DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 24 Eanáir 2018

Wednesday, 24 January 2018

Tháinig an Comhchoiste le chéile ag 9 a.m.

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Jack Chambers,	Martin Conway,
Clare Daly,	Niall Ó Donnghaile.
Jim O'Callaghan,	
Mick Wallace.	

I láthair / In attendance: Deputies Fiona O'Loughlin and Donnchadh Ó Laoghaire.

Teachta / Deputy Caoimhghín Ó Caoláin sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: I remind members to switch off their mobile phones as they interfere with the recording equipment.

No apologies have been received. We will go into private session briefly to deal with some housekeeping matters before commencing our scrutiny of the Equality (Miscellaneous Provisions) Bill 2017.

The joint committee went into private session at 9.05 a.m. and resumed in public session at 9.45 a.m.

Equality (Miscellaneous Provisions) Bill 2017: Discussion

Chairman: We will resume in public session. The purpose of today's engagement is to conduct detailed scrutiny of the Equality (Miscellaneous Provisions) Bill 2017, which is sponsored by our committee colleague, Deputy Jim O'Callaghan. The format of the meeting is that Deputy O'Callaghan will be invited to make an opening statement and that be followed by a question-and-answer session. We will then invite our visitors, representatives of both the Equality and Rights Alliance and IBEC, to give their views on the Bill. I extend a warm welcome to Mr. Niall Crowley, Ms Anne Lyne and Mr. Damien Walshe, who are here from the Equality and Rights Alliance, and Ms Maeve McElwee and Ms Nichola Harkin from IBEC. They are all very welcome.

Under the salient rulings of the Chair, members should not comment on, criticise or make charges against a person outside the House or an official by name or in such a way as to make him or her identifiable. That is a caution I will have to repeat at the appropriate time.

I invite Deputy O'Callaghan to make his opening statement.

Deputy Jim O'Callaghan: I welcome the opportunity to have legislative scrutiny performed on this legislation, which Deputy Fiona O'Loughlin and I introduced last year. I also welcome the representatives from the Equality and Rights Alliance and IBEC. It is very important to get perspectives from outside the Houses on the legislation, which has gone through Second Stage, before we bring forward amendments on Committee Stage.

I will give members a very brief overview of what is proposed in this short but important legislation. At present, equality law in Ireland is governed by measures introduced since the 1990s, namely, the Employment Equality Acts and the Equal Status Acts. The former provides for a prohibition on discrimination in respect of employment and access to employment. The latter deals with a prohibition on discrimination in respect of what can generally be referred to as services or the offer of services to citizens in the State. Both Acts contain prohibitions in respect of discriminating against individuals on what are referred to as discriminatory grounds. One cannot treat an individual less favourably than a person who is not so associated, on the basis of the discriminatory grounds. One cannot discriminate against a person on gender grounds - because the person is a woman - in an employment context. One cannot discriminate against a person because he or she is a Traveller in terms of permitting access to a public house or institution such as that.

It is important to remind members there are nine discriminatory grounds in legislation. They are gender, that is, one person is a woman, the other a man; civil status; family status; sexual orientation; religion; age; disability; race; or membership of the Traveller community. Those nine grounds are set out in section 6 of the Employment Equality Act and section 3 of the Equal Status Act. In respect of any such discrimination, it has to be acknowledged that it is extremely difficult to prove whether, for example, in the employment context, an employer is discriminating against an individual on the religion ground or the gender ground. One does not really know the thought process behind a potential employer's decision to employ one person and not to employ another. Let us not be under any illusion that it is easy to prove discrimination because it is not; it is extremely difficult. The benefit of the legislation is that it sets out very concisely and clearly that discrimination on these grounds is prohibited. It sends a message to the community when people see legislation introduced by the Oireachtas which says one cannot discriminate against individuals on these nine grounds.

