Neutral Citation Number: [2011] IEHC 303

THE HIGH COURT

2009 595 JR

BETWEEN

CLARE COUNTY COUNCIL

APPLICANT

AND

THE DIRECTOR OF EQUALITY INVESTIGATIONS

AND

THE EQUALITY TRIBUNAL

RESPONDENTS

AND

MONGAN & ANORS

NOTICE PARTIES

JUDGMENT of Mr. Justice Hedigan delivered on the 21st day of July, 2011

1. The applicant is the County Council with responsibility for the administrative area of County Clare. The first named respondent directs the second named respondent which is an impartial forum established to hear or mediate complaints of alleged discrimination under equality legislation. The notice parties have initiated proceedings alleging that the applicant has discriminated against them. These proceedings are pending before the second named respondent.

2. The reliefs sought by the applicant are as follows:

> (i) An Order of Prohibition preventing the respondents from proceeding further and/or from adjudicating on the purported complaints made to the respondents on behalf of the notice parties against the applicant, pursuant to the Equal Status Acts 2000-2004.(ii) A declaration by way of an application for judicial review that the respondents have no jurisdiction to make any decision in the said complaints, having regard to the fact that the purported complaint forms sent to the first named respondent did not disclose any valid complaint against the applicant within the meaning of the Equal Status Acts 2000-2004, and/or in accordance with the respondents' procedural guidelines.
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> (iii) A declaration by way of an application for judicial review that any decisions of the respondents in respect of the purported complaints of the notice parties and purportedly made under s. 25 of the Equal Status Acts 2000-2004, is invalid and/or *ultra vires* and/or wrong in law and/or contrary to fair procedures and natural and constitutional justice, was reached unlawfully and is of no legal effect and is in breach of Article 6 of the European Convention on Human Rights.
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> (iv) An order of *certiorari* quashing any decision of the second named respondent providing redress to any notice parties pursuant to s. 27 of the Equal Status Acts 2000-2004, as being made ultra vires, unlawfully and contrary to fair procedures and natural and constitutional justice and in breach of Article 6 of the European Convention on Human Rights.
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> (iv) An order pursuant to O. 84, r. 20(7)(a) of the Rules of the Superior Courts, staying the first named respondent's purported investigation and adjudication of the notice parties' purported complaints pending this application for judicial review, or until otherwise ordered by this honourable Court.
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> (vi) An injunction preventing any further investigation of the applicants by the respondents' agent, Ms. Marion Duffy, of any complaints made by the notice parties through the purported agency of Ms. Heather Rosen.
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> (vii) Costs
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> (viii) Directions as to service of Notice Parties.

Background

3. 1 Commencing in late November 2003, and continuing until in or about November 2006, the respondents received a large number of complaints of discrimination and harassment against the applicant pursuant to the Equal Status Act 2000, as amended. The complaints were submitted by one Heather Rosen on behalf of members of the Traveller community, and related to the alleged failure by the applicant to provide the complainants with accommodation. In 2005, the respondents assigned Ms. Marian Duffy to investigate the complaints.

3.2 To date, Ms. Duffy has sat in nine separate sessions. Each session was of approximately one week's duration. Sessions took place in May 2006, September 2006, October 2006, January 2007, February 2007, May 2007, February 2009, April 2009 and May 2009. The non-attendance of complainants was a consistent feature of the process. In the course of the sittings of the Equality Tribunal, scheduled for 16th –20th October, 2006, all six complainant families failed to attend before Ms. Duffy and their cases were dismissed.

At the call over in December 2006, 9 out of 32 families attended, 22 family groupings had their cases dismissed and one family withdrew its complaint. At the call over in January 2007, 8 out of 29 families attended, the remaining 21 family groupings had their cases dismissed. At the call over in May 2007, 40 out of 56 families attended. Ms. Duffy went on academic leave in October 2007 for the academic year 2007/08. In September to November 2008, Ms, Duffy issued a series of decisions arising from the May 2007 call over. Approximately 40 cases were dismissed due to non-attendance.

3.3 In 39 separate cases, Ms. Duffy issued decisions expressing the opinion that Ms. Rosen had obstructed the investigation, and pursuant to s.37A(1) of the Equal Status Act 2000, she ordered Ms. Rosen to pay the applicant specified amounts in respect of expenses incurred by the applicant. On a number of occasions, the applicant complained that it appeared that the subject matter of many of the forms submitted appeared to be statute-barred. To address lack of specifics in originating complaint documents, Ms. Duffy required Ms. Rosen to submit a further document referred to as a "points in time" document. The applicant consistently complained that the "points in time" document did not provide the sufficient or specific information as would enable them properly to defend the case.

