

IRELAND

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Contents

1.	National court system	1
2.	Restrictions regarding access to justice	3
3.	Length of judicial proceedings	3
4.	Are procedures concluded within a reasonable time?	4
5.	Does provision exist for speedy resolution of particular cases?	4
6.	Is it possible to waive the right of access to a judicial body?	5
7.	Access to non-judicial procedures	5
8.	Legal aid	9
9.	Forms of satisfaction available to a vindicated party	14
10.	Adequacy of compensation	14
11.	Rules relating to the payment of legal costs	15
12.	Rules on burden of proof	16

1. National court system

Article 34 of the 1937 Constitution¹ sets out the structure of the court system in the Irish state. It shall comprise of:

- Courts of First Instance.
- Courts of Final Appeal.

The Courts of First Instance include the Circuit Court and the District Court which have local and limited jurisdiction organised on a regional basis. The High Court also comes under this category, invested with power to determine all matters of law.

¹ Constitution of Ireland – Bunreacht na hEireann, available at: <http://www.taoiseach.gov.ie/upload/publications/297.pdf>, (16.08.2009)

In terms of the Circuit Court, the country is divided into eight circuits with one judge assigned to each, except in Dublin, where ten judges may be assigned. In Cork three judges may be assigned if required. There are also twenty-six Circuit Court Offices throughout Ireland with a County Registrar in charge of the work of each office. The Circuit Court sits in venues in each circuit and can vary in length from one day to three weeks. They are held every two to four months in each venue in the circuit. The work of the Circuit Court is divided into four main areas: civil, criminal, family law and jury service. Civil jurisdiction in the Circuit Court is limited unless all parties to an action consent to it. In that case jurisdiction is unlimited. In family law, the Circuit Court and High Court have concurrent jurisdiction including custody and access orders as well as maintenance and barring orders. In criminal matters, the Circuit Court has the same jurisdiction as the Central Criminal Court in all indictable offences except murder, rape, aggravated sexual assault, treason, piracy and related offences. Criminal jurisdiction is exercised wherever the offence has been committed or where the accused has been arrested or resides. Responsibility for the jury selection for the Circuit Criminal Courts rests with the County Registrars across the twenty-six counties. All decisions of the Equality Tribunal may be appealed to the Circuit Court, by either the complainant or the respondent. A decision of the Director, or a mediation settlement which has not been complied with, may also be enforced through the Circuit Court.

The District Court consists of a President and sixty three judges. The country is divided into twenty four districts with one or more judges permanently assigned to each district. The venue where the case is heard depends on where the offence was committed or where the defendant resides or was arrested. Each District Court office deals with the work of the Court. The District Court is a court of local and summary jurisdiction. The business of the District Court concerns criminal, civil, family law and licensing. The District Court has a limited appellate jurisdiction in respect of decisions made by statutory bodies and in these appeals, the decision of the District Court is final except where a point of law is at issue. In such instances an appeal can be taken to the High Court.

The courts system in Ireland does provide a right to appeal decisions in civil cases. The Circuit Court acts as a court of appeal from The District Court. The High Court has full original jurisdiction and determining power in all matters of law and fact. It hears appeals from the Circuit Court in civil cases. The Supreme Court is the court of final appeal². It exercises appellate jurisdiction from all decisions of the High Court subject to the exceptions as prescribed by law.

² <http://www.supremecourt.ie/>, (16.08.2009)

Claims for discrimination can be brought before an administrative tribunal under the equality legislation, decisions of which can be subsequently appealed to higher judicial bodies like the High Court and Supreme Court.

2. Restrictions regarding access to justice

The right of access to a judicial body is not absolute and certain restrictions exist. Specific categories of litigants, such as minors, may be prevented from instituting proceeding. Proceedings must also be initiated within a reasonable time. Excessive delays on behalf of the litigant might deny them a right of access. The Employment Equality Acts 1998-2008 requires that a complaint must be brought within 6 months of the last act of discrimination. In order to make a complaint under the Equal Status Acts 2000-2004 the organisation against whom the complaint is being made must be notified of this within 2 months of the last act of discrimination. This can be extended by the Director of Equality Investigations. The complaint must then be made within 6 months of the last act of discrimination. This can be extended to 12 months if ‘reasonable cause’ can be shown.

