relation to recourse to the District Court...

The outcome of this change [the introduction of Section 19] has been a massive reduction in cases in relation to discrimination by publicans. This reduction reflects the important role played by the Equality Tribunal [the predecessor to the WRC] in the effective implementation of equality legislation.²⁶

At the time, political representatives were also opposed to the legislative change; for example, in Dáil Éireann in 2003, Aengus Ó Snodaigh TD stated:

The Bill exploits genuine and widespread concern about the negative impact of alcohol and alcoholism, the prejudice and preconception that Travellers and young people are responsible for the bulk of public order offences and the unfortunately widespread, but mistaken belief that the reason the Equality Tribunal has made so many findings in favour of Travellers is because they are milking the system. This is rather than accept that this pattern reflects a long-standing tradition of discrimination and exclusion of Travellers from these businesses due to prejudice.²⁷

²⁶ Crowley, *An Ambition for Equality* (2006, Irish Academic Press), pages 101–106.

²⁷ Dáil Éireann debate – Tuesday, 24 Jun 2003 – Aengus Ó Snodaigh
<https://www.oireachtas.ie/en/debates/debate/dail/2003-06-24/13/>

Section 19 in practice

Between 2022 and 2024, the Commission has provided legal assistance (including legal advice and representation) to 67 Travellers in multiple cases before the District Court and the High Court.²⁸

Through its work, the Commission has also engaged with a number of individuals who have reported being discriminated against on or at the point of entry to licensed premises on the basis of protected grounds other than membership of the Traveller Community including minority ethnic groups, disabled people and LGBTQIA+ people.

However, the experience of the Commission in this area, as well as the data provided by the Courts Service and the Legal Aid Board (discussed in more detail below), indicates that those who institute Section 19 proceedings are predominantly Travellers.²⁹ In fact, figures provided by the Courts Service show that, between 2022 and 2024, the only complaints that were made centred upon discrimination as a result of Complainants' membership of the Traveller Community.³⁰

Therefore, the information that is available to the Commission appears to suggest that Section 19 predominantly impacts Travellers.

Data provided by the Legal Aid Board and the Courts Service

Legal Aid Board

The Legal Aid Board informed the Commission that, between 2022 and 2024, it had granted 36 legal aid certificates for representation in cases that involved alleged discrimination in violation of Section 19. All of the legal aid certificates granted for

²⁸ See, for example: Irish Human Rights and Equality Commission, *Commission Provided Legal Representation to Man with Brain Tumour asked to leave a pub for appearing unsteady on his feet*, available at: <https://www.ihrec.ie/news-press/customer-with-disabilities-settles-discrimination-claim-against-licensed-premises>; Irish Human Rights and Equality Commission, *Travellers Denied Service Secure Settlement and Redress*, available at: <https://www.ihrec.ie/news-press/travellers-denied-service-secure-settlement-redress>; Irish Human Rights and Equality Commission, *Pub issues apology for refusing entry to member of the Travelling Community*, available at: <https://www.ihrec.ie/news-press/pub-issues-apology-for-refusing-entry-to-member-of-the-travelling-community>

²⁹ See Appendix D and E

³⁰ See Appendix E

cases under the ILA during this period were provided to individuals who claimed to have been discriminated against on the basis of their membership of the Traveller Community. This is summarised in the table below and detailed in Appendix D.

Year	2022	2023	2024	Total
Legal Aid Certificate granted	4	25	7	36
Settled cases	1	2		3
Unsuccessful cases		1	1	2
Cases dismissed by court	2	1		3
Cases closed by Legal Aid Board	1	1		2
Ongoing cases		21	6	27

The Courts Service

The Courts Service also furnished data to the Commission detailing the volume of cases that have been instituted under Section 19 since the First Review, and the outcome of such proceedings. This is summarised in the table below and detailed in Appendix E.

Year	2022	2023	2024	Total
Number of applications made based on Discrimination	20	40	122	182
Applications made on the Traveller Community Ground	20	40	122	182
Applications made under all other Grounds	0	0	0	0
Cases Struck out / Withdrawn / Adjourned / Adjourned Generally	20	28	89	137
Order for Compensation	0	5	33	38
Order for Closure	0	0	0	0
Order for Closure & Compensation	0	0	0	0

Experiences of Travellers as litigants

People who were discriminated against on or at the point of entry to a licensed premises formed a central role in the consultation process for this Review. The Commission

engaged extensively with Travellers and with individuals engaged in Traveller representative groups, as well as with advocates for people who experienced discrimination under other grounds.

The Commission's consultation process and its work in respect of Section 19 demonstrates that the statutory provision has a particularly negative impact on Travellers.

The following case studies and quotes detail the challenges and obstacles faced by people in vindicating their rights under Section 19, in circumstances where they have experienced discrimination on or at the point of entry to a licensed premises.

Case study A

In the summer of 2021, Stephen,³¹ a Traveller, went to a pub to celebrate the birth of his first child with a few friends who are also Travellers. In the first pub, the group were told that they could have one drink only and that they would then have to move on.

Stephen then called another local pub to check if he could book a table and he was told that no booking was necessary. The group went to the new pub and sat in the seating area outside. They were served a pint each and then they were told that as they had no booking, they would have to leave.

Stephen and his friends checked with another group sitting outside and asked if they had a booking. They were told that they had not booked or reserved a table.

Stephen and one of his friends sought legal advice.

As they had been refused service while sitting outside the bar, it was unclear whether legal proceedings should be instituted in the District Court under Section 19 or under the ESA.

To protect the legal position, their solicitor at the time filed complaints in both venues. Information regarding the area which a liquor licence covers is in the possession of the publican and, while a copy can be obtained from the applicable District Court Office, the area of a particular building or premises that a licence covers is not always clear.

³¹ Real name not used to protect the identity of the individual.

In July 2022, after the matter had been listed in the District Court four times, the matter was struck out on the basis that the case could not proceed in two jurisdictions.

In February 2023, the matter came before the WRC under the ESA. At this point, the Respondent clarified that the liquor licence covered the physical area where Stephen and his friends were refused. In those circumstances, the WRC had no authority to examine the case.

Proceedings were then filed in the District Court once again, pursuant to Section 19. The case came before the District Court 14 times over the next two-and-a-half years. During this time the following complex legal issues were raised:

1. Jurisdiction;
2. *Res Judica* (the legal doctrine meant to preclude re-litigation of a claim already concluded);
3. Administrative Law;
4. Statute of Limitations; and
5. Article 8 of the Race Equality Directive.

The matter was settled between the parties, four years after Stephen and his friends say they were discriminated against and following 18 court appearances and one appearance before the WRC.

Stephen reports that since that evening, he has anxiety and fear that he will be refused a service when he is going about his daily life. He states he felt that equality and justice did not seem to be the focus of the court process.

Quotes from Travellers and representatives

The amendments [introduced by Section 19] and... the District Court... has had a detrimental impact in terms of people pursuing cases. It's become a deterrent and has deterred Travellers... people have felt or believed that they were discriminated against but have not brought cases under section 19 due to issues such as costs, intimidation and so on.

Traveller NGO

I would say discrimination against Travellers is endemic, I mean it's pervasive, whatever word you want to use, it's widespread, it's unfortunately almost a daily occurrence for Travellers across the country trying to access hotels, pubs for weddings, christenings, birthday parties, confirmations, holy communions or even just to go for a social drink. I mean not even necessarily for any sort of social event, even just to go for a nice quiet [drink], it's a scourge, it's pervasive... it's so pervasive it's actually almost normalised to discriminate against Travellers. I've always said, you know, to others the fear of it actually happening is equally as bad if not worse than the actual act... you know the fear of it happening is actually, it's mentally draining people and it's nearly as bad as the actual act of discrimination itself. That point I think gets lost quite often...

Traveller NGO

...from the service users' perspective the cases went through the District Court very slowly, it's the waiting and waiting, the stop start, the court date, adjournment, the waiting around and having to take time, the fear of... being played and the lack of transparency generally around that...

I don't think we've had a single [District Court] case that was listed and heard immediately, there have always been multiple adjournments...

Legal academic and Traveller advocate

Thematic issues arising

Through its engagement in casework, and in its engagements during this Review, the Commission has identified several thematic issues that give rise to concern.

These are:

- the impact of discrimination on or at the point of entry to a licensed premises;
- the need for legal representation;
- cases not being pursued;
- delays experienced when advancing cases; and
- Complainants' perception of the District Court.

We were all Travellers... It was our [the interviewee's and the Co-Complainants'] first day in college. None of us had ever been at the bar before or since... In the District Court, everyone is in for criminal cases. They just look at you and think you're a criminal, it makes you feel like a criminal... Anyone you see in court is up there for something wrong, driving conviction, drug dealing etc. When I go in there, people think how can he be a youth worker, the assumption is that... You wouldn't be in fear of the WRC, you're treated fairly and welcomed. The court's system usually negatively portrays Travellers... [In courtrooms] you can feel hierarchy, people are more superior than you, you fear how they're going to treat you. Are you going to be treated differently because of what you look like or who you are?

Michael,³² Traveller who took a case

The impact of discrimination on or at the point of entry to a licensed premises

The impact of discrimination can be profound and traumatising and, as detailed in a later section of this Review, data reflects that discrimination can have significant social consequences, particularly on mental health.

...because [when] you belong to a minority ethnic group that, you know, is oppressed and experiences racism and discrimination, you're navigating essentially what is a hostile environment... it kind of dictates how do you plan your week, how you plan your life essentially... If you're living in an area a long time, you become really familiar with various establishments, you know, which have the reputation... It's almost like being defeated, in fact it is being defeated, you deliberately avoid those places and you deliberately go to an establishment where you think you have some chance that you might be accepted... you plan your whole life around the fear of being discriminated against... you don't want the embarrassment and humiliation... And what actually gets lost is that then when you are actually inside the premises, you modify your behaviour, you change your accent a little bit maybe just to fit in, you change your identity a bit, you end up thinking you are the problem, you compromise yourself and your

³² Pseudonym used

identity, adapt it, which eventually from a mental health point of view takes a toll on you.

That you have to do this just to be accepted by settled people. These sacrifices get overlooked, they are not healthy mentally.

Traveller NGO

The need for legal representation

The Legal Aid Board (LAB) can, where appropriate and resourced, provide legal aid for cases issued under Section 19 ILA 2003 before the District Court. As indicated above, the LAB provided legal assistance in 36 legal aid cases for representation during the period between 1 January 2022 and 31 December 2024. However, there are still significant barriers to pursuing these cases.

...that [technical and procedural] part is difficult. We definitely needed the support of [the Commission] there. We wouldn't have been able to do that without lawyers. There is a lot of us out there not educated enough... We wouldn't understand the forms or even know about the forms. They'd [potential Complainants] need support. That would turn them off, knowing they'd have to fill out the forms. They won't tell you they have literacy problems, that they didn't get the supports they needed or finish education. It wasn't their fault... Travellers need to be more aware. More educated. Paperwork puts them off.

Bridget,³³ Traveller who took a case

The Commission has received a very high volume of requests for assistance in this area and has identified that the level of need, particularly amongst structurally vulnerable groups, requires that it provide legal assistance in line with its statutory functions.

Obviously, you need someone with legal expertise in navigating the ILA, it can be technical, you would need a legally trained eye, I think I would have been out of my depth there...