3.4 Matters eventually came to a head in early 2009. By letter dated 18th March, 2009, the applicant's solicitor wrote to Ms. Duffy claiming that the information provided was lacking in specificity and that the applicant was unable to respond. The applicant further complained that the contents of the complaint forms appeared to relate to events which occurred before the introduction of the Equal Status Act 2000, and that there was an absence of requisite details in the information provided to allow them determine whether the complaints were in accordance with the time allowed by law for same.

3.5 Ms. Duffy responded in April 2009. Her letter notified the applicant of a list of complainants due to appear for a call over of outstanding cases on 18th May, 2009. By letter dated 12th May, 2009, the applicant, through its solicitors, notified Ms. Duffy of its intention to withdraw from further participation in the process, and on 19th June, 2009, leave to apply for judicial review was granted.

3.6 In total, some 1,300 complaints were referred to the Equality Tribunal concerning some 450 individuals from 96 families. To date, 73 families have been dealt with. Of these, 72 were dismissed under s. 25 of the Equal Status Act. Of these, 61 complainant families had findings issued against them under s. 25 after their failure to appear before the Tribunal on the first occasion, the remainder related to a non-appearance on a subsequent occasion. One notice of dismissal pursuant to s. 38 of the Act has issued. There are 18 families who await decisions; the notice parties herein plus 1 other family. Of these, five have had their cases heard and one is partially heard. It appears that Ms. Rosen has submitted fresh complaints to the respondents on behalf of members of the Traveller community, after the date of leave herein. These fresh complaints again allege discrimination by the applicant, however, they are not relevant to the within proceedings. The applicant seeks to prohibit the respondents from adjudicating on the complaints of the 18 families herein.

Applicant's Submissions

4.1 The applicant complains that the respondents acted wrongly in accepting the claim forms submitted on behalf of the notice parties, as the claim forms do not provide it with sufficient detail to know the nature of the case it must defend. The respondents have not filtered the complaints by examining what complaints were made in time. The complaint forms do not refer to a specific occurrence of prohibited conduct, therefore, the applicant does not know what accusations it needs to deal with and so the procedure is unfair. The respondents have published their own guidelines regarding the procedures to be followed under s.25(3) of the Equal Status Act. These guidelines have not been adhered to in the instant case by reason of the failure on the part of the respondents to filter out complaints that are clearly out of time. It is not appropriate for the respondents simply to hear all the evidence and then make determinations. The procedure adopted by Ms. Duffy involved the complainants being allowed to expand substantially on the contents of the complaint forms and to present material relating to conduct that occurred well outside the time limits provided under the Act. The applicant, under this procedure, has no advance warning of what case it has to make or what witnesses it will require, and it is oppressive to the applicant to engage in this type of shapeless procedure. The applicant is entitled to know the case they have to meet i.e. in what way is it contended that they were in breach of statute; e.g. "who? what, where? and when? These fundamental requirements of fairness are not met by presenting generic complaints of discriminatory conduct.

4.2 Statutory bodies like the respondents are to be given some flexibility to run hearings as they see fit, however, they must comply with the principles of natural and constitutional justice. In *Louth VEC v. Equality Tribunal* (Unreported Judgement 24th July, 2009), the applicants challenged the conduct of a hearing before the Equality Tribunal. In that case, the High Court held that there was no obligation on the part of the Equality Authority to hold a preliminary hearing as to whether or not the matters raised by way of a complaint were properly brought under the time limits of the legislation, however, some filtration is necessary in order to do justice to the position of the applicants. In the *Louth VEC* case, McGovern J. observed as follows at paragraphs 6.2 and 6.3:-

> "I accept the submission on behalf of the respondent that the Form EEI was only intended to set out, in broad outline, the nature of the complaint. If it is permissible in court proceedings to amend pleadings where the justice of the case requires, then a fortiori, it should be permissible to amend a claim as set out in a form such as the EE1, so long as the general nature of the complaint . . . remains the same. What is in issue here is the furnishing of further and better particulars, although, it must be said, in the context of an expanded period of time. But, under the legislation, it is clear that the complaints which were made within the expanded period are not time-barred. That is not to say that complaints going back over a very lengthy time period would have to be considered as an issue of prejudice might arise. But this is something that would fall to be dealt with in the ordinary course of a hearing in any particular case.
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> Of course, it is necessary that insofar as the nature of the claim is expanded, the respondent in the claim must be given a reasonable opportunity to deal with these complaints, and the procedures adopted by the Equality Officer must be fair and reasonable and in compliance with the principles of natural and constitutional justice."