3. Length of judicial proceedings

Cases examined ranged from 12 months to 3 years.

Proceedings varied in length depending upon the circumstances of the case. The bulk of the length of proceedings lay before the administrative tribunals. Since 2002 the Equality Tribunal has suffered major backlogs of up to 3 years. Where applicable, the appeal stages to higher courts lasted between 1 and 2 years.

Appealing decisions of the tribunal is a lengthy process particularly with cases coming before the Supreme Court. Any appeal to High Court rulings can only be made to the Supreme Court. There are only two division of the Supreme Court to hear from 36 High Court divisions. It has become largely concerned with correcting errors of lower courts rather than interpreting constitutional issue. The growing number of cases as well as their complexity has added to the length of proceedings.

4. Are procedures concluded within a reasonable time?

Broadly speaking there appears to be excessive delays. Although many cases examined concluded within three years many have taken longer to conclude. The cases examined all experienced significant delay at the non judicial stage and on appeal to the higher courts. One of the main areas of delay in Irish discrimination proceedings is the period between the case being listed for hearing and the actual commencement of the hearing.

Appeals to judicial bodies have also experienced significant delay. Appeals to the Supreme Court can take over 30 months to be heard. It is an appellate court and the court with jurisdiction to consider constitutional issues and yet has had minimal growth since its inception. There have been calls for a new civil appellate court to alleviate this pressure.

5. Does provision exist for speedy resolution of particular cases?

There are no specific provisions in place for speedy resolution under judicial bodies. This is subjective and on an ad hoc basis.

The Employment Appeals Tribunal³ is a body set up to act judicially in order to speed up the process for individuals to seek redress. It is intended to be an informal and inexpensive forum for people to make complaints about the breach of their statutory rights. Persons making a claim may be heard in person, by a legal representative, by a trade union or with the permission of the tribunal, or any other person. Decisions by the tribunal are final although there is leave to appeal to higher courts.⁴

³ www.eatribunal.ie (31.08.09)

⁴ http://www.eatribunal.ie/en/after_a_determination.aspx (31.08.09)

6. Is it possible to waive the right of access to a judicial body?

It is possible to waive the right of access to a judicial body through agreement of a friendly settlement.⁵ Mediation is an alternative method of resolving a dispute. It is conducted in private between parties and seeks to come to a mutually acceptable conclusion without investigation.

7. Access to non-judicial procedures

Access to non-judicial procedures in order to obtain redress is possible. These procedures are complementary to other legal remedies.

There are two institutions established specifically to address discrimination on the nine grounds covered by the equality legislation including the grounds of race and ethnic origin. These are the Equality Authority and the Equality Tribunal.

The Equality Tribunal was established by the Employment Equality Act 1998 to 2007. The Equality Tribunal is the first forum of redress for most cases under the Employment Equality Acts and the Equal Status Acts 2000 to 2004.

The Equality Tribunal is the quasi judicial body established to investigate, hear and decide claims under the equality legislation. There is the further option of mediation where the Director can refer a case for mediation with the consent of both parties. Equality officers of the Equality Tribunal can play a more proactive and inquisitorial role than traditional judges in adversarial hearings in that they have the inquisitorial function of seeking the facts as well as determining the legal issues. This inquisitorial model can in theory mean that the pursuit and defence of a claim is not wholly dependent on the capacity of the individual to marshal the evidence or present complex legal arguments. There are issues of independence in relation to the Equality Tribunal in that the Equality Officers are civil servants - drawn from and promoted back into the civil service - which can lead to perceptions of a lack of independence.

A party who is dissatisfied with the determination of the Equality Tribunal under the Employment Equality Acts may bring an appeal to the Labour Court. In a case under the Equal Status Acts an

⁵ <http://www.equalitytribunal.ie/index.asp?locID=68&docID=-1> (22.12.09)

appeal can be brought to the Circuit Court. A further appeal can be taken from the Labour Court (Employment Equality Acts) and from the Circuit Court (Equal Status Acts) to the High Court on a point of law.