Traveller NGO

³³ Pseudonym used

Cases not being pursued due to fatigue with the system

A recurring theme in the Commission's interactions with advocacy groups and people seeking information is that people feel unable or unwilling to take cases under Section 19 due to the challenges involved.

Fatigue. People think it's a waste of time. Fatalism, apathy, we'll get nowhere, we won't win anyway. A lot of discrimination cases go unchallenged.

Traveller NGO

Many people also find it difficult to challenge businesses and organisations.

I think the thing is that people don't want to go to court anyway. I think that is the dissuading thing. It would take a very special person to instigate a complaint against a business due to the feeling of not wanting to draw attention to themselves.

National Advocacy Service for People with Disabilities

Delays experienced when advancing cases

In its legal casework, the Commission has observed and has been involved in a significant number of adjournments and protracted delays in cases being heard and adjudicated upon. In some cases, it took several years for a case to be concluded due to issues such as long court lists, delays in getting a hearing date and complex legal issues.

These delays can have a profound impact on people who have already been marginalised.

In... matters [before the] District Court, I know that [delay] is a frustration for them, because people don't know when they need to appear, when is it going to be heard or not, particularly if you are dealing with people with anxiety or communication difficulties.

National Advocacy Service for People with Disabilities

When cases are dismissed because a judge determines that they have been instituted in the wrong forum, it can compound negative feelings and experiences, resulting in a loss of faith in the justice system

You feel fed up. I feel what is the point bringing the case to the court when it's taken this long. It's not about the money; it's about things needing to change. I want my son to enter a pub without discrimination. Is there any point in fighting this corner when I'm just being passed along? This was four years ago, still no answer. They delay it so long that you just give up. There's no point in keeping going and it leaves you fed up.

Patrick,³⁴ Traveller who took a case

Even if cases are successful, the length of time that it takes to go through the courts still has a negative impact on Complainants.

...it was about 2 years [before the case got on for hearing]... The women [Co-Complainants] were stressed about it.

Bridget,³⁵ Traveller who took a case

Perception of the District Court

The Commission has seen, through its work and in its engagements in this Review, that many Complainants find advancing a case before the District Court an intimidating experience.

Courts are very intimidatory places and there are costs associated with bringing a case, and if cases are not won, the money that people have to pay for that.

Traveller NGO

Court is a very frightening experience. All Travellers will tell you that... A lot of Travellers would have had bad experiences [of courtrooms]... it

³⁴ Pseudonym used

³⁵ Pseudonym used

would always be for bad things with a bad outcome... It is very scary. Very scary, going into the Courtroom. It's going in there and talking in front of people, some people don't have the confidence. It's just a frightening experience going in there. The anxiety that Travellers build up is unreal.

Bridget,³⁶ Traveller who took a case

In particular, Travellers expressed that they have negative perceptions of the court process and courts system and indicated that they would welcome being able to bring cases in respect of discrimination in an alternative forum.

Largely negative [experience of the District Court in claims under Section 19]... People have difficulty getting legal representation, they feel unsupported, lost, with nobody on their side, alienated in the courtroom, there's a degree of fear and that kind of thing... ...even stepping into court, that feeling is "oh I might be recognised" and that stigma, of people thinking "oh what has she done", she's been caught doing something and that stigma, self-stigma even, walking into court, that I'm exposing myself to judgement and re-victimisation... I think you have members of the [Traveller] community who have ongoing trauma from being over-policed and family members going through the courts themselves and that view of the courts is of a harmful space, it's a very hard space to visualise yourself getting rights protection in... and when it goes wrong, it goes badly wrong.

Legal academic and Traveller advocate

These perceptions are exacerbated when Complainants cannot proceed with their cases because they are ruled to have been instituted in the wrong forum.

It's a bit tense. You're looking at many people going in and out [of the courtroom]. [You] feel that tension in the air going into a court case... I found it a bit intimidating. I almost feel like, they are already looking at you like you're wrong, I'm already on the backfoot walking in... The other solicitors... the Gardaí walking around.

Patrick,³⁷ Traveller who took a case

³⁶ Pseudonym used

³⁷ Pseudonym used

Even when cases are settled prior to hearing, there is an impact of having to attend court.

I'd be very nervous going into court... No way, I could not have done it without lawyers... I wouldn't be as well educated to speak to these well-educated people... None of us wanted to go into court and in front of a judge. We travel, we pull our trailers, Travellers are constantly being brought up in front of a judge for other reasons. Who do we think we are to bring a case against these people when there's so much stigma against Travellers? Having to walk into court, people would be wondering what we were in Court for they would think we did something serious... Say, for example, the person before me is in for hitting a bouncer right before my case came up, and then I'm in to protect my rights. I wouldn't feel confident going in [without legal representation].

Mary,³⁸ Traveller who took a case

Legal uncertainty

Jurisdiction

As the Commission set out in its First Review, Complainants experience significant difficulty in determining what forum (whether the District Court or the WRC) a case should be instituted in. This is because reaching a conclusion in respect of whether discrimination occurred 'on or at the point of entry to a licensed premises' is not always easy.

By way of example, if discrimination occurred in an outdoor space adjacent to the licensed premises, it could cause confusion as to the question of where a complaint should be instituted. Separately, in hotel premises, it is often not easy to determine what area an intoxicating liquor licence will cover. All of this requires Complainants to consult liquor licences and/or maps of premises, which are often not easily accessible

³⁸ Pseudonym used

or available. Potential Complainants are often not successful in advancing their proceedings because of this complex distinction.

These problems were reflected in the engagements that the Commission had during the course of this Review.

There is a huge difficulty in understanding the information [needed to institute a District Court claim], but if you were discriminated against in a hotel, understanding where you should commence proceedings would be hugely difficult for people. That would be a massive issue.

National Advocacy Service for People with Disabilities

The personal experiences of identifying the correct jurisdiction (i.e. District Court or WRC) are also borne out by recent decisions of the WRC. These decisions demonstrate the very significant consequences that can arise for Complainants in selecting the wrong forum in which to institute a case.

...it was a grey area – we were in the outdoor area but in the pub. We didn't know which the right place was to bring the case to. We were told to bring it to both and let them decide where the jurisdiction was, was the WRC or the District Court the right way to go. [The] judge didn't want to deal with the situation and wanted to pass it to the WRC... when we got to the WRC, he said it was a case for the District Court, their solicitors were saying we tried to hedge our bets so we knew the best option to get a claim... The WRC then decided it wasn't for them.

Patrick,³⁹ Traveller who took a case

The Commission highlighted this recurring problem in very significant detail in its First Review.⁴⁰

³⁹ Pseudonym used

⁴⁰ Report of a review of Section 19 of the Intoxicating Liquor Act 2005 carried out pursuant to Section 30 of the Irish Human Rights and Equality Commission Act 2014, pages 25–27, available at: <https://www.ihrec.ie/publications/report-of-a-review-of-section-19-of-the-intoxicating-liquor-act-2005-carried-out-pursuant-to-section-30-of-the-irish-human-rights-and-equality-commission-act-2014>

Appendix A lists 35 cases that have been dismissed by the WRC since 2016 solely on the basis that the WRC did not have jurisdiction by virtue of Section 19 and they should have been instituted in the District Court pursuant to Section 19.

82% of these cases were taken by Travellers.

During 2025, there has been at least one additional case that has been dismissed on that basis – *Joyce v Commiskey’s Bar and Restaurant, Blackhorse Avenue*.⁴¹ However, it is important to highlight that because these cases were dismissed, no findings were made against the Respondents and therefore they only constitute alleged claims of discrimination.

This repeated pattern is of significant concern to the Commission. As a result of a procedural hurdle, each one of the Complainants involved in those cases has been denied access to justice, as they are unable to have the substance of their complaint heard, regardless of whether they would have been successful in pursuing their claims.

These cases highlight the negative consequences of having multiple jurisdictions for instituting a discrimination case and illustrate the need to repeal Section 19.

Reversal of the burden of proof

In the First Review, the Commission highlighted that the Race Equality Directive applies to the provision of goods and services by all sectors, including licensed premises.

In particular, Article 3(1)(h) of the Race Equality Directive states:

3.1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to...

(h) Access to and supply of goods and services which are available to the public, including housing.

Article 8(1) and (2) of the Race Equality Directive then provides:

⁴¹ ADJ-00053755, 10 February 2025, available at: <https://www.workplacerelations.ie/en/cases/2025/february/adj-00053755.html>

8.1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs...

This means that the provisions contained within the Race Equality Directive must be taken into account when determining discrimination.

In line with Article 8 of the Race Equality Directive, Ireland (as a Member State of the European Union) is required to put in place measures to ensure that when a Complainant establishes facts before a court or other competent authority, from which it may be presumed that there has been direct or indirect discrimination (a so-called *prima facie* case), the burden of proof shifts to the Respondent to prove that there has been no breach of the principle of equal treatment.

This is significant. In all other civil proceedings, including most claims for discrimination, it will be up to a Complainant to prove their case on the balance of probabilities. This means that a Complainant has to show that it is more likely than not that a certain action or decision was taken and that it is more likely than not that the action or decision was taken for discriminatory reasons or based on discriminatory factors.

Because of the Race Equality Directive, this is not the case when it comes to claims of discrimination based on race. Rather, such a Complainant must show only that a certain action or decision was taken which gives rise to an inference that it was based on discrimination. Then it will be for a Respondent to prove that it was not taken for discriminatory reasons or based on discriminatory factors. There is no need for a Complainant to prove that the action or decision was taken for discriminatory reasons or based on discriminatory factors.

It is necessary to highlight that, while explicit recognition of this rule is provided for in Section 38A of the ESA, Section 19 does not provide for such an explicit mechanism.

The reasons for this and the impact of this rule have been engaged with in significant detail in the Commission's First Review in 2022.⁴²

The reversal of the burden of proof is an important tool to ensure fairness in the adjudication of complaints.

When you sit and watch it happen, it's the way that the spotlight shifts and the attention is placed on the respondent to talk through what they have done and why this isn't discrimination.

Legal academic and Traveller advocate

The importance of the reversal of the burden of proof was emphasised by the High Court in *Smith v The Office of the Ombudsman*.⁴³

Section 38A [of the ESA] gives effect to article 8 of the Racial Equality Directive (Directive/2000/43/EC). The Complainant must establish a prima facie case of discrimination, i.e. the Complainant must establish facts from which it may be presumed that there has been direct or indirect discrimination. The effect of these legislative provisions is that a Complainant is required to discharge a reduced burden of proof, and once this is done, the burden of proof is reversed. As explained by Advocate General Mengozzi in Case-C-415/10, Meister ECLI:EU:C:2012:8 [22], the effect of the burden of proof provisions under the Racial Equality Directive (and other related Directives) is that a measure of balance is maintained between the parties, to enable the complainant to claim his or her right to equal treatment but preventing proceedings from being brought against a respondent solely on the basis of the complainant's assertions...

⁴² Report of a review of Section 19 of the Intoxicating Liquor Act 2005 carried out pursuant to Section 30 of the Irish Human Rights and Equality Commission Act 2014, available at: <https://www.ihrec.ie/publications/report-of-a-review-of-section-19-of-the-intoxicating-liquor-act-2005-carried-out-pursuant-to-section-30-of-the-irish-human-rights-and-equality-commission-act-2014> pages 52–55.

⁴³ [2020] IEHC 51, paragraph 88.