It is submitted that the Louth VEC case is distinguishable from the instant case as the judge determined, *inter alia*, that the applicants had adequate information in order to meet the complaint of the notice party, which is in marked contrast to the position of the applicant in the present case. While the court determined in the *Louth VEC* case that the Equality Tribunal ought to tolerate an expansion of pleadings in appropriate circumstances, it is submitted that such circumstances were not present in this case. In *Louth VEC*, the court found that the claim by the notice party was made within time, but it is not clear in this case that the complaints being raised by the notice parties were made within time.

4.3 The complaints in this case are of a generic nature, the notice parties are alleging that the local authority has not provided them with adequate housing. However, they do not identify actual instances of discrimination. The complaints are really a narrative of the

difficulties faced by Traveller families. The purpose of the Equality Tribunal is to deal with instances of discrimination, not to deal with wider housing issues. Under the Act, a complainant must be able to point to prohibited conduct that has been directed against him or her. The complainants in this case do not point to an occurrence of prohibited conduct.

4.4 The applicant submits that it is unfair to allow large amounts of material which appears to be irrelevant and prejudicial to be presented before the Tribunal. This material is presented without any prior notice to the applicants to enable them to appreciate in advance what case is being made against them. While it is recognised that not every Tribunal investigation will require a party to be protected with the full panoply of procedural rights recognised in *Re Haughey* [1971] IR 217, nevertheless, it has to be regarded as a basic and fundamental tenet of procedural fairness that a party under investigation will have some ability to understand properly what is being raised against it. A determination against the Council could have significant adverse financial consequences including fines of €5,000.00 where complaints are upheld or a direction is given that the local authority provides housing.

4.5 The only jurisdiction available to the Tribunal is to hear evidence relating to complaints which were brought within the fixed statutory timeframe of six months as provided under s. 21(6) of the Act, or if there is a good reason for extending the timeframe to indicate what those good reasons are. Section 21(6) provides:-

> "21(6)(a) Subject to *subsections* (3)(a)(ii) and (7), a claim for redress in respect of prohibited conduct may not be referred under this section after the end of the period of 6 months from the date of the occurrence of the prohibited conduct to which the case relates or, as the case may be, the date of its most recent occurrence."

It is submitted that the respondents went outside their statutory jurisdiction in receiving and considering information relating to conduct which occurred outside the statutory time limit. Most of the material being presented to the investigation appears to relate to conduct which occurred more than six months prior to the date of the complaints filed. Some of the material relates to a time which preceded the coming into force of the Act, and some of the material goes outside the scope of the complaints in that it relates to conduct which occurs post-complaint up to the present time.

4.6 The respondents complain that the applicant is guilty of delay by not challenging the decision in *John & Angela Mongan v. Clare County Council* DEC-S2008- 039 of September 2008, which the respondents have sought to classify as a landmark decision. The respondents submit that the issues raised in the within judicial review were dealt with in that case. The applicant submits that the *Mongan* decision does not bind separate applications by other notice parties. *Mongan* is a procedural ruling; no final rulings have been made. There was no practical advantage in the applicant challenging this ruling as it was in its favour. *Certiorari* is not granted where it is of no benefit to the party. It would have been presumptuous of the applicant to assume that that the Equality Officer would follow this ruling rigidly in other cases where different issues arose. There has been no unjustifiable delay on the part of the applicant in seeking judicial review, and any hesitation in seeking relief on the part of the applicant does not and cannot confer jurisdiction on the respondents to continue to investigate complaints relating to matters outside the relevant statutory timeframe for a lawful statutory investigation

4.7 The applicant submits that the delay in this case has, in fact, been caused by the respondents. Ms. Duffy sat from 2006 to 2009, without making a single determination on the merits of a complaint. The applicant is put in the position of having to apply limited time and financial resources more appropriately allocated to dealing with the pressing Traveller accommodation programme, to deal with the myriad of complaints raised by Ms. Rosen. Article 6(1) of the European Convention of Human Rights Act 2003, stipulates that:-

> "In the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time. . ."