As far as the mediation is concerned, the Director of the Equality Tribunal can at any stage with the consent of both parties, appoint an equality mediation officer. This service has been in place since 2001. Equality Mediation Officers are given specialised training for mediation resulting in professional accreditation. Equality cases involving mediated agreements can be concluded in six months compared with the average length of eighteen months for a formal investigation by an Equality Officer. The Equality Tribunal state that mediation respects confidentiality and offers a much faster resolution than an investigation by an equality officer⁶. Mediation is private and the settlements are not published, however the Equality Tribunal publishes an annual mediation review. Advisors and other representatives are welcome at mediation but there is no requirement to be represented. If the mediation reaches a settlement between both parties then the terms are legally enforceable.

The Equality Authority is a national body to deal with claims of discrimination in relation to sexual orientation, racial discrimination, gender, disability and membership of the traveller community. The Equality Authority was established by the Employment Equality Act 1998. Its powers were further expanded under the Equal Status Acts 2000 to 2004. It also has powers under the Intoxicating Liquor Act 2003. It is accorded the mandate to promote equality of opportunity and to combat discrimination in the areas covered by the equality legislation. Its mandate includes to provide information on the equality legislation to the general public and to keep the operation of the equality legislation under review and to make recommendations to the Minister for Justice Equality and Law Reform as appropriate. The Equality Authority is a specialised equality body for the purposes of Council Directive 2000/43/EC.

The Equality Authority is afforded a number of different powers. It may:

- prepare Codes of Practice (the Equality Authority has issued one Code of Practice on Sexual Harassment and Harassment at Work⁷ which has been relied on in cases brought to the Equality Tribunal).
- undertake or sponsor research.

⁶ *www.equalitytribunal.ie, 21st March 2009, 14h00*

⁷ *Statutory Instrument No. 78 of 2002*

- conduct an inquiry.
- conduct equality reviews and action plans.
- provide legal assistance to people bringing proceedings under the equality legislation.
- institute proceedings in its own right under the equality legislation.
- institute proceedings where there is discriminatory advertising.
- may apply to act as amicus curiae.

The Equality Authority has powers to provide information on the provisions of the equality legislation to the general public. One exception to this relates to matters covered by the Intoxicating Liquor Act 2003 where the Equality Authority can provide legal assistance to victims of discrimination but is not accorded powers to provide information on the anti-discrimination provisions of this Act to the general public - this presents a barrier to people taking cases under this Act. Any person who considers that she/he has been discriminated against can apply to the Equality Authority for Assistance in bringing proceedings under the Employment Equality Acts and/or the Equal Status Acts. The Equality Authority has a broad discretion to grant assistance if it is satisfied that the case raises an important matter of principle or it appears to the Equality Authority that it is not reasonable to expect the person to adequately present the case without assistance. The Equality Authority sets out criteria against which applications for assistance will be assessed.

The sanctions available under the equality legislation for cases on the race and Traveller grounds, as on the other grounds, are civil or administrative sanctions rather than criminal sanctions. These take the form of financial awards made to the complainant in successful cases. There are a range of upper limits to the awards that can be made set out in the legislation. These can also take the form of an order for action to be taken by the respondent where they have lost a case.

The following sanctions are available under the Employment Equality Acts:

- in equal pay claims an order for equal pay and arrears in respect of a period not exceeding three years.
- in other cases an order for equal treatment and compensation for the effects of discrimination of up to a maximum of two years pay or €12,700 where the person was not an employee.

- an order for re-instatement or re-engagement with or without an order for compensation.
- an order that a named person or persons take a course of action set out in the finding.

In gender discrimination claims which are initiated in the Circuit Court, the Circuit Court in equal pay claims may order arrears of pay in respect of six years before the date of referral. There is no limit to the amount of compensation that may be ordered by the Circuit Court. This option is not available on the race or Traveller grounds.