Where it is alleged that discrimination has occurred on the ground of race, it is necessary to establish a prima facie case that the complainant has been treated less favourably than another person is, has been or would be treated in a comparable situation, on the ground that the complainant is of a different race, colour, nationality or ethnic or national origin.

A judgment of the UK House of Lords in *Glasgow City Council v Zafar* (delivered prior to the UK leaving the European Union)⁴⁴ highlighted the particular challenges that arise in respect of cases of race discrimination and the need for a reversal of the burden of proof in certain circumstances:

Claims brought under [legislation prohibiting sex and race discrimination] present special problems of proof for complainants since those who discriminate on the grounds of race or gender do not in general advertise their prejudices: indeed, they may not even be aware of them.

Given that the Government has yet to introduce a change in the law that would provide for claims in respect of discrimination on or at the point of entry to licensed premises to fall within the ESA, uncertainty remains in respect of the applicability of this legal requirement in Ireland.

In a number of cases where the Commission has provided litigants with legal representation to take cases under Section 19, the Commission has seen varying approaches taken by the District Court in different parts of the country to whether the statutory provision mandates, or even allows, courts to reverse the burden of proof where a prima facie case of discrimination is made out by a Complainant.⁴⁵ As set out above, this is what Article 8 of the Race Equality Directive requires, but Section 19 does not explicitly reflect this. This lack of a consistent approach has the effect of undermining the protection of equality in Ireland and violates the rights of individuals

⁴⁴ [1998] ICR 120.

⁴⁵ In recent years, IHREC has not acted in any cases involving discrimination on the gender ground where this question has arisen for consideration and, therefore, this chapter of the Review only engages with the application of the Race Equality Directive to cases involving discrimination on or at the point of entry to licensed premises. However, it is likely that the same or similar points could be made in respect of the application of the Gender Equality Directive in such cases.

who are entitled to the legal protection provided for in Article 8 of the Race Equality Directive.

The following two case studies illustrate the diverging approaches taken by different judges in the District Court where the Commission provided legal assistance to clients to pursue actions under Section 19.

Case study B

In 2024, the Commission represented five women who are members of the Traveller Community. The women had been celebrating a birthday and went out for dinner and a drink in Charleville, Co. Cork. After dinner, all five women were refused service in O'Connell's Bar on Main Street in Charleville.

The women ordered a drink at the bar. However, they were told that there was no room due to a private function being held on the premises. There was no evidence of a private party in the bar, and other customers continued to receive service. The group believed that the refusal of service was an act of discrimination owing to their membership of the Traveller Community.

The Commission provided the women with legal representation before the District Court, claiming that the refusal of service constituted prohibited conduct by a licensed premises within the meaning of Section 19.

At Mallow District Court, the women argued that Travellers, as a distinct ethnic group, enjoy protections under European law, specifically under the Race Equality Directive.

Reversal of Burden

The Commission argued on behalf of the women that, while Section 19 does not explicitly refer to the issue of the burden of proof, as a matter of European Union law it must be interpreted in a harmonious way or in conformity with Article 8 of the Race Equality Directive, which provides for the reversal of the burden of proof.

The District Court ruled on a preliminary application made by the Commission on behalf of the group. The effect of the submission, in summary, was that Section 19 must be given a 'harmonious interpretation' with EU law. This would involve, it was said, the Court interpreting Section 19 in a manner that provided for the reversal of the burden of

proof once facts from which it may be presumed that there has been direct or indirect discrimination had been made out.

At the hearing, the District Court heard evidence from the women (one of whom was eight months' pregnant at the time of the incident), and the Court was satisfied that facts had been established from which discrimination could be presumed. As such, the Court decided that the burden shifted to the Respondent to prove the contrary.

The Court ruled that O'Connell's Bar failed to rebut the presumption that discrimination had occurred. The Court held that the women had been discriminated against as Travellers when accessing the services of the pub.

Conclusion

The Court made individual orders of compensation to each of the women. In addition, the Court directed that a statement be published on the Facebook page operated by O'Connell's Bar, providing the details of these proceedings and the finding of the Court. The Court also directed the licensee for O'Connell's Bar to engage in Traveller cultural-awareness training provided by the Travellers of North Cork group within a period of six months of the making of the Court's order. The Court indicated that those orders and directions were made with a view to ensuring that the sanctions for the Respondent's prohibited conduct were effective, proportionate and dissuasive, in line with the requirements of the Race Equality Directive.⁴⁶

⁴⁶ See Appendix C.

Case study C

In 2022, the Commission provided legal assistance to a man who is a member of the Traveller Community (the Complainant) who had entered a pub in Wexford. The individual alleged that he had been refused service on the basis that it was ‘regulars only’. The Complainant had claimed that the conduct of the bartender or pub was discriminatory and in breach of Section 19.

District Court proceedings

The Complainant’s case first came before the District Court in September 2022. The Complainant made a preliminary application seeking a ruling on the burden of proof to be applied to the hearing (‘the preliminary application’), in particular, he sought clarity in respect of whether the burden of proof would be reversed once a prima facie case of discrimination on the basis of race/on the Traveller Community ground had been made out. The case came before the Court on multiple occasions after that.

When the Complainant advanced the preliminary application in June 2023, the District Judge said that he believed he was bound to interpret the complaint in line with the Race Equality Directive.

However, he also said that he:

‘... only had the power to interpret and was not empowered to impose a section that was not in the legislation.’

The District Judge also said that he was:

‘... swayed by the fact that the 2003 Act post-dated the Directive and it had been open to the legislature to include a burden shift provision’.

He stated that he could only assume that:

‘... there was lobbying or some other factors taken into account that led the legislature not to do that’.

The District Judge therefore refused to allow the burden of proof to be reversed in the event that a prima facie case of discrimination was made out, and therefore determined that Section 19 did not permit the requirements of the Race Equality Directive to be complied with in cases of discrimination which occur on or at the point of entry to a licensed premises.

As the Complainant did not believe that the District Court hearing would be in compliance with EU law, he sought an adjournment (which was refused) and subsequently chose not to proceed with the hearing of his discrimination complaint. Instead, he applied to the High Court to challenge the position adopted by the judge or, in the alternative, to challenge Section 19 on the basis that it was incompatible with the requirements of European Union law, in particular, Article 8 of the Race Equality Directive.

High Court proceedings

The Complainant instituted proceedings in the High Court against the owner of the pub in question, and also against Ireland and the Attorney General (the State). It was necessary to institute the proceedings against the State because the Complainant wished to challenge Section 19 as not complying with the requirements of European Union law. The State participated in the High Court proceedings, but the owner of the pub chose not to do so.

In his application for judicial review, the Complainant asked the High Court to make a number of declarations, the effect of which would have been to declare that the District Judge was legally obliged to reverse the burden of proof once a *prima facie* case of discrimination had been made out even though Section 19 does not explicitly provide for this. The position is to be contrasted with Section 38A of the ESA.

If the High Court determined that it could not make this declaration and/or that this did not reflect the legal position, the Complainant sought for Section 19 to be deemed invalid on the basis that it did not comply with the requirements of European Union law.

The outcome in the High Court

The Commission argued that the approach of the District Court did not conform with the judgment of the Court of Justice of the EU in *Minister for Justice and Equality and Commissioner of An Garda Síochána v Workplace Relationship Commission and Boyle*, Case⁴⁷ 57, wherein the Court of Justice of the EU confirmed that national courts and other statutory bodies are tasked with applying EU law, saying they:

⁴⁷ C-378/17 [2019] 30 ELR 57.

‘... are obliged to adopt all the measures necessary to ensure that EU law is fully effective, disapplying if need be, any national provisions or national case law that are contrary to EU law. This means that those bodies, in order to ensure that EU law is fully effective, must neither request nor await the prior setting aside of such a provision or such caselaw by legislative or other constitutional means.’

The judicial review application was refused by the High Court on procedural grounds, due to the failure of the Applicant to proceed with the hearing to its conclusion in the District Court prior to instituting judicial review proceedings. The High Court did not therefore rule on the substantive legal issues concerning the reversal of the burden of proof.

Does Section 19 comply with EU Law?

In the First Review, the Commission highlighted issues in respect of European Union law that arise for consideration when analysing Section 19.

These included:

- The fact that the statutory provision did not explicitly provide for the reversal of the burden of proof in the circumstances provided for in the Race Equality Directive, thus raising questions in respect of the transposition of the Directive into Irish law;
- The failure to properly transpose the Race Equality Directive may result in rights provided for in the Charter of Fundamental Rights of the European Union, such as the right to an effective remedy, being undermined; and
- The procedural conditions imposed by Section 19 may result in the exercise of rights pursuant to the Race Equality Directive being virtually impossible or extremely difficult and, as a result, this undermines the principle of effectiveness.

In addition to the observations made in the First Review, which are summarised above, the Commission takes this opportunity to highlight further significant issues that arise in terms of the State's compliance with European Union law, as a result of its failure to transpose the Race Equality Directive and by virtue of the mechanism provided for such complaints.

Principle of non-regression

Article 6(2) of the Race Equality Directive sets out:

6(2) The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

In addition, Article 2 of the Treaty of the European Union (TEU) provides:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

In an important judgment of the Court of Justice of the EU, *Repubblika v Il-Prime Ministru*, at paragraph 61, the Court noted that the European Union is:

... composed of States which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU.⁴⁸

This voluntary commitment of Member States to the founding values of the European Union means that such states cannot subsequently resile from the commitment.⁴⁹

The Court went on to hold that:

... a Member State cannot therefore amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law... compliance by a member state with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties.⁵⁰

One legal commentator provides a succinct summary of how the principle emanating from the Court's judgment has come to be understood:

Repubblika, in the eyes of many, has thus established a new basis for the ECJ's value jurisprudence, grounding it in a principle of non-regression that prohibits member states from 'reducing' the level of protection of the rule of law they committed to when they joined the Union. Since the member states have committed themselves to the values in Article 2 TEU upon acceding to the EU,

⁴⁸ Case-C-896/19, 20 April 2021.

⁴⁹ See also: *Poland v Parliament and Council*, Case-C-157/21, 16 February 2022, paragraph 144, where the Court stated: '[C]ompliance with [Article 2 TEU] values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European union and which it may disregard after its accession.'

⁵⁰ Case-C-896/19, 20 April 2021, paragraph 63.

they are under an obligation not to walk back the commitment they have made by reducing the extent to which those values are protected.

At the time of writing, the Court has explicitly made use of this principle on two occasions following *Repubblika*: in *Commission v Poland (Régime disciplinaire des juges)* the Court found that the introduction of the now-defunct Disciplinary Chamber of the Polish Supreme Court constituted a regression, reducing the protection of the rule of law in Poland. In *AFJR*, the Court briefly invoked non-regression to justify the binding nature of the CVM decision that enables continued monitoring of the rule of law and anticorruption under the Cooperation and Verification Mechanism.⁵¹

When Ireland introduced the ESA, all claims for discrimination fell within it. The action of carving out discrimination on or at the point of entry to licensed premises resulted in fewer protections being afforded to Complainants by virtue of Section 19 than had previously been provided. This fundamentally undermines the commitment to the values spelt out in Article 2 of the TEU and, in the view of the Commission, has the effect of being regressive and contravening the principle of non-regression set down by the Court in *Repubblika* and explicitly provided for in Article 6(2) of the Race Equality Directive.