This is consonant with the general approach taken by the courts in this jurisdiction regarding delay in bringing proceedings. In *O'Domhnaill v. Merrick* [1985] ILRM 40, Henchy J. stated:

> "While justice delayed may not always be justice denied, it usually means diminished, and in a case such as this, it puts justice to the hazard to such an extent that to allow the case to proceed to trail would be an abrogation of basic fairness."

4.8 The applicant submits that the respondents have incorrectly dismissed claims pursuant to sections 22 and 25 of the Equal Status Act 2000, in circumstances where the claims should have been dismissed under s.38 of the Act. Section 22 permits the respondent to dismiss a claim as being made in bad faith, frivolous, vexatious or where it relates to a trivial matter. Section 25 is the section whereby a substantive decision is made on the complaint after the investigation has concluded. Section 38 provides that where a case is referred to the Director, and after a period of one year, it appears to the Director that the complainant has not pursued, or has ceased to pursue, the reference, the Director may dismiss the reference. The applicant complains that s.25 has been used in cases where complainants have failed to make an appearance, in these circumstances, there could have been no investigation leading to a substantive decision; therefore, s.25 was not the appropriate section to use. Claims dismissed under sections 22 and 25 can be an appeal to the Circuit Court, whereas claims dismissed under s. 38 cannot be appealed. The failure to use the correct provision to dismiss claims has wrongly exposed the applicants to further legal costs. The applicant is entitled to query at this stage as to what they fairly can do to meet the claims being brought against them and when the end of the claims can or will be in sight. The Court is asked to consider the problems faced by the applicant in having to deal with the vague complaints being raised against it and the unstructured procedures under which same are being investigated. In all of the circumstances, it is submitted that it is unjust for the applicant to have to face the continued investigation of these complaints.

Respondents' Submissions

5.1 The massive number of complaints referred caused considerable administrative difficulty for the respondents. Many administrative steps were taken by the respondents to effectively and fairly deal with the large numbers of complaints. These include callovers which were designed to expedite and clarify how the complaint's would be processed and determined. The Equality Officer tried to organise the complaints by grouping them into family clusters so that all issues raised by each family would be dealt with at a hearing concerning that family. The effect of so grouping cases substantially reduced the number of hearings necessary and expedited the manner in which the cases were processed.

5.2 In the lead decision *John & Angela Mongan v. Clare County Council* DEC-S2008- 039 of September 2008, many issues were dealt with, including the identity of the correct respondent, the time limit issue, dealing with non-attendance, referral of complaints by Ms. Rosen, referral of multiple complaints on one form and sufficiency of information contained on the referral forms. The respondents submit that, in fact, all of the issues canvassed in the within judicial review were dealt with in that decision. The applicant did not appeal same. The applicant cannot now complain of those matters, as they are time- barred.

5.3 The applicant refers to the respondents' guidelines on making complaints. The guidelines outline how the Tribunal's secretariat initially examines complaints to see if they come within the ambit of the Act. The applicant complains that a proper examination, in accordance with the guidelines, did not take place in the instant case. The respondents submit that failure to comply with the guidelines is not a good ground for judicial review. The guidelines are not legally binding. They are for general guidance only. The secretariat checks the complaint form to see if the complaint comes within the statutory framework. This check is cautiously undertaken, as it is primarily the function of the Equality Officer to decide this issue. It would need to be absolutely clear that a complaint was inadmissible on time grounds before it could be rejected by the secretariat, and even that might well be problematic. Where any question arises, it requires an investigation by an Equality Officer. The guidelines cannot override the rights enshrined in the legislation nor do they purport to do so. The issue of whether complaints are receivable can be determined at the hearing rather than at a preliminary stage. There is no requirement for a preliminary hearing.

5.4 The applicant complains that the respondents acted wrongly in accepting the claim forms submitted by or on behalf of the notice parties. The complaints form EE1 is designed to set out only the generality of the complaint. The applicant herein seeks to turn the complaint form into a rigid pleading that cannot be amended. To do so would seriously impede the respondents' ability to carry out its statutory function. The applicant alleges that the claim forms do not provide it with sufficient detail to know the nature of the case it must defend. The respondents argue that the complaints are straightforward. They explain how the indigenous clause adversely impacts upon Travellers, how Travellers are not allocated houses in estates with settled people and how high walls are built around their estates and barriers are put at the entrance to their estates. The applicant should have no problem understanding these complaints; they are perfectly comprehensible. The applicant has not stated what information it lacks. Where the Equality Officer required further information, complainants were directed to provide "points in time" information, which was passed on to the applicant.