The Equality Authority has identified problems with the upper limit of award that can be made in cases involving access to employment that it is not effective or dissuasive⁸. It has also identified problems where the upper ceiling of two year's pay for awards, other than equal pay, under the Employment Equality Acts is not effective or dissuasive and where the level of award available to a claimant on low wages might not be effective or dissuasive⁹.

The following sanctions are available under the Equal Status Acts:

- an order for compensation of €6350 for the effects of discrimination.
- an order that a named person or persons take a course of action set out in the finding.

In relation to remedies and redress in discrimination cases, two issues can be identified. The first issue relates to the various upper limits on awards that can be made under the equality legislation. On a number of occasions the Equality Tribunal has identified that it was constrained by these upper limits in the scale of the award made (for example *A Complainant v. A Local Authority* DEC-S2007-049 which related to a failure to make reasonable accommodation of the complainant's son in housing provision and *Ms A vs A Contract Cleaning Company* EE/2001/166 which related to sexual harassment at work). These upper limits can mean that awards are not proportionate, effective nor dissuasive. The highest award that can be made under the Equal Status Acts is €6350. If a complainant is not in receipt of remuneration at the date of reference of a case the highest award that can be made under the Employment Equality Acts is €12,700. The Equality Authority has noted that employers continue to be aware that the price of discrimination

⁸ *Annual Report 2003, Equality Authority, Dublin 2004*

⁹ *Annual Report 2004, Equality Authority, Dublin, 2005*

in these type of cases is quite low¹⁰. There is a ceiling on all awards under the Employment Equality Acts, other than equal pay cases, of two year's pay. The Equality Authority has recommended that these upper limits should be removed¹¹.

The second issue relates to the forum for redress. The Intoxicating Liquor Act 2003 changed the forum for redress in relation to cases involving allegations of discrimination against licensed premises from the Equality Tribunal to the District Court. The Equality Authority has highlighted the fall in the number of case files against licensed premises on foot of this change¹². This is due to issues such as the risk of costs being awarded in the District Court and the loss of the accessibility and broad right of representation afforded by the Equality Tribunal. A further but similar issue in relation to redress relates to the barriers presented in that appeals in relation to cases under the Equal Status Acts are heard in the Circuit Court. These barriers include the formal rules of evidence, the risks of costs being awarded and the lack of anonymity for complainants when this is required.

8. Legal aid

There is a provision in Ireland to extend legal aid to those with insufficient means. To avail of civil legal aid, one must contact one of the Law Centres run by the Board on a regional basis throughout the country. There are certain tests an applicant must undergo before qualifying for legal aid. These consist of a means test and a merits test. The means test states that the applicant's disposable income must be below €18,000 per year and a disposal capital of less than €320,000. The merits test essentially requires the Legal Aid Board to deem your case to have merit. They take into account the prospect of success of the case, the availability of an alternative method of dealing with the issue and the cost of providing the service against the potential benefit to the claimant.

Legal assistance for civil cases in Ireland is not free. An applicant must pay a minimum contribution and this will depend on their circumstances. The minimum contribution is €10 for legal advice and the maximum is €150. Minimum contribution for legal aid is €50 and capital contributions are dependent on the applicant's disposable capital. Criminal Legal Aid is subject to

¹⁰ *Annual Report 2004, Dublin, Equality Authority, 2005.*

¹¹ *Overview of the Employment Equality Act 1998 and the Equal Status Act 2000 in light of the Transposition of the European Union 'Race' Directive, Framework Employment Directive and the Gender Equal Treatment Directive, Equality Authority, 2004, unpublished*

¹² *Annual Report 2007, Dublin, Equality Authority, 2008.*

much less stringent requirements, but there is currently a proposal for reform before the Oireachtas in response to escalated gangland crime and subsequent abuses of the current legal aid scheme.¹³

Legal advice is any oral or written advice given by a solicitor or a barrister in civil matters. This can include oral advice on certain matters, composing letters on the applicant's behalf, acting for the applicant in negotiations with other parties. Legal aid on the other hand is representation by a solicitor/barrister in civil proceedings in the District Court, High Court and Supreme Court. Legal aid is not granted automatically and is considered on a case-to-case basis. If it is deemed appropriate, a legal aid cert will be issued to the applicant.