Principle of effectiveness

An important principle underpinning the development of the shifting burden of proof in European Union discrimination law is the principle of effectiveness. This principle provides that substantive and procedural conditions governing actions for the enforcement of European Union law must not be framed in such a way as to make it excessively difficult or virtually impossible to exercise rights conferred by that law.⁵² In this regard, account should be taken of Article 7 of the Race Equality Directive.

⁵¹ Scholtes, Constitutionalising the end of history? Pitfalls of a non-regression principles for Article 2 TEU, *European Constitutional Law* (2023), available at: <https://eprints.gla.ac.uk/284754/2/284754.pdf>

⁵² *Bulicke v Deutsche Büro Service GmbH*, C-246/09, 8 July 2010, paragraph 25.

The principle (which applies across non-discrimination law) was clearly explained by the Court of Justice of the EU in an important judgment, *Danfoss*,⁵³ which addressed an equal pay Directive, but which could also be applied to the Race Equality Directive.

The Court observed at paragraph 14:

The concern for effectiveness which thus underlines the directive means that it must be interpreted as implying adjustments to national rules on the burden of proof in special cases where such adjustments are necessary for the effective implementation of the principle of equality.

Clearly, Section 19 does not allow for the effective implementation of the principle of equality. There are many problems associated with Section 19, not least the fact that a division of jurisdiction in respect of different categories of discrimination claims between the WRC and the District Court renders it virtually impossible or, at the very least, excessively difficult to assert rights. This is illustrated to an even greater extent by the fact that many lawyers, let alone Complainants, have been said to have instituted cases in the wrong forum, thus resulting in their clients' claims being defeated on that procedural ground.

Principle of equivalence

The principle of equivalence mandates that procedural rules governing actions for safeguarding individual rights under European Union law must be no less favourable than those governing similar domestic actions.

In *Impact v Minister for Agriculture and Food*,⁵⁴ the Court of Justice of the EU observed:

Those requirements of equivalence and effectiveness, which embody the general obligation on the Member State to ensure judicial protection of an individual's rights under Community law, apply equally to the designation of the

⁵³ C-109/88, [1989] ECR 3199.

⁵⁴ C-268/06, 15 April 2008 at paragraphs 47–48.

courts and tribunals having jurisdiction to hear and determine actions based on Community law.

A failure to comply with those requirements at Community level is – just like a failure to comply with them as regards the definition of detailed procedural rules – liable to undermine the principle of effective judicial protection.

The ESA is national legislation which contains domestic law as well as introducing provisions the purpose of which is to implement European Union law. Section 38A of the ESA explicitly transposes Article 8 of the Race Equality Directive, which brings the reduced burden of proof provision (allowing for the reversal of the burden when a prima facie case is set out) into effect for complaints before the WRC. In the absence of an equivalent provision providing for a reversal of the burden in the ILA 2003, Complainants who experience discrimination on or at the point of entry to licensed premises are in a less favourable position in asserting their rights in the District Court than a Complainant asserting their rights in the WRC. In effect, this means that the State has provided procedural rules that treat someone who attempts to take a case for discrimination on or at the point of entry to licensed premises less favourably than someone who attempts to take a case for discrimination against another provider of goods and services under the ESA. Data has shown that this disproportionately impacts Travellers.⁵⁵

⁵⁵ See Appendix A

Approaches in other jurisdictions

The Commission, through the assistance of Equinet, the European network for equality bodies, engaged with national equality bodies across Europe to ascertain the approach taken in other jurisdictions in respect of claims of discrimination. In particular, the Commission sought to ascertain whether the discrepancy that exists between the ESA and Section 19 in Ireland occurs in other countries.

The request was sent to all members of the network, and the countries listed below responded.

Country	Reversal of the burden of proof provided for in the Race Equality Directive?	Categories of case that the reversal of the burden of proof applies to
Bosnia and Herzegovina	Yes ⁵⁶	All discrimination cases
Estonia	Yes	All discrimination cases
Finland	Yes	All discrimination cases
Germany	Yes	All discrimination cases
Northern Ireland	Yes	All discrimination cases
Sweden	Yes	All discrimination cases
Czech Republic	Yes	Gender and race
Netherlands	Yes	All discrimination cases

As the table demonstrates, Ireland is an outlier in Europe. The responses received from other equality bodies reflected that there were no exceptions to the rules in respect of the reversal of burden of proof required by the Race Equality Directive. In fact, the majority of the responses received indicated that a reversal of the burden of proof was

⁵⁶ Bosnia and Herzegovina is not a member state of the European Union. Notwithstanding this, the reversal of the burden of proof has been confirmed as being applied by the Law on prohibition of discrimination of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, nos. 59/09 and 66/16).

provided for in many other categories of discrimination case and, in most instances, in all discrimination cases.

In the view of the Commission, given that Ireland has not explicitly transposed the requirements set out in the Race Equality Directive to apply in *all* circumstances in which racial discrimination takes place, it has failed to properly transpose the Directive and give effect to the protection it aims to provide.

Response of the EU and the international community

The First Review set out in detail the significant criticism directed at Ireland by international organisations and monitoring bodies in respect of the effect of Section 19 and its application.⁵⁷ It is necessary to highlight that there are ongoing concerns raised by such organisations and bodies given there has still, at this point in time, been no change to the law. Notwithstanding that an amendment is currently before the Oireachtas, structurally vulnerable groups continue to live with the impact of Section 19.

Since the First Review was published by the Commission, Section 19 has been the subject of negative commentary by bodies of the European Union.

In a report prepared for the European Commission entitled *A comparative analysis of non-discrimination law in Europe (2023)*⁵⁸ the following was observed:

‘In Ireland, the previous specialised Equality Tribunal was dismantled in 2015, when its functions were grouped together with those of all bodies involved with workplace relations into the Workplace Relations Commission (WRC). This body, which specialises in workplace-related conflicts and issues, also hears discrimination cases falling within the scope of the Equal Status Acts 2000–2018, in the fields of education and goods and services, including housing. It is problematic however that cases of alleged discrimination in relation to licensed premises (bars, etc.) are exempted from the mandate of the WRC and are instead adjudicated by the District Court, where proceedings are both more costly for the claimants and more complex than before the WRC. This has an

⁵⁷ See, for example: Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fifth to ninth reports of Ireland*, UN Doc. CERD/C/IRL/CO/5-9, 12 December 2019, paragraphs 45–46; European Commission against Racism and Intolerance, *ECRI Conclusions on the Implementation of the Recommendations in respect of Ireland Subject to Interim Follow-Up*, 1 March 2016, CRI(2016)4, page 5; The European Commission against Racism and Intolerance, *ECRI Report on Ireland (fifth monitoring cycle)*, 4 June 2019, CRI (2019)18; and Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Ireland*, 10 October 2018, ACFC/OP/IV(2018)005, paragraph 26.

⁵⁸ Chopin and Germaine, *A comparative analysis of non-discrimination law in Europe 2023*, December 2023, page 75, available at: op.europa.eu/en/publication-detail/-/publication/0624900d-e73b-11ee-9ea8-01aa75ed71a1

impact notably on the Traveller community whose members often face discrimination in access to licensed premises.’ **[emphasis in original]**.

The comparative analysis report prepared for the European Commission in 2024 once again highlighted some of the problems associated with Section 19:

In **Ireland**... It is problematic, however, that cases of alleged discrimination in relation to licensed premises (bars, etc.) are exempted from the mandate of the WRC and are instead adjudicated by the District Court, where proceedings are more costly and complex than before the WRC. This has an impact notably on the Traveller community whose members often face discrimination in access to licensed premises. It also risks leading to situations where neither the WRC nor the District Court recognises its jurisdiction, which happened in two cases in 2023 [e.g. *Stokes v Murtagh Bars Limited*, ADJ-00036951, 5 May 2023].⁵⁹ **[emphasis in original]**.

Recently, the Council of Europe’s Commissioner for Human Rights, Michael O’Flaherty, released a Memorandum that examined the human rights situation of the Roma and Traveller Communities in Ireland.⁶⁰ Commissioner O’Flaherty had visited Ireland in October 2024, as part of a series of country visits taking place in the context of his priority work on the human rights of these communities across the Council of Europe Area.

The Commissioner observed as follows in respect of the operation of Section 19:

18... According to research conducted in 2017, Travellers are 38 times more likely to experience discrimination in shops, pubs, restaurants than the majority population. While anti-discrimination laws in Ireland prohibit discrimination in the workplace, in the provision of goods and services and with respect to accommodation, housing assistance and education, including on the ground of

⁵⁹ Chopin and Germaine, *A comparative analysis of non-discrimination law in Europe 2024*, December 2024, page 90, available at: op.europa.eu/en/publication-detail/-/publication/0624900d-e73b-11ee-9ea8-01aa75ed71a1

⁶⁰ Council of Europe, *Memorandum on the human rights of Travellers and Roma in Ireland*, 25 February 2025, available at: rm.coe.int/memorandum-on-the-human-rights-of-roma-in-ireland-by-michael-o-flaherty-1680b44725

‘membership of the Traveller Community’, there are concerns regarding the functioning and effectiveness of these laws in practice, which undermines Travellers’ access to effective remedies and further weakens their trust in the justice system.

19. By way of example, matters concerning access to ‘places of entertainment’, such as bars, restaurants, or clubs where alcohol is offered for sale, are not under the purview of the anti-discrimination laws but that of the Intoxicating Liquor Act 2003. According to its Section 19, complaints regarding discrimination in licenced [sic] premises must be brought before district courts rather than the more accessible WRC, which acts as an equality body and hears other discrimination cases. This exception, which disproportionately affects Travellers and Roma imposes higher costs and greater burden of proof requirements on claimants, thereby effectively hindering Travellers and Roma from accessing remedies in such cases. While welcoming the uptake in the NAPAR 2023-2027 of urgent recommendations by international monitoring bodies and IHREC to give jurisdiction to the WRC in relation to discrimination regarding use of licensed premises, the Commissioner notes that to date, no action has been taken in this regard.

In light of this, the Commissioner made the following recommendation:

The authorities should ensure the effective implementation of the National Action Plan Against Racism (NAPAR) 2023–2027, including by:

Amending Section 19 of the Intoxicating Liquor Act to include claims of discrimination by licensed premises under the jurisdiction of the Workplace Relations Committee [sic] (WRC).

Strengthening legal aid schemes to enhance access of Traveller and Roma victims of discrimination in all sectors to effective remedies and complaints mechanisms.⁶¹

In its Fifth Opinion on Ireland, published in October 2024, the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities made the following observations and recommendations in respect of Section 19:

An ongoing review of the Equality Acts and the impending adoption of a National Equality Data Strategy by the government are commendable steps towards the promotion of equality but the delays in their adoption are a matter of concern [emphasis added]. The use of standardised ‘ethnic identifiers’ for persons belonging to the Traveller and Roma communities needs to be extended to all state departments and public administration. Section 19 of the 2003 Intoxicating Liquor Act has not been repealed, and Traveller potential victims of discrimination in ‘places of entertainment’ still do not have adequate procedural guarantees in terms of access to justice. These cases are adjudicated by district courts rather than by the more accessible Workplace Relations Commission.