5.5 The legislative framework provides that procedures before the respondents are not to have the formality of a court case. The Oireachtas did not intend to create a highly complex system of adversarial decision-making. The procedures must be flexible. They should allow, by their informality, for ordinary persons without legal advisors to bring their complaints to the Tribunal. The applicant alleges that the procedures were unfair, as the Equality Officer permitted the Notice Parties to adduce oral evidence and then allowed the applicant to respond at a later date. The respondents accept that it might have been unfair if the applicant was immediately required to deal with the evidence it had just heard. However, they were allowed time to consider how they wished to respond. The respondents are at a loss to understand the alleged unfairness in this manner of proceeding. The case *of Louth VEC v. The Equality Tribunal* [2009] IEHC 370, dealt with fairness in the context of extra information being provided above and beyond the EEI form. Mc Govern J. held at paragraph 6.4:-

> "6.4 It is clear that on 19th September, 2007, details of the notice party's claim were given to the applicant. These details went beyond the information contained in the EE1 form but were part of the same complaint . . . The replying submissions were not made available until 21st January, 2009, which was the date before the hearing. I am satisfied that the applicant had ample notice of the claim being made against the employees and should have been in a position to deal with them at the hearing before the Equality Officer . . .
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> 6.6 . . . The Equality Officer was entitled to run the hearing of the complaint as she saw fit, so long as it complied with the principles of natural and constitutional justice . . .
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> 6.7 It is important to emphasize that the hearing before the Equality Officer Tribunal is not a hearing in a court of law with all the attendant formality that would exist in such a forum."

It is clear from *Louth VEC* that Equality Officers are to be given latitude regarding the running of cases before them. A respondent cannot complain that the Tribunal is not operating with the formality of a court.

5.6 The Equal Status Act 2000, imposes an obligation on the respondent to investigate complaints of discrimination. Section 21 of the Act provides for an initial notification to a respondent within two months of the prohibited conduct, or two months of the last occurrence thereof, extendable by a further two months in exceptional circumstances. Thereafter, the complaint is referred to the Equality Tribunal. Section 21(6) provides:

> " A claim for redress in respect of prohibited conduct may not be referred under this section after the end of the period of 6 months from the date of the occurrence of the prohibited conduct to which the case relates or, as the case may be, the date of its most recent occurrence."

Again, there is a power to extend that period by a further six months. The Act sets a time limit for referral of six months from the most recent act of discrimination, not from the first such act of discrimination. That time limit runs from the end of a period of time where the act constituting discrimination extends over a period. The assertion that some of the claims appear to be statute-barred falls to be determined by the respondents. She has not yet determined the claims, and will determine the issue of time in her decision if relevant. The within judicial review is therefore premature. The complaint that the Equality Officer should embark on a process to ensure that the respondents have jurisdiction is rejected. This amounts to a demand that the respondents should hold a preliminary hearing. There is no such requirement. The respondents have received complaint forms that are valid on their face. The notice parties have specifically confirmed to the Equality Officer that they want their complaint heard. Issues of substance and of time will be determined as part of the respondents' statutory investigation.

5.7 The applicant further complains that the respondents have not prevented Ms. Rosen from acting as representative. The respondents do not have the power to do so. The Equal Status Act makes it clear that the Equality Tribunal must facilitate a representative of a party's choosing. Section 25(a) of the 2000 Act provides:

> "A party (whether complainant or respondent) to proceedings under section 24 or 25 may be represented by any individual or body authorised by the party in that behalf."

This section demonstrates the more informal nature of proceedings before the Equality Tribunal. This is in marked contrast to court proceedings. Complainants have had to satisfy the Equality Officer of their knowledge of the claim and their wish for it to proceed with Ms. Rosen as representative. In this case, the notice parties have all attended call-overs and expressed a willingness to pursue their cases with Ms. Rosen as their representative.