Free Legal Advice Centres (FLAC) is an independent, non-governmental human rights organisation committed to achieving equal access to justice for all. The primary focus of this operation is campaigning on various legal issues and offering free legal services to the public. The main areas of focus include Legal Aid, Social Welfare, Credit & Debit and Public Interest Law.¹⁴ FLAC promotes the pursuit of justice for all. Established in 1969, FLAC immediately lobbied the government to initiate a civil legal aid scheme. After much campaigning, this aim was achieved in 1995 under the Civil Legal Aid Act. The Civil Legal Aid Regulation 1996-2006 further established this scheme. The Legal Aid Board was put on a statutory footing to give effect to the Act.

The Northside Community Law Centre is an independent, non-governmental Law Centre operating since 1975. It was the first Community Law Centre in Ireland. The NCLC provides free legal advice to those in the community who cannot access legal services. The centre strives to promote the social and legal rights of people in the community. It focuses specifically on three areas of work, the first of which is providing information and advice. 5% of this work involves legal representation. The next aim is to educate the community directly on the legal rights available to them. Another important aspect of their work is research and campaigning for law reform. It targets people who are welfare-dependent or have low incomes. In contrast to the civil legal aid scheme operated by the state through the Legal Aid Board, there is no strict means test. It is a strategic resource for the local community as it tends to focus on areas that the Civil Legal Aid Scheme does not cover. At the governance level there is a Board with a majority

¹³ The proposed Criminal Justice (Legal Aid) Amendment Bill includes a compulsory means test if the Gardai or DPP object to the grant of legal aid.

¹⁴ www.flac.ie (17.08.09)

representation from the community it serves. It operates an 'open door' policy i.e. there are no waiting lists. There is immediate access to a solicitor. Every Thursday there is an advice clinic where solicitors and barristers offer advice on a pro bono basis. According to an NCLC spokesperson, a significant leap in figures has been noted in the last twelve months with a 21% leap in inquiries ranging across employment, debt and social welfare. This increased workload has, unfortunately been met with a cutback in funding. The NCLC is continually campaigning for law reform. It makes recommendations on new legislation, it networks with other organisations on these issues and it engages with policy makers to encourage change. The NCLC is also engaged at a local level to establish what new communities are emerging in this multi-cultural society. Another novel feature of the NCLC is the Community Mediation Service. Mediation Northside is essentially a forum for resolving conflict at a local level. It operates through self-referral or referral by An Gardaí Síochána (the police). Community volunteers are trained as mediators. This has the dual benefit of cost effectiveness and community involvement. The programme has been hugely effective with parties receiving conflict coaching services as well as counselling to deal with confrontation.

Ballymun Community Law Centre was established in 2002 to address the absence of adequate legal services available to this disadvantaged community. Its mandate is similar to that of NCLC in providing legal advice, representation and information. It operates a mediation service and seeks to promote self-empowerment by educating community members on their legal rights and entitlements.

The Irish Traveller Movement is an organisation established in 1990 which is committed to seeking equality for Travellers in Irish society. Travellers are an indigenous minority who have formed part of Irish culture for generations. Their nomadic traditions and way of life differ significantly from those of the settled community. They constitute 0.5 per cent of the population of Ireland and experience high levels of prejudice and discrimination. Government policy indicates that Travellers are entitled to a nomadic lifestyle and yet they continue to live in appalling conditions. The ITM Legal Unit was formed in 2003 on a temporary basis and the strategic plan 2003-2006 provided Travellers with a process of accessing legal services and the chance to obtain legal representation at affordable rates. The ITM Law Centre was set up in 2009 to continue to address the difficulties facing the traveller community in a modern society and to develop legal responses to these issues. This specialist law centre aims to protect their human and legal rights by providing access to expert legal advice, to advance their human rights through the courts, to achieve positive change in the perception of the Traveller community, and to educate

Traveller organisations to deal with the legal issues facing them. Self-empowerment, collective action and participation are key principles adopted by this law centre to implement a legal strategy at local and national level.