⁶¹ Government of Ireland, Comments of the Government of Ireland on the Council of Europe’s Commissioner for Human Rights Recommendations in the ‘Memorandum on the Human Rights of Travellers and Roma in Ireland’, 19 February 2025, page 6:
‘In June 2024 the Department of Justice provided feedback to the Department of Children, Equality, Disability, Integration, and Youth in support of their proposal to repeal Section 19 in the General Scheme of the Equality (Miscellaneous Provisions) Bill 2024, which was published in November 2024. A General Scheme and Heads of Bill arising from a review of Ireland’s equality legislation was approved by the then Government in November 2024. This General Scheme proposes the repeal of Section 19 and provides for cases of discrimination that occurred on or at the point of entry to licensed premises to be determined by the Workplace Relations Commission under the Equal Status Act, as is the case for other cases of discrimination in the provisions of goods and services.’

With a view to addressing the existing barriers to legal aid, the number of dedicated Traveller legal service solicitors within the Legal Aid Board needs to be expanded...

Another issue which has again been brought to the attention of the Advisory Committee concerns Section 19 of the 2003 Intoxicating Liquor Act (ILA), which relates to discrimination in 'places of entertainment', referred to by the law as 'licensed premises' (i.e. bars, public houses, hotels or clubs, where alcohol is offered for sale). Persons belonging to the Traveller community are 22 times more likely to experience discrimination in shops, pubs and restaurants than the rest of the Irish population. One pressing issue is the difficulty in booking hotels for family occasions, which adds unnecessary stress particularly during significant life events such as weddings. Addressing this challenge would not only promote equality and fight discrimination but also improve the quality of life for persons belonging to the Traveller Community. Interlocutors from the Traveller Community have continuously advocated for those cases of discrimination in 'places of entertainment' to fall under the competence of the WRC, arguing that district courts were not efficient enough.

The Advisory Committee, reiterating its previous findings, deeply regrets that the legislative framework related to 'places of entertainment' remains unchanged. The Advisory Committee considers that public houses should not constitute a space where discrimination is tolerated. Awareness raising measures on the part of the authorities, in particular on anti-Traveller racism, are necessary and need to target both the general public and owners and staff of 'places of entertainment'.

The Advisory Committee is equally concerned that the accent of persons belonging to the Traveller community could play an active role in the denial of

their access to public houses. In this connection, it reminds the authorities that accents are an integral part of an individual's identity...⁶²

In light of that delay, once again the Advisory Committee has had to make the following recommendation:

The Advisory Committee reiterates its call on the authorities to undertake all necessary measures, in close co-operation with relevant stakeholders, to improve access to justice by persons belonging to the Traveller community. This includes the repeal of Section 19 of the 2003 Intoxicating Liquor Act and granting the Workplace Relations Commission the competence in cases of discrimination in 'places of entertainment'. The authorities should also amend legal aid legislation to provide the Legal Aid Board with the possibility to represent victims of discrimination in front of all relevant bodies.⁶³

Ireland is presently undergoing its sixth monitoring cycle by the European Commission against Racism and Intolerance (ECRI), the conclusions of which are awaited. In its engagement with this process, the Commission submitted to the ECRI that the jurisdiction in respect of claims for discrimination on or at the point of entry to licensed premises should be transferred from the jurisdiction of the District Court to the WRC.⁶⁴ The Commission also highlighted that the prevalence of discrimination against Travellers seeking access to licensed premises has been described by the Free Legal Advice Centres as giving rise to their 'cultural segregation'. It argued that the issues in respect of accessibility and the compliance of Section 19 with EU law had resulted in a deterrent effect, caused by the jurisdictional change ushered in by the statutory provision.

⁶² Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fifth Opinion on Ireland*, 16 October 2024, pages 4 and 13, available at: <https://rm.coe.int/5th-op-ireland-en/1680b4868b>

⁶³ Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fifth Opinion on Ireland*, 16 October 2024, page 7, available at: <https://rm.coe.int/5th-op-ireland-en/1680b4868b>

⁶⁴ Irish Human Rights and Equality Commission, *Ireland and the 6th Monitoring Cycle of the European Commission against Racism and Intolerance*, June 2024, available at: <https://www.ihrec.ie/uk/publications/ireland-and-the-6th-monitoring-cycle-of-the-european-commission-against-racism-and-intolerance>, pages 36–37.

The trenchant criticism by international bodies reflects and echoes the criticism the Commission has repeatedly maintained that Section 19 acts as a barrier to justice and potentially directly discriminates against Travellers.

Affected business groups and trade bodies

As it did in the First Review,⁶⁵ the Commission invited submissions from affected business representative groups and trade bodies tasked with representing the views and interests of various forms of licensed premises based in the State (collectively, ‘the trade bodies’).⁶⁶ Copies of all submissions received are available at Appendix B.

Similar to the submissions made in respect of the First Review, all of the trade bodies advocated for the jurisdiction over claims of discrimination on or at the point of entry to licensed premises to remain with the District Court.

As the commentary detailed earlier in the background section of this Review illustrates, many of the points made by the trade bodies to argue that Section 19 should be retained are the same or similar to those which were put forward by that category of organisation in or around the time of the enactment of the statutory provision.

The trade bodies continue to assert that concerns raised by the Commission in its First Review in respect of the procedural and other barriers or challenges caused by the District Court having jurisdiction are not well-founded because :

- the technical and procedural requirements are appropriate due to the important rights at play;
- the requirements are not in themselves overly, unduly or disproportionately burdensome or extensive;
- the evidential burdens and requirements are appropriate and cross-examination is required in order to test evidence;
- claims of discrimination should not be brought lightly, given their seriousness, and given the cost and time input; and
- there are a number of statutory mechanisms through which claimants may obtain legal assistance including through the provision of legal aid and therefore

⁶⁵ Section 19 Review Report, page 41.

⁶⁶ Irish Hotels Federation; Licensed Vintners Association; and Vintners’ Federation of Ireland.

any exposure to costs does not leave them without a means of bringing proceedings.⁶⁷

Other issues they raise in their submissions include:

- Consequences for licensed premises
 - Complaints of discrimination have serious consequences for licensees and accordingly it is appropriate that such proceedings be heard and determined by a judge, in a court of law.⁶⁸
- Fair trial
 - A balance must be struck between facilitating a claimant in making a claim and obtaining reasonable access to justice, and ensuring a fair and rigorous hearing and an ability to require full proof and testing of the claim.⁶⁹
- Licensed premises are under the jurisdiction of the District Court
 - The District Court is the forum in which licensing matters are dealt with and therefore anything associated with the licence, including the refusal of services at a licensed premises, should be dealt with in the District Court.⁷⁰
- The sanctions available to the District Court
 - The District Court has a broad range of sanctions available to it which are appropriate and fair.⁷¹
- Time limit
 - The procedure provided for under Section 19 is not subject to any particular time limit, and this may be of assistance to Complainants.⁷²
- Length of time for the proceedings

⁶⁷ Submission by the Irish Hotels Federation, 28 March 2025.

⁶⁸ Submission by the Irish Hotels Federation, 28 March 2025; Submission by the Licensed Vintners Association, 8 April 2025; Submission by the Vintners' Federation of Ireland, 8 April 2025.

⁶⁹ Submission by the Irish Hotels Federation, 28 March 2025; Submission by the Licensed Vintners Association, 8 April 2025; Submission by Vintners' Federation of Ireland, 8 April 2025.

⁷⁰ Submission by the Irish Hotels Federation, 28 March 2025; Submission by Licensed Vintners Association, 8 April 2025; Submission by Vintners' Federation of Ireland, 8 April 2025.

⁷¹ Submission by the Irish Hotels Federation, 28 March 2025.

⁷² Submission by the Irish Hotels Federation, 28 March 2025.

- The procedure in the District Court is ‘reasonably expeditious’ and the procedure that was formerly in place, which involved the Equality Tribunal adjudicating upon claims, ‘*suffered from delays and backlogs*’. ⁷³
- Multiple Actions
 - When the Equality Tribunal had jurisdiction to deal with claims of discrimination, and the District Court had jurisdiction to deal with other claims (e.g. refusal to serve a violent or disorderly customer), licensees ‘*could potentially face actions in two jurisdictions for decisions not to permit entry or refuse service*’. ⁷⁴

⁷³ Submission by the Irish Hotels Federation, 28 March 2025.

⁷⁴ Submission by the Licensed Vintners Association, 8 April 2025; and Submission by the Vintners’ Federation of Ireland.

Impact of discrimination

Research demonstrates that the societal and individual impact of discrimination is profound, particularly in relation to mental health inequalities.

For example, a medical study comprised of an analytical sample of 32,003 participants in the United Kingdom, concluded that:

We... found that those who had perceived personal discrimination were found to have increased likelihood of probable mental health problems. This observed association between perceived discrimination and negative mental health has been evidenced in previous literature (Hatch et al., 2016; Pascoe and Smart Richman, 2009) and previous prospective studies have highlighted the negative impact that forms of perceived discrimination have on future mental health measures (Hackett et al., 2019; Hackett et al., 2020; Jackson et al., 2019).⁷⁵

A study funded by the University of Manchester, which was based on a sample of 8,897 participants,⁷⁶ found that:

Chronic experience of racial discrimination over the life course showed the strongest association, increasing the likelihood of poor mental health 3-fold. These findings remained the same when looking at the different domains of racial discrimination separately (hate crimes, interpersonal, institutional)...

⁷⁵ Maletta et al., Prevalence of perceived discrimination and associations with mental health inequalities in the UK during 2019–2020: A cross-sectional study, *Psychiatry Research* 322 (2023), page 7, available at: <https://mural.maynoothuniversity.ie/id/eprint/19135/>

⁷⁶ For the purpose of the study, researchers separated discrimination into three categories: hate crimes (having property deliberately damaged, being physically attacked), interpersonal racial discrimination (being insulted, treated unfairly in public, treated unfairly by friends/family/partner, neighbours making life difficult), and racial discrimination in institutional settings (being treated unfairly in education, at work, by the police and/or in seeking housing).

Experiences of racial discrimination at any time point, compared to no reported experiences, were strongly associated with greater feelings of loneliness and isolation...⁷⁷

In Ireland, research reflects that Travellers are ten times more likely than White Irish to experience discrimination, and Travellers are over 22 times more likely to report discrimination in private services, particularly in shops, pubs and restaurants.⁷⁸ The impact of generational and life-long structural and societal exclusion of and discrimination against Travellers is shown to have an adverse impact on the mental health of Travellers. A study funded by the Department of Health highlighted that in 2010, 39% of Travellers had mental health problems for which they were being treated and 81% were taking prescription medication.⁷⁹

A recent report by the Commissioner for Human Rights of the Council of Europe reports that the negative impact of discrimination on mental health within the Traveller Community is continuing.⁸⁰ The Psychiatrists of Ireland Conference on Traveller mental health, in October 2024, heard that 11% of deaths within the Traveller Community were as a result of suicide (which is six times the national average). 11.9% of Traveller respondents had frequent mental health distress (which is defined as 14 or more days of poor mental health in the preceding month), while an estimated 10% of patients in the Central Mental Hospital are Travellers (more than ten times their share of the population).⁸¹

⁷⁷ Irizar et al., *The impact of racial discrimination on mental health*, Centre on the Dynamics of Ethnicity (2025), pages 10–11, available at: https://pure.manchester.ac.uk/ws/portalfiles/portal/582267300/The_Impact_of_Racial_Discrimination_on_Mental_Health_-_Irizar_et_al.pdf

⁷⁸ McGinnity et al., *Who experiences discrimination in Ireland?* Irish Human Rights and Equality Commission and Economic and Social Research Institute (2017), page iv, available at: <https://www.esri.ie/system/files/publications/BKMNEXT342%20%281%29.pdf>

⁷⁹ *All Ireland Traveller Health Study*, University College Dublin (2010), page 111, available at: <https://assets.gov.ie/static/documents/all-ireland-traveller-health-study-our-geels-summary-of-findings.pdf>

⁸⁰ Council of Europe: Memorandum on the human rights of Travellers and Roma in Ireland: 03 February 2025. <https://rm.coe.int/memorandum-on-the-human-rights-of-roma-in-ireland-by-michael-o-flaherty/1680b44725>

⁸¹ RTÉ, *Serious mental health crisis among Travellers, conference hears*, 16 October 2024, available at: <https://www.rte.ie/news/regional/2024/1016/1475831-traveller-mental-health/>

However, worryingly, international data shows that instances of Roma and Travellers having pursued complaints in respect of discrimination are low by comparison:

Roma and Travellers who reported that they had experienced discrimination in the previous five years due to being Roma or Traveller were asked a follow-up question on whether they had ‘reported or filed a complaint’ about the most recent incident of discrimination that they had experienced. In total, one-fifth (21%) reported making a complaint about the most recent incident of discrimination they had experienced. The highest levels of reporting were among Travellers living in Belgium (30%) and Travellers living in Ireland (28%)...⁸²

For those reasons, it is essential to ensure, as the Government’s own National Action Plan Against Racism recognises, that mechanisms through which complaints of discrimination are made are accessible and do not compound discrimination.