5.8 The applicant complains that in the past, the respondents have dismissed claims pursuant to s.22 or s. 25. Section 22 permits the respondents to dismiss a claim as being made in bad faith, frivolous or vexatious where it relates to a trivial matter. There is an appeal to the Circuit Court from such a decision. Section 25 is the section whereby a substantive decision is made on the complaint after the investigation has concluded. The applicant complains that the claims should have been dismissed pursuant to s. 38 which provides

that where a case is referred to the Director, and at any time after the expiry of one year from the date of the reference, it appears to the Director that the complainant has not pursued the case, the Director may dismiss the reference. There is no appeal from a decision pursuant to section 38. The applicant's complaint that s. 38 should have been used, clearly refers to previous decisions. None of those previous decisions are challenged herein, the complaint is entirely moot. In this case, s.38 could not be applied as the notice parties have all attended call overs and expressed a willingness to pursue their cases.

5.9 The applicant complains of delay by the Tribunal. During the course of the investigation, nine applications for adjournments were made by solicitors for the applicant and six were granted. The applicant has therefore been the cause of some delays itself. The Equality Officer has been working through a vast amount of complaints from many families. The notice parties are the last family grouping to have their claims determined and are equally as entitled as the other groups to have their claims adjudicated upon. In respect of the academic leave of absence, the applicant was offered the opportunity of having another Equality Officer appointed to continue hearing the claims but declined the offer. It is now estopped from making a complaint in that regard.

5.10 The applicant complains of non-attendance. The failure of some complainants to attend is not the fault of the respondents herein. The applicant complains of receiving masses of documents from the respondents. The respondents have a practice of copying all correspondence received from one party to a dispute to the other. The respondents are not responsible for the content of these documents, nor are they responsible for providing a referencing system for the ease of the applicant. It is submitted that the court ought not to interfere with the procedures adopted by the respondents. The respondents are a specialist body, and as such, the courts should be slow to interfere with its decision. The respondents submit that the issues in respect of the ambit of the jurisdiction are matters that ought to be raised before the Equality Tribunal and adjudicated there. If they are determined incorrectly, an appeal or a review can then be considered. This action is entirely premature. The relevant authorities demonstrate that in Irish law, a Tribunal, such as the respondents, ought to be left to determine the issues raised in the complaint, including time issues. In *Aer Lingus v. the Labour Court* (Unreported, 20th March, 1990), Walsh J. stated 8:

> "It was contended on behalf of Aer Lingus that the Labour Court must first make an initial determination that a complaint is receivable before making the administrative decision to refer the matter to the Equality Officer. I find myself in agreement with the High Court Judge that this view is not correct. The Equality Officer has no function to deal with any matter concerning the question of the time bar, and therefore any finding he makes is strictly without prejudice to what the Labour Court may decide about the latter point. If it were otherwise, then the Labour Court would, as the judge pointed out, have to hold a preliminary enquiry into every case, whereas, in fact, the Labour Court can decide on the question of the acceptability at the same time as it falls to determine the merits of the case. The Labour Court is quite free to have such a hearing if it wishes, but I do not think it is correct to claim that it must have such a hearing."

The respondents submit that this decision is binding authority for the proposition that there is no obligation for the deciding body to deal with receivability at a preliminary stage. The issue of recievability can be decided at the same time as the merits of the case fall to be determined. It is not conducive to a speedy resolution of disputes if there has to be a multitude of separate decisions, each of which is open to appeal to the High Court on a point of law.

5.11 The complaints herein relate to matters that have been raised by the applicant on many occasions and ruled upon by the Tribunal in similar claims without appeal by the applicant. Order 84, r. 21(1) of the Rules of the Superior Courts, provides that an application for leave to apply for judicial review shall be made promptly, and in any event, within three months from the date when grounds for the application first arose, or six months where the relief sought is certiorari, unless the court considers that there is good reason for extending the period within which the application shall be made. No application for an extension of time has been made in these proceedings. If there were grounds for judicial review, they arose when the complaint forms were submitted, if the complaint forms lack specifics now they lacked specifics when submitted. As far back as 2006, Clare County Council was threatening judicial review. The onus is on an applicant for judicial review to show that he acted promptly.

5.12 The applicant's primary case as made out herein is to prevent Ms. Rosen from referring claims to the respondents, and not the manner in which the respondents have dealt with the complaints. This is not the correct proceeding for that issue to be determined. The respondents must be permitted to perform their statutory function to determine the complaints. In advance of a decision by the designated Equality Officer, the within proceedings are wholly premature.

Decision of the Court

6.1 The Oireachtas established the Equality Tribunal to hear and determine complaints of discrimination under the Equal Status Act 2000. The Act is a stand-alone code. Claims of unlawful discrimination are referred to the Director of the Equality Tribunal under s. 21(1) of the Act. This provides that a person who claims to have been discriminated against:

> "May . . . seek redress by referring the case to the Director."