Non-governmental organisations have been able to a limited extent to play a procedural role in relation to the implementation of anti-discrimination legislation. This role has involved:

- the provision of information on the legislation to people who have experienced discrimination. One example of this is the role played by Citizen Information Centres in local areas around the country. Each centre holds the full range of Equality Authority information materials on the equality legislation. There is regular training provided to Citizen Information Centre volunteers and staff on the equality legislation so that they can make full use of the materials available when they engage with people who have experienced discrimination. This training is organised by the Citizen Information Board and provided by the Equality Authority.
- the provision of advice and representation to individuals taking cases under the equality legislation. There are few examples of this role being played. One example is that of Traveller organisations who have provided advice and representation to Travellers taking cases under the Equal Status Acts. This has involved working with the individual who is bringing forward the claim of discrimination to fulfil notification requirements for cases, to lodge cases with the Equality Tribunal, to prepare submissions on the case for hearing and to be present at the hearing to represent the claimant. Training was provided to advocates from Traveller organisations by the Equality Authority to enable them to engage with these procedures.
- the provision of personal support to people taking cases under the equality legislation by maintaining contact with claimants during the course of a case and providing moral support and encouragement to them.

The procedural role of non-governmental organisations is necessary for the effective implementation of the equality legislation. The Equality Authority does not provide legal advice and representation to all claimants under the equality legislation. It is only resourced to play a role of strategic litigation and currently it is questionable whether it even has the resources to play this limited role. As such it is important that there is a broad range of advocacy supports available

to claimants under the equality legislation. This role is also important in a context where only 6% of those who experience discrimination take any formal response including legal action

There has been neither evaluation of the quality nor the scale of the work done by non-governmental organisations in providing advice and representation to individuals making claims under the equality legislation. Very few non-governmental organisations have an in-house legal capacity to support such work

This procedural role for non-governmental organisations is not formalised. There are only a small number of non-governmental organisations specifically funded to play public interest litigation roles. Only a smaller number of these provide legal advice and representation in cases under the equality legislation. There are no specific budget lines to support the advocacy role of community based non-governmental organisations and their involvement is based on core funding received for their mainstream objectives.

Trade Unions have been able to a limited extent to play procedural roles under the equality legislation. These roles include:

- provision of information and training for their members on the provisions of the equality legislation.
- support for their members in engaging with informal workplace procedures to resolve complaints of discrimination.
- provision of legal advice and representation to their members taking cases under the equality legislation – including support in lodging cases with the Equality Tribunal, in the preparation of submissions to the Equality Tribunal, in being present in the Equality Tribunal to represent the claimant and in funding cases before the higher courts.

As with non-governmental organisations the advocacy role of trade unions is limited to the Equality Tribunal as trade unions do not have a right of audience before the higher courts.

Trade Unions have provided a limited advocacy service to their members. This support has been confined to claimants taking cases under the Employment Equality. This work covers all the nine grounds under the equality legislation including the race and Traveller grounds.

9. Forms of satisfaction available to a vindicated party

Under the Employment Equality Act 1998 various forms of redress are available for victims of discrimination. An order for equal treatment, an order for equal pay (plus arrears), an order for compensation of up to 2 years pay (up to 12,697 euro for someone who is not an employee of the respondent) and an order for certain action to be taken can be made.

The Equal Status Act 2000 provides that aggrieved individuals can receive compensation of up to €6,349 or an order for a party to take specific action to make amends for the discrimination.

Other forms of satisfaction are also available such as an order for equal treatment or alternatively an order can be made that specific action be taken to relieve the injured party.¹⁵

10. Adequacy of compensation

Levels of compensation vary in civil cases in Ireland but can, in certain circumstances, be wholly inadequate. In the cases examined compensation ranged from 500 euro to 5000 euro.