The Plan states that:

... Eliminating systemic racism in the justice system is essential to ensuring access to justice. This involves putting in place robust structures, practices and, where required, special measures to build and maintain trust between the justice system and groups experiencing racism.⁸³

⁸² Government of Ireland, Experiences and Perceptions of Discrimination in Ireland, 2022, page 44 available at: <https://assets.gov.ie/static/documents/statistical-spotlight-7-experiences-and-perceptions-of-discrimination-in-ireland.pdf>

⁸³ Government of Ireland, National Action Plan Against Racism, available at: <https://assets.gov.ie/static/documents/national-action-plan-against-racism.pdf>, page 30.

Recommendations

Given the devastating impact of discrimination on structurally vulnerable groups and in particular Travellers, the Commission makes the following recommendations.

The Commission recommends that Section 19 of the Intoxicating Liquor Act 2003 is repealed urgently, and all claims of discrimination are brought under the jurisdiction of the WRC.

Given the very real obstacles to justice in place by virtue of Section 19, in the event of any delay by the State in repealing Section 19, the Commission also makes the following recommendations.

The Commission recommends that the State enacts an explicit statutory mechanism within Section 19 to transpose Article 8 of the Race Equality Directive, reversing the burden of proof in prima facie cases, in similar terms to Section 38 of the Equal Status Act.

The Commission recommends that the State enacts an explicit statutory mechanism, in compliance with EU principles of equivalence, requiring each party to bear their own costs.

The Commission recommends that District Court Judges receive training on discrimination and EU law.

The Commission recommends that District Court Judges receive training on the endemic discrimination faced by Travellers in trying to access services.

The Commission recommends that members of the Vintners' Federation of Ireland and Licensed Vintners Association receive training on the endemic discrimination faced by Travellers in trying to access services in licensed premises.

The Commission recommends that the provision of legal aid is extended to all individuals who allege they have been discriminated against in accessing services, both at the WRC and in the District Court.

It is of significant concern to the Commission that the Government has not taken sufficient steps to ensure that the recommendations made in February 2022, two years and nine months ago, have been fully realised.

The slow progress of the State in repealing Section 19 despite national and international calls for reform is also concerning. Every day that the State delays reform on this issue leads to access to justice issues for protected groups and, in particular, Travellers.

The Oireachtas conferred the Commission with a power, pursuant to Section 30(2) of the Commission's founding statute, to make recommendations in respect of legislation. This was in explicit acknowledgement of the role to be played by the Commission in protecting and promoting human rights and equality. The Act states:

The Commission may, if it thinks fit, and shall, if requested by the Minister, carry out a review of the working or effect of any enactment referred to in subsection (1) and may make such recommendations as it sees fit following such review.
[emphasis added]

The objective underpinning this statutory power is to ensure that the statutory provisions referenced in Section 30(1) of the Act (of which Section 19 is one) are as effective as possible in protecting equality and/or human rights. Notwithstanding this, and the fact that several clear and precise recommendations were made by the Commission in February 2022, the Government did not treat them and the shortcomings of Section 19 with the urgency that required.

This has resulted in many individuals' rights being undermined and, in some cases, violated. It has also meant that Ireland has been the subject of even more condemnation from international monitoring bodies. This is in addition to the significant criticism that had already been directed at Ireland at the time of the First Review of Section 19 having taken place.

While the Commission welcomes the fact that the Government has taken the initial steps to enact legislation, this did not occur until November 2024. The Commission also acknowledges that the proposed legislation has been sent for priority drafting, but it has yet to be drafted, let alone enacted or commenced.

At this juncture, it is necessary for the Commission to emphasise the very significant urgency attached to this situation. As time passes, more and more individuals are not benefitting from the equality law framework provided by the ESA and the protections they should be afforded are being undermined by Section 19. This results in arbitrary unfairness and a failure by the State to ensure the effective implementation of European Union law.

As a consequence, the Government must ensure that it fulfils its commitments without any further delay and brings about the changes detailed above as soon as possible.

Appendix A – Cases dismissed by the WRC

Table of WRC decisions dismissing complaints because of Section 19 Intoxicating Liquor Act 2003

Year	Case	Ground/s	Reason for dismissal
2024	Brady v. JFR Limited, ADJ-00046239, 7 May 2024	Disability	No jurisdiction – Intoxicating Liquor Act
2024	Quilligan-Culligan v. Unicorn Bars and Restaurants Limited Unicorn Pub & Fables Restaurant, ADJ-00052716, 2 October 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Berry v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051818, 13 November 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Hanifan v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051816, 13 November 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Flynn v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051809, 13 November 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Berry v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051813, 13 November 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Wall v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051811, 13 November 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Flynn v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051815, 13 November 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Berry v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051808, 13 November 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Cash O'Brien v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051814, 14 November 2023	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Cash v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051817, 14 November 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2024	Cash v. Phoenix Inn Limited t/a Kestrel House, ADJ-00051810, 14 November 2024	Traveller community	No jurisdiction – Intoxicating Liquor Act
2023	Stokes v. The Brass Fox, ADJ-00040008, 14 February 2023	Traveller community	No jurisdiction – Intoxicating Liquor Act

Year	Case	Ground/s	Reason for dismissal
2023	Stokes v. The Brass Fox, ADJ-00040001, 13 March 2023	Traveller community	No jurisdiction – Intoxicating Liquor Act
2023	Stokes v. Murtagh Bars Limited, ADJ-00036951, 5 May 2023	Traveller community	No jurisdiction – Intoxicating Liquor Act
2023	Mongan v. Murtagh Bars Limited, ADJ-00037889, 9 May 2023	Traveller community	No jurisdiction – Intoxicating Liquor Act
2023	Collins v. Staunton, ADJ-00040748, 8 August 2023	Traveller community	No jurisdiction – Intoxicating Liquor Act
2023	Collins v. Laurence Staunton, The Punch Bowl, ADJ-00040742, 8 August 2023	Traveller community	No jurisdiction – Intoxicating Liquor Act
2023	O'Malley v Eamonn Harty t/a Harty's Bar, ADJ-00037643, 2 October 2023	Religion	No jurisdiction – Intoxicating Liquor Act
2023	Flanagan v Wynn's Hotel, ADJ-00045069, 22 November 2023	Gender Age Disability	No jurisdiction – Intoxicating Liquor Act
2022	No relevant cases in 2022		
2021	Pratt v. The Half Door Bar and Restaurant Limited, ADJ-00026369, 6 October 2021	Traveller community	No jurisdiction – Intoxicating Liquor Act
2020	A Member of the Travelling Community v. A Limited Company, ADJ-00023714, 15 September 2020	Traveller community	No jurisdiction – Intoxicating Liquor Act
2020	A Member of the Travelling Community v. A Limited Company, ADJ-00023718, 15 September 2020	Traveller community	No jurisdiction – Intoxicating Liquor Act
2019	A Customer v. A Licensed Premises, ADJ-00015106, 1 February 2019	Disability	No jurisdiction – Intoxicating Liquor Act
2019	Deans v. Harvest Point Ltd., ADJ-00011781, 23 April 2019	Gender Age Civil status Race (Nationality) Disability Harassment	No jurisdiction – Intoxicating Liquor Act
2018	A Member of the Travelling Community v. A Publican, ADJ-00008223, 2 August 2018	Traveller community	No jurisdiction – Intoxicating Liquor Act

Year	Case	Ground/s	Reason for dismissal
2018	Supple v. The Good Luck Restaurant Limited T/A Bombay Palace, ADJ-00013169, 9 August 2018	Race Family status	No jurisdiction – Intoxicating Liquor Act
	A Complainant v. A Licensed Premises, ADJ-00007237, 15 January 2018	Race (Polish nationality)	No jurisdiction – Intoxicating Liquor Act
2017	A Member of the Travelling Community v. A Public House, ADJ-0001389, 25 January 2017	Traveller community	No jurisdiction – Intoxicating Liquor Act
2017	A Customer v A Hotel, ADJ-00004878, 24 March 2017	Traveller community	No jurisdiction – Intoxicating Liquor Act
2017	A member of the Travelling community v A Hotel, ADJ-00004874, 24 March 2017	Traveller community	No jurisdiction – Intoxicating Liquor Act
2017	A Customer v. An Off Licence, ADJ-00005652, 9 June 2017	Traveller community	No jurisdiction – Intoxicating Liquor Act
2017	Mongan v. Donal & Martha Duffy Limited t/a SuperValu Edgeworthstown, DEC-2017-044, 23 November 2017	Traveller community	No jurisdiction – Intoxicating Liquor Act
2016	A Customer v A Public House, ADJ-00002246, 23 August 2016	Traveller community	No jurisdiction – Intoxicating Liquor Act
2016	A Customer v. A Nightclub, ADJ-00001797, 15 September 2016	Race (skin colour)	No jurisdiction – Intoxicating Liquor Act

Appendix B – Submissions received from trade bodies



Áine Bhreathnach

Irish Human Rights and Equality Commission 16 –
22 Green Street

Dublin 7

28th March 2025

Re: IHF Submission - Updated IHREC Review of Section 19 of the Intoxicating Liquor Act 2003 (the 'ILA')

Dear Ms Bhreathnach,

The Irish Hotels Federation (IHF) would like to thank the Irish Human Rights and Equality Commission (IHREC) for your letter dated 18 March 2025 inviting us to make a written submission in relation to an updated review of section 19 of the Intoxicating Liquor Act 2003 (ILA) which the Commission is undertaking.

As the national organisation of the hotel and guesthouse sector, representing over 900 businesses, the IHF welcomes the opportunity to set out our position below.