The complaint is thereafter delegated to an Equality Officer and can be the subject of mediation or investigation and, ultimately, a decision. Section 25(1) of the Equal Status Act 2000, as amended, creates an obligation on the Director to investigate the case where mediation fails, and provides that the Director:

> "Shall investigate the case and hear all persons appearing to the Director to be interested and desiring to be heard"

In establishing the Equality Tribunal, the Oireachtas did not intend to create a complex system of adversarial decision-making. The procedures before the respondents are not to have the formality of a court case. In *Louth VEC v. The Equality Tribunal* [2009] IEHC 370, McGovern J. held at paragraph's 6.6 to 6.7:

> "6.6 . . . The Equality Officer was entitled to run the hearing of the complaint as she saw fit, so long as it complied with the principles of natural and constitutional justice...
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> 6.7 It is important to emphasize that the hearing before the Equality Officer Tribunal is not a hearing in a court of law with all the attendant formality that would exist in such a forum"

It is clear from the *Louth VEC* that Equality Officers are to be given significant discretion regarding the running of cases before them.

6.2 An aggrieved party cannot complain that the Tribunal is not operating with the formality of a court. The Equal Status Act is intended to provide accessible remedies for persons alleging discrimination. It is designed to proceed without lawyers present, but with lay representation. The legislation envisages that complainants before the Tribunal may have literacy problems and therefore a

procedure strictly based on written submissions would be a considerable hurdle for many complainants. The legislation is structured so as to allow complainants to elaborate on their complaints by way of oral submissions. The applicant argues that the complaints in this case are a narrative of the difficulties faced by Traveller families, are generic in nature and do not pinpoint occurrences of prohibited conduct. The applicant also complains that it is unfair to allow large amounts of material, which appears to be irrelevant, to be presented before the Tribunal. It seems to me that allowances must be made for the fact that lay persons and representatives do not articulate complaints in the same way as professionally qualified advocates. It is part of the job of the Equality Officer during the investigation to tease out a complaint to determine whether it has substance. This will necessarily involve the receipt of information, which may ultimately be discarded as irrelevant.

6.3 The applicant complains that the procedure followed by the Equality Officer was unfair. The procedure adopted by the Equality Officer during the investigation was to hear all the evidence which the notice parties wished to adduce. The applicant was allowed to respond to this evidence at a later date and then, finally, the Equality Officer made her determinations. The procedure clearly does not have the formality of a court case and it is inevitable that, in giving complainants some leeway, evidence will be given about irrelevant matters or matters that are outside the time limits prescribed in the legislation. The applicant was, however, allowed time to consider how it wished to respond and the Equality Officer is well placed to exclude from her consideration any matters which are irrelevant. It seems to me that this procedure conforms with the principles of constitutional justice, therefore, this Court ought not interfere with the respondents by requiring an alternative approach. It is well established that courts should be slow to interfere with the procedures of expert administrative Tribunals. In *Calor Teoranta v. McCarthy* [2009] IEHC 139, Clarke J. stated at paragraph 7.4:-

> "A body, such as the Labour Court, must be afforded a significant degree of procedural autonomy as to the manner in which it conducts its proceedings. That is not, of course, to say than in structuring its procedures, the Labour Court is not obliged to ensure that those procedures conform with the principles of constitutional justice."

This approach is equally applicable to the procedures followed by an Equality Officer

6.4 Section 25(3) of the legislation gives the Minister the power to specify procedures to be followed by the Director in carrying out investigations, however, no regulations have been made regarding the procedures to be followed. The respondents have published guidelines dealing with procedures. The applicant complains that the guidelines have not been adhered to in the instant case by reason of the failure on the part of the respondents to deal with the issue of recievability at the preliminary stage. It is argued that the first step the respondents should have taken was to filter out complaints that were out of time. The guidelines are not a legal interpretation of the Act. They are for general guidance only. A failure to comply with them is not, therefore, a good ground for a judicial review. Thus, the Equality Officer is entitled to decide whether the issue of receivability should be determined at the hearing rather than at a preliminary stage. In *Aer Lingus v. The Labour Court* (Unreported, 26th February, 1988) Carroll J. held:-

> "The Labour Court can decide on receivability at the same hearing as it determines the question of discrimination. That is not to say that the Labour Court may not hear a preliminary point on receivability and decide whether the complaint is out of time or whether there is a reasonable cause for delay, as it did in the early stages of the dispute, before referring the matter to the Equality Officer. But it is not obliged to do so, any more than a Court is obliged to hear a preliminary issue on whether a claim is statute barred or not. The Labour Court must be allowed a discretion in the running of the Court whether to have a preliminary hearing or deal with all questions, including that of recievability at one hearing."