One area in particular where levels of compensation seem to be inadequate and as such do not have the required punitive effect is discrimination on the traveller ground. In cases of discrimination concerning the Traveller community there are often inadequate awards of compensation made. Often, the redress lacks the understanding of the difficulty in taking a case and discourages others from following suit. In *Maguire v North Eastern Health Board*¹⁶ the complainant suffered verbal abuse, discrimination and was subsequently fired when it was revealed he was a member of the Traveller community. He only received €5,000 in compensation for the stress and embarrassment suffered. The decision of the *Equality Officer in McDonagh v Fiddlers Creek Bar*¹⁷ presented a similar problem. The claimant was refused service at the respondent's premises because she was a Traveller and received merely €500 in compensation. Other such examples of inadequate compensation include *Collins v Drogheda Lodge Pub*¹⁸ and

¹⁵ www.equalitytribunal.ie (31.08.09)

¹⁶ DEC-E2002-039.

¹⁷ DEC-S2002-119.

¹⁸ DEC-S2002-097.

Barrett v Menlo Park Hotel.¹⁹ In *O' Brien v The Imperial Hotel*²⁰ the applicant received an award of €1,000 for discrimination on the Traveller ground. An example of the ineffectiveness of such awards is *Complainants v MacMathunas Pub*²¹ where each applicant was awarded €1 for the discrimination suffered on the equality ground. This had no deterrent effect whatsoever for the respondents because they were found guilty of discrimination again in *Feigherty v MacMathunas Pub*²² and had damages awarded against them to the sum of €1,200.

Levels of compensation under the Equal Status Acts are clearly inadequate with regard to the damage suffered. For example, in *Maguire v Bob's News & Deli*²³ the applicant was discriminated against on grounds of disability. As a result of this she did not enter the shop again for eighteen months. An order to pay the applicant €500 was made which was clearly inadequate for the level of stress and embarrassment suffered by the applicant. Similarly, low levels of compensation were awarded in *Barry v Richardson's Pub* where the applicant received €800 after suffering discrimination on the family status ground when she was refused entry to a pub because she was with her baby.

11. Rules relating to the payment of legal costs

According to the rules of the court, if you win your case most or all of your costs will be paid for by the other party. The courts are permitted to order the payment of costs by the losing party in certain circumstances. Legal costs can vary depending on the complexity of a case. The longer the case continues, the more it will cost and this is the reason for many cases settling at the door of the court. There are provisions in place setting out guidelines for legal fees in Ireland. This includes the Rules of the Court and the Solicitors (Amendment) Act 1994. Under the Solicitors (Amendment) Act 1994 they are obliged to explain to a party how much fees will be or provide a reasonable estimate before commencement of proceedings. Charges can vary based on the complexity of the matter, the urgency of the matter, time spent on the matter etc. Solicitor fees can vary but they are not permitted to charge a percentage of an award or settlement. The Law

¹⁹ DEC-S2006-006.

²⁰ DEC-S2003-405.

²¹ DEC-S2003-048/050.

²² DEC-S2003-051.

²³ DEC-S2004-025.

Society of Ireland is the regulatory body for Solicitors in Ireland and handles complaints about excessive fees.

The fear of losing can prevent an applicant from proceeding with the case. In *Doherty v South Dublin County Council*,²⁴ a case concerning members of the Traveller community, the legal team settled the case because they were aware that the ruling would not be in their favour.

The Equality Tribunal does not award costs in cases that it investigates or mediates. This means that claimants and respondents bear their own costs and that there is no further financial risks. However this is not the case under the Intoxicating Liquor Act where cases are heard before the District Court and costs can be awarded. It is also not the case in appeals to cases under the Equal Status Acts which are heard by the Circuit Court where costs can be awarded.

12. Rules on burden of proof

Directive 2000/43/EC provides that once the complainant has established a prima facie case of discrimination it is for the respondent to prove that there has been no breach of the principle of equal treatment. The shifting of the burden of proof makes it easier for the individual complainant. However there are still significant hurdles in establishing a prima facie case of discrimination, particularly in areas where people have not had access to rights before this legislation and do not have easy access to knowledge as to how potential comparators are treated. The provisions in relation to the burden of proof would be far more effective for the enforcement of rights if there were a meaningful entitlement to relevant information. The low success rate of cases on the race and Traveller grounds before the Tribunal are of interest in this regard and suggest further work is required to identify any such barriers there might be to bringing forward cases successfully.

²⁴ [2007] 1 ILRM 241.