Summary of IHF views

At a high level, we submit that it is important that claims of discrimination be capable of being made, heard and determined

1. Within a reasonable timeframe;
2. With reasonable expedition;
3. In a manner that is fair to all concerned, and, in particular, in a manner that strikes an appropriate balance between the legitimate needs and interests of the parties to the proceedings, such that it is neither too easy, nor too difficult, to bring, or successfully bring, a claim;
4. In a manner that strikes the right balance in terms of what to require as regards formality; technicality; procedure; evidential requirements, onuses and proofs; consequences and costs; and ease-of-use;
5. In a manner that is fit for purpose for all concerned, and which also
 - a. recognises the seriousness of claims and allegations of discrimination being made, and the consequences of a finding against a relevant person, not only in terms of redress, but also in terms of reputation and impact on trade; and
 - b. recognises and caters for any special needs that users of the system, and in particular claimants, may legitimately have;
6. In a manner that provides for appropriate redress, and an appropriate range of redress possibilities; and
7. In a manner that is coherent and aligns with other related and relevant jurisdictions exercised by the forum concerned.

In our experience and view, the procedure under section 19 of the ILA meets these criteria and strikes the right balance overall.

There has been no negative feedback from our members as regards the procedure under section 19 of the ILA as compared with the pre-existing procedure before the Equality Tribunal and the section 19 procedure seems to be working well.

Particular Views

In particular, we feel that the District Court (DC) is an appropriate forum, for reasons including the following:

1. Complaints of discrimination on the relevant grounds are serious, and, if established, have serious consequences for licensees.
2. Accordingly, it is appropriate that the proceedings be heard and determined by a judge, in a court of law, according to the rules, principles and procedures that pertain in our judicial system for the establishment of rights and obligations of parties in this sort of matter.
3. In our system of justice, it is considered appropriate, in matters of this sort, where important rights, and obligations, are at stake, respectively, to require a procedure before an appropriate forum that strikes the right balance between
 - a. facilitating the claimant in making his claim, and gaining reasonable access to justice, and
 - b. ensuring a fair and rigorous hearing, and an ability to require full proof and testing of the claim, before a finding is made against the defendant or respondent which affects his reputation, business and finances.
4. While the IHREC has previously identified a number of aspects of DC practice and procedure, and elements of the rules that apply, which it suggests may not appropriately facilitate claimants, this point can be overstated. In that regard, the IHREC has, in essence, referred, in contrast to the Workplace Relations Commission (WRC) procedures, to the greater technicality, formality, evidential requirements and cost (including exposure to legal costs) of the DC procedure.
5. However, in our view
 - a. These requirements are appropriate, as they are appropriate in other similar court proceedings in which important rights and obligations are to be heard and determined by the court concerned;
 - b. The requirements are not in themselves, overly, unduly or disproportionately, burdensome or extensive in any event;
 - c. In terms of the evidential burdens and requirements, it is appropriate that the essential proofs and cogent, probative admissible and relevant evidence be both given, and be capable of being tested by means of cross-examination, before a claim of discrimination is considered to have been made out on the balance of probabilities;
 - d. It is appropriate that a claim of discrimination be rehearsed in an adversarial fashion, and particularly that evidence in support of such a serious allegation subject to cross-examination (a process famously described by Wigmore as *"the greatest legal engine ever invented for the discovery of truth"*).
 - e. It is also appropriate that a claim of discrimination not be brought lightly, given its seriousness, and given the cost, time-input and stress that will be incurred by a licensee in having to defend such proceedings. Accordingly, it is appropriate that there be appropriate checks and balances which proportionately serve to ensure that claims are not brought lightly, such as the considerations that the proceedings will be heard in public, and the possibility that costs might be awarded against an unsuccessful claimant.
 - f. Any legal or procedural technicality or formality, or even exposure to cost, that may throw up difficulties for a claimant does not leave them without a means of bringing the proceedings with the appropriate support, assistance and/or representation.

In this regard, while legal aid is not available from the Legal Aid Board under the Civil Legal Aid Act 1995, extensive provision is made for the provision of support and assistance (including the provision of legal and other advice, assistance and representation) by the IHREC.

- i. Under section 19(6) of the ILA;
 - ii. Under section 19(7) of the ILA; and
 - iii. Under section 40 of the IHREC Act 2014.
- g. Insofar as it may be argued by some that there is room for streamlining the DC procedure, or making it more user-friendly, this could be done by appropriate amendments or procedural amendments to the DC rules and would not require a removal of discrimination cases from the jurisdiction of the DC.
- 6. The DC is the main forum for dealing with licensing issues. This includes annual licence- renewal, the granting of Special Exemption Orders, and the application of sanctions, penalties and temporary closure orders.

For a variety of reasons, then, it is coherent and appropriate that the DC also have vested in it a jurisdiction for dealing with all matters pertaining to licensing, and licensed premises, including complaints in respect of admission and exclusion from licensed premises, complaints made under the Equal Status Act, and other complaints, such as refusing to customers on other alleged grounds.

These issues relating to licensing and licensed premises – including, but not limited to, matters relating to admission and service, might otherwise be heard before different *fora*, and licensees would face a multiplicity of proceedings in such different *fora*.

Also, it is appropriate that all matters relevant to licensing and the licensing history of a licensee come before the same *forum*, and that the DC would not only deal with, but also be aware in other contexts of, any compensation; taking of specified action; and/or temporary closure of licensed premises ordered by it in the context of a discrimination claim.

- 7. Where satisfied, on foot of a hearing meeting the standards ordained by our system of justice as being appropriate, fair and rigorous in cases such as these, that an applicant is entitled to redress for prohibited conduct, the DC has the flexibility and the power to make whatever order it considers appropriate, one or more of the following:
 - a. An order for up to €15,000 in compensation;
 - b. An order that the relevant licensee take a particular, specified, course of action; and/or
 - c. A temporary closure order.

This power and flexibility is appropriate where the serious allegation of discrimination on relevant grounds has been properly made out before a judicial authority.

Moreover, a licensee who does not comply can be found in contempt of court, which is a further advantage of the DC procedure.

- 8. Another advantage to the section 19 procedure is that it is not subject to any particular time-limit, and this may be of assistance to claimants who are facing any initial difficulties in mounting their proceedings or making or putting in place arrangements to seek assistance in that regard.
- 9. Finally, the DC procedure is reasonably expeditious, and it is noted that the former procedure before the Equality Tribunal suffered from delays and backlogs of a significant order.

Conclusion

In conclusion, we believe that section 19 of the ILA is both working well and that it makes appropriate provision for the hearing and determination of relevant discrimination claims before the DC. We think it strikes the right balance between the legitimate needs and requirements of all parties to the proceedings so as to ensure fair outcomes and procedures for all concerned.

A combination of section 19 of the ILA and section 40 of the IHREC Act 2014 also ensure that, insofar as any claimant faces any difficulty in dealing with section 19 proceedings, the appropriate support, assistance, advice and representation can be made available to them by the IHREC.

Furthermore, if, contrary to our views, there are any aspects of the DC procedure that might desirably be tweaked to overcome perceived disadvantages for litigants which are of a disproportionate nature, it is

always possible to amend section 19 and/or make particular provision in the DC Rules to cater for these matters.

We would respectfully ask that the IHREC give due consideration to our views. We are also willing to provide further views, clarification and information should that be of assistance to the IHREC.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Paul Gallagher', with a long, sweeping flourish extending to the right.

Paul Gallagher
Chief Executive



Áine Bhreathnach
Legal Team

Irish Human Rights and Equality
Commission 16 – 22 Green Street
Dublin 7

8 April 2025

Re: Review of Section 19 of the Intoxicating Liquor Act 2003

Dear Ms Bhreathnach,

I refer to your email of 18 March 2025. See our response below.

The Licensed Vintners Association (LVA) is the representative body for the publicans of Dublin and Bray. See www.lva.ie for further information.

Background

We reviewed the Recommendations of the Commission in your “Review of Section 19 of the Intoxicating Liquor Act 2003”, published in 2022.

It is important to note that members of our trade association also have significant direct experience of the operation of section 19, ILA 2003 and that the views of our members are just as valid but are also directly contrary to the views of civil society organisations. The LVA believes, and we understand the main hospitality trade bodies in Ireland also believe, that jurisdiction for discrimination cases

arising from incidents on or at the point of entry should remain with the District

Court. We oppose any steps to move such discrimination claims to the jurisdiction

of the WRC.

The LVA welcomed Section 19 of the Intoxicating Liquor Act 2003 as we had always believed the District Court should have had the jurisdiction to hear complaints of discrimination under the Equal Status Act that occurred on or at the point of entry to licensed premises.

Licensed Vintners Association

Anglesea House

Anglesea Road

LVA Position

The LVA believes that Section 19 of the Intoxicating Liquor Act 2003 is functioning well and that no amendments to this section are required.

Our Rationale

- The District Court is the main Court for most licensing issues – the annual license renewal, granting of Special Exemption Orders, as well as the application of sanctions, penalties and temporary closure orders under licensing law.
- It is entirely consistent that the District Court also has jurisdiction for dealing with complaints in respect of admission and exclusion from licensed premises, including complaints made under the Equal Status Act.
- The system that applied prior to 2003, whereby licensees had to deal with the Equality Authority for Equal Status cases, and the District Court for other cases e.g. refusing to serve a violent or disorderly customer, meant that licensees could potentially face actions in two jurisdictions for decisions not to permit entry or refuse service. This was completely unfair and unsatisfactory.
- The licensed trade does not now need to revert to answering to two competing, and potentially contradictory, authorities on matters of admission and service.
- Experience over the 22 years since the introduction of Section 19 of the 2003 Intoxicating Liquor Act has shown that it works well.
- We note that subsection (6) and subsection (7) of Section 19 also provide for Equality Authority to apply to the District Court for redress in certain cases, and also provides that the authority provide assistance to persons applying to the courts for redress.
- We believe that the procedures required to take a complaint of discrimination to the District Court under Section 19 of Intoxicating Liquor Act 2003 are appropriate, and not onerous as suggested in your review report of 2022.
- Making a complaint of discrimination against a licensed premises is a serious allegation. It is right and proper that such complaints be taken to the District Court to ensure that robust and independent process is in place to assess such complaints and ensure **both** parties are treated fairly.
- Accordingly, we believe that the requirements of taking a District Court case is actually a significant strength of the Irish legal system in hearing discrimination cases against licensees.
- In our view, the fact that the District Court procedures require
 - formal proceedings
 - completed forms
 - court fees
 - is an adversarial process
 - heard in public

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- by District Court judges in the general licensing section
- with no anonymity
- with the risk of costs orders
- is a serious process
- with Appeals to go to the Circuit Court with cost risks

is essential in ensuring that both parties receive a fair hearing. Just as licensees should rightly face sanction if the Court believes they have acted in a discriminatory fashion, it is also right that

claimants face a rigorous examination, and costs, should their claim fail.

We were surprised by the reference in the consultation document of 2019 that “District Court is less familiar with equality legislation” as we feel District Court judges are well placed to hear such cases, and indeed, have significant experience in dealing with admission / refusal of services / disorderly conduct matters in licensed premises.

Conclusion

Based on this rationale, the LVA’s position is the Section 19 of the Intoxicating Liquor Act 2003 is working well and that no amendments to this Section are required. Discrimination cases in licensed premises should remain a matter for the District Courts.