There are good reasons why this approach should be open to an Equality Officer. Where a complaint is of ongoing discrimination, it may be difficult to determine at a preliminary stage whether it comes within the statutory time limits. This may only become clear after the complaint is elaborated upon by the complainant in oral submissions.

6.5 I do not accept the applicant's argument that the the respondents acted wrongly in accepting the claim forms submitted by the notice parties on the basis that they did not provide sufficient detail. The respondents have drafted the EEI forms for complaints. Complainants, however, are not obliged to use them. The Minister has not issued directions regarding the form to be used and applicants can submit complaints in any format they see fit. The EEI form is designed to elicit basic details of the complaint. In *Louth VEC v. The Equality Tribunal* [2009] IEHC 370, McGovern J. observed as follows at paragraphs 6.2 and 6.3:-

> "I accept the submission on behalf of the respondent that the Form EEI was only intended to set out, in broad outline, the nature of the complaint. If it is permissible in court proceedings to amend pleadings where the justice of the case requires then *a fortiori*, it should be permissible to amend a claim as set out in a form such as the EE1, so long as the general nature of the complaint . . . remains the same."

It is clear from the foregoing that because the EEI form is only designed to set out the generality of a complaint, complainants should be allowed to expand on matters not specified in the form. So long as respondents are not taken by surprise, or alternatively given adequate time to answer, there can be no injustice therein.

6.6 The Equality Tribunal has received a flood of complaints. Ms Rosen has submitted some 1,200 complaints. This huge number of complaints has caused difficulties both for the applicant and the respondent. On the one hand, the applicant seems to suggest that the Equality Officer was not fair to it, while on the other hand, Ms. Rosen has accused the Equality Officer of bias and has asked her to recuse herself from hearing the complaints. The process has been exacerbated by the animosity between the parties. It seems to me that the Equality Officer is doing the best she can in difficult circumstances. The Equality Officer has tried to be fair to both sides. The applicant complains that the level of toleration afforded to Ms. Rosen has operated oppressively against it. It is noteworthy, however, that the Equality Officer has awarded expenses in favour of the applicant against Ms. Rosen. Ms. Rosen has adopted the approach of submitting a huge number of complaints. This has lead to frustration on all sides. This is most unfortunate. A more appropriate approach might have been to pick a small number of strong test cases and to bring these before the respondents. Ms. Rosen is not, however, an experienced advocate, although it is clear that she is committed to the cause of alleviating the hardship endured by those she represents. In this case, the notice parties have all attended call overs and expressed their desire to pursue their cases with Ms. Rosen as their representative. In these circumstances, I accept the respondents' submission that it has no power to prevent Ms. Rosen from representing the notice parties.

6.7 Complaints have been referred to the Equality Tribunal concerning some 96 families. Of these complaints, there are now just 18 families who await decisions; the notice parties herein plus 1 other family. Five of these families have had their cases heard and one is partly heard. The issuing of decisions in those five cases has been stayed because of these proceedings. The Equality Officer was appointed in this matter in 2005, and between that time and June 2009, when leave to seek judicial review was granted, she has gained significant experience of how to best approach these cases. The Equality Officer has used call overs to clarify which complainants wished to proceed. The Equality Officer has also grouped complainants into family clusters to expedite matters. In light

of the experience that she has gained and the procedures that she has adopted, I am confident that the Equality Officer can determine these matters in a manner which is fair to both sides. The notice parties are the last family grouping to have their claims determined and are equally as entitled as the other groups to have their claims adjudicated upon. In terms of the relief sought, the applicant seeks an order of certiorari quashing the decision of the respondents providing redress to any of the notice parties. There is nothing to quash as no decisions have issued in respect of the notice parties. The applicant seeks an order of *prohibition* preventing the respondents from further proceeding with or adjudicating upon the complaints made by the notice parties. The Equality Officer has determined that these complaints are validly made and has embarked on hearing a number of these complaints. I am not satisfied that there are grounds upon which to prohibit the respondents from performing its statutory function of determining these complaints. For all the above mentioned reasons I must refuse the relief sought in these proceedings.