Yours sincerely,

Donall O’Keeffe

Chief Executive

Appendix C – Statement of the Court

RECORD NO: 2023100069

AN CHUIRT DUICHE

THE DISTRICT COURT

DISTRICT COURT AREA OF COUNTY CORK

DISTRICT NO. 20

IN THE MATTER OF SECTION 19 OF THE INTOXICATING LIQUOR ACT 2003
BETWEEN:

MARY CONWAY O'DRISCOLL, MARGARITA MCCARTHY, THERESA MCCARTHY,

MARGARET MEEHAN, AND ANNIE
MCCARTHY

APPLICANT

AND

TADHG O'CONNELL OF O'CONNELL'S BAR

RESPONDENT

STATEMENT BY THE COURT PURSUANT TO SECTION 19(5) OF THE INTOXICATING LIQUOR ACT 2003

The above-named Applicants instituted an application pursuant to section 19 of the Intoxicating Liquor Act 2003, against the above-named Respondent, the Licensee of a public house which trades as "O'Connell's Bar", situated at 69 Main Street, Charleville, County Corik, P56 Y364. The Applicants were represented by the Irish Human Rights and Equality Commission.

The Applicants claimed that the Licensee of O'Connell's Bar, Tadhg O'Connell, had engaged in prohibited conduct against them. In particular, the Applicants claimed that Mr O'Connell had refused to provide them with access to services provided at O'Connell's Bar on 5 March 2022 and in so doing, he had subjected them to discrimination because they are members of the Traveller community.

In the course of adjudicating upon the Applicants' applications, the Court held that where it is alleged that prohibited conduct has occurred on the basis of a person's membership of the Traveller community, the provisions of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin¹ ("**the Race Directive**") will apply to section 19 of the Intoxicating Liquor Act 2003.

As a consequence, where the Court was satisfied that the Applicants, one of whom was eight months pregnant, had established facts from which it may be presumed that there had been direct or indirect discrimination on the basis of race or ethnicity and in particular, their membership of the Traveller community, then it would be for the Respondent to prove the contrary.

The Court found that the Applicants had established a *prima facie* case of discrimination, and therefore the burden of proof was reversed in line with the requirements of the Race Directive.

The Respondent failed to rebut the *prima facie* case of discrimination made out by the Applicants. The Court therefore determined that the Respondent had engaged in prohibited conduct towards the Applicants as defined by section 19 of the Intoxicating Liquor Act 2003, in that he had discriminated against them on the basis of their membership of the Traveller community.

The Court made orders of compensation in the following amounts:

Mary Conway O'Driscoll €2,000.00

Margarita McCarthy- €3,000.00

Theresa McCarthy - €2 500.00

Margaret Meehan €2,000.00

Annie McCarthy - €2,000.00

The said amounts of compensation are to be paid by the Respondent within six months of the making of the Court's order.

The Court also directed that a statement be published on the Facebook page operated by O'Connell's Bar providing the details of the within proceedings and the finding of the Court.

The Court also directed Tadhg O'Connell to engage in the Traveller Cultural Awareness Training provided by the Travellers of North Cork CLG within a period of six months of the making of the Court's order.

The Court made the said orders and directions, with a view to ensuring that the sanctions for the Respondent's prohibited conduct were effective, proportionate and dissuasive, in line with the requirements of the Race Directive.

30th day of January 2024

Judge Colm Roberts

Appendix D – Data from the Legal Aid Board

Review of Section 19 of the Intoxicating Liquor Act 2003

1. The number of legal aid certificates for *advice only* that were issued by the Legal Aid Board in respect of Section 19 of the Intoxicating Liquor Act 2003 between 1 January 2022 and 31 December 2024 and, if different the number of clients that the Legal Aid Board provided advice to in respect of potential complaints under Section 19 between 1 January 2022 and 31 December 2024

The Legal Aid Board does not issue certificates in respect of advice only. Cases are dealt with by a Law Centre on what is known as ‘on an advice basis only’. The Legal Aid Board has provided advice in respect of Section 19 of the Intoxicating Liquor Act 2003 between 1 January 2022 and 31 December 2024 in eight applications. This number can be broken down to three clients in 2022, all of whom decided not to pursue a claim, two clients in 2023, all of whom decided not to pursue a claim and finally in 2024, three clients, one of whom was out of time to bring an application, one client who decided not to pursue a claim and one client who pursued a claim with the Workplace Relations Commission after receiving advices from the Legal Aid Board.

2. The number of legal aid certificates granted for representation in respect of Section 19 of the Intoxicating Liquor Act 2003 between 1 January 2022 and 31 December 2024.

Thirty-six legal aid certificates were granted for representation in respect of Section 19 of the Intoxicating Liquor Act 2003 between 1 January 2022 and 31 December 2024. This number can be broken down as follows four certificates in 2022, 25 certificates in 2023 and 7 certificates in 2024.

3. In instances where advice was provided in respect of a potential complaint under Section 19 of the Intoxicating Liquor Act 2003, please outline the relevant protected ground in respect of which the advice related in each instance

The relevant ground upon which advices were sought between 1 January 2022 and 31 December 2024 in all eight applications received under Section 19 of the Intoxicating Liquor Act 2003, discrimination on or at the point of entry to licensed premises, discrimination as

defined by Section 3 of the the Equal Status Acts 2000–2018, membership of the Traveller Community

4. In instances where representation was provided in respect of a potential complaint under Section 19 of the Intoxicating Liquor Act 2003, please outline the relevant protected ground in respect of which the advice related in each instance

The relevant ground upon which legal aid certificates were issued from between 1 January 2022 and 31 December 2024, in all 36 claims, was under Section 19 of the Intoxicating Liquor Act 2003, discrimination on or at the point of entry to licensed premises, discrimination as defined by Section 3 of the the Equal Status Acts 2000–2018, membership of the Traveller Community

5. Information in respect of the outcome of cases advanced under Section 19 of the Intoxicating Liquor Act 2003 between 1 January 2022 and 31 December 2024.

The outcome of cases advanced under Section 19 of the Intoxicating Liquor Act 2003 between 1 January 2022 and 31 December 2024 is as follows;

In 2022, in the four applications made to a Law Centre for which legal aid certificates were granted, proceedings were instituted under Section 19 of the Intoxicating Liquor Act 2003 in the District Court, resulting in two applications being dismissed by the District Court, one application being compromised and settled on date of hearing and one application was closed by the Legal Aid Board for failure to comply with the requirements of the Civil Legal Act 1995.

In 2023, 25 applications were made to a Law Centre and legal aid certificates were granted in all applications and proceedings were instituted in the District Court. One client was unsuccessful in the District Court, while two cases were compromised and the clients settled their applications. One application was closed by the Legal Aid Board for failure to comply with the requirements of the Civil Legal Act 1995. The remaining 21 proceedings remain before the District Court.

In 2024, seven applications were made to a Law Centre and legal aid certificates were granted to issued proceedings in the District Court. One client was unsuccessful with the remaining six proceedings remaining before the District Court.

6. The current policy position of the Legal Aid Board in respect of the transfer of complaints of discrimination on or at the point of entry to licensed premises from the District Court to the Workplace Relations Commission. For your information, we enclose a submission received from the Legal Aid Board in advance of the previous review carried out by the Commissions

The current position of the Legal Aid Board in respect of the transfer of complaints of discrimination on or at the point of entry to licensed premises from the District Court to the Workplace Relations Commission remains unchanged. In accordance with Section 27(2) of the Civil Legal Act 1995, Legal Aid Board services do not extend to the provision of representation in respect of complaints under the Equal Status Acts 2000–2018 at the Workplace Relations Commission. However, the Legal Aid Board can provide advice to applicants who have satisfied the financial eligibility criteria and are involved in cases before the Workplace Relations Commission. Furthermore, the Legal Aid Board can provide representation before the Circuit Court for appeals of decisions of Workplace Relations Commission, subject to the merits test and financial eligibility criteria being satisfied.

7. Any other information which you deem as being relevant

The Legal Aid Board's Statement of Strategy 2024-2026 affirms the Board's commitment to serving the community at 4.3.

The following extract from 4.3.1 sets out the following:

The Legal Aid Board will become a more visible and vocal part of the communities we serve, to ensure that all of the people who are entitled to our support are aware that we are available and know how to access our services. This requires local engagement as well as strategic engagement with key partners in the legal sector, the public service, and representative bodies. A campaign of national public awareness is required to underline this work.

It is critically important that we are sure that we are offering the right services in the right places. To that end, we will pilot outreach to target particular sectors of society (e.g., clients in homelessness), further develop and promote our expertise at working with applicants for International Protection, as well as carry out a national mapping exercise to ensure that our service provision is correctly aligned with need.

The Board convenes an External Consultative Panel of NGOs and other organisations a number of times a year to inform on our services and to obtain feedback on our services.

There is also a Consultative Committee of the Minceir/Traveller Legal Support Service held a number of times each year again to ensure that these organisations are aware of the services offered by the Board in areas where need may arise.

Appendix E – Data from the Courts Service

Table 1: 2022 Applications under Section 19 of the Intoxicating Liquor Act 2003

[illegible]

	Category of conduct under which application has been made			Grounds for Application							Result of Application			
Location	Discrimination	Harassment	Sexual Harassment	Gender	Marital Status	Family Status	Sexual Orientation	Religion	Race / Colour / Nationality / Ethnic background	Member of the Travelling Community	Strike out / Withdrawn / Adjourned / Adjourned Generally	Order for Compensation	Order for Closure	Order for Closure & Compensation
Letterkenny	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Limerick	1	0	0	0	0	0	0	0	0	1	1	0	0	0
Longford	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Loughrea	1	0	0	0	0	0	0	0	0	1	1	0	0	0
Mallow	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Monaghan	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mullingar	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Naas	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nenagh	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Portlaoise	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Roscommon	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sligo	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Tralee	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Trim	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Tullamore	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Waterford	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Wexford	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Youghal	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	20	0	0	0	0	0	0	0	0	20	20	0	0	0

Table 2: 2023 Applications under Section 19 of the Intoxicating Liquor Act 2003

[illegible]

	Category of conduct under which application has been made			Grounds for Application							Result of Application			
Location	Discrimination	Harassment	Sexual Harassment	Gender	Marital Status	Family Status	Sexual Orientation	Religion	Race / Colour / Nationality / Ethnic	Member of the Travelling Community	Strike out / Withdrawn / Adjourned /	Order for Compensation	Order for Closure	Order for Closure & Compensation
Monaghan	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mullingar	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Naas	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nenagh	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Portlaoise	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Roscommon	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sligo	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Tralee	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Trim	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Tullamore	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Waterford	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Wicklow	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Wexford	1	0	0	0	0	0	0	0	0	1	1	0		0
Youghal	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	40	0	0	0	0	0	0	0	0	40	28	5	0	0

[illegible]

	Category of conduct under which application has been made			Grounds for Application							Result of Application			
Location	Discrimination	Harassment	Sexual Harassment	Gender	Marital Status	Family Status	Sexual Orientation	Religion	Race / Colour / Nationality / Ethnic	Member of the Travelling Community	Strike out / Withdrawn / Adjourned /	Order for Compensation	Order for Closure	Order for Closure & Compensation
Monaghan	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mullingar	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Naas	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nenagh	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Portlaoise	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Roscommon	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sligo	7	0	0	0	0	0	0	0	0	7	7	0	0	0
Swords/Ballbriggan	1	0	0	0	0	0	0	0	0	1	1	0	0	0
Tralee	3	0	0	0	0	0	0	0	0	3	3	0	0	0
Trim	17	0	0	0	0	0	0	0	0	17	11	6	0	0
Tullamore	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Waterford	2	0	0	0	0	0	0	0	0	2	2	0	0	0
Wicklow	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Wexford	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Youghal	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	122	0	0	0	0	0	0	0	0	122	89	33	0	0



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

The Irish Human Rights and Equality
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