The legislation introduced by Deputy O'Loughlin and me would add a further ground, namely, the disadvantaged socioeconomic status ground, to those already in existence. It sounds complicated. I will tell the committee the thinking behind it. Very many people have come into my constituency clinic and informed me - I was surprised when I heard it first - that if they are from certain local authority estates or estates which have a reputation, unfairly or undeservedly, of being areas where there is anti-social behaviour or high crime, they do not put down the address in their estate when they apply for a job. The reason is that communicating their addresses in certain well-known estates or local authority housing areas deters employers. I was astonished when I heard this. It obviously happens because it has been mentioned to me on numerous occasions. I will not give examples of local authority estates but it is the case, unfortunately, that discrimination takes place against individuals looking for jobs when they put down in their curricula vitae or application forms that they are from particular estates. Everyone in this room will agree that such forms of discrimination should not be permitted. It is simply unacceptable that an employer would prejudicially assume that a person who is from such an estate is less capable of doing the job than anyone else. That is how it applies in the area of employment. Similarly, under the provisions of the Equal Status Act, it would be wholly unacceptable if people were being prevented from having access to a public house or restaurant because they came from a certain local authority estate. Pubs and restaurants are perfectly entitled to have a dress code or any type of code they wish. I hope Deputy Wallace is not offended by that. One thing they are not allowed to do is turn around and say that they do not want particular groups or individuals coming in because they come from such and such an area in the State. This legislation proposes a tenth ground that one cannot discriminate against people in employment or against people in the equal status legislation if they have a disadvantaged socio-economic status. That is difficult to define but the Bill proposes to insert a new definition of disadvantaged socio-economic status, which I believe to be most appropriate, namely, "Disadvantaged socio-economic status' means a socially identifiable status of social or economic disadvantage resulting from poverty, level or source of income, homelessness, place of residence, or family background;". I am aware there have been reports on this before and that the Minister has some concerns about it. I have thought about it and I believe the proposed amendment is worthwhile, as does my colleague Deputy O'Loughlin. Like all of the other grounds, it will be difficult to prove, but I believe that everyone in this room agrees there should not be discrimination against individuals on the basis of where they are from, if they happen to come from a disadvantaged socio-economic background.

It will also add some vigour to equality law in this jurisdiction. Sometimes, perhaps unfairly, equality law is seen as being a rather niche interest that applies to certain interest groups.

I suspect there is a lot of discrimination in this area. This legislation would benefit significant numbers of people in our society and, more than the fact that it could be identifiable before the courts, it would send out a strong message that one cannot discriminate against people because they come from a poor background or from certain housing estates that are perceived to be associated with anti-social behaviour.

This is the opening I wanted to give and I am happy to take questions. Most importantly, I want to hear the views of others and I want to hear the views of IBEC and the Equality and Rights Alliance. The witnesses must feel free to say what they want in this regard. The committee wants to hear the criticisms of the legislation. It has not yet reached Committee Stage and any suggestions or amendments that are made will be considered on Committee Stage.

Chairman: I thank Deputy O'Callaghan. The protocol is that questions may be asked of Deputy O'Callaghan at this juncture, following his opening remarks. The opportunity is there as with any occasion. Alternatively, would he prefer to proceed to hear the witnesses?

Deputy Jim O'Callaghan: My colleagues have already spoken to me on it.

Chairman: That is fine. I thank Deputy O'Callaghan for outlining the Bill today and for his briefing note on it. Have all witnesses and members received a copy of that? The note puts the Equality (Miscellaneous Provisions) Bill into context for our discussions.

Normally we would have to suspend to allow our witnesses to take their seats but they have beaten us to it. I welcome from the Equality and Rights Alliance its chairperson, Mr. Niall Crowley, as well as board members Mr. Damien Walshe and Ms Anne Lyne. I also welcome from IBEC Ms Maeve McElwee, director of employer relations, and Ms Nichola Harkin, employment law solicitor. They are all very welcome and I hope I got their titles correct.

The format of the meeting is that both groups are invited to make their opening statements. This will be followed by a question-and-answer session, which the witnesses can field as they are most comfortable within their respective groupings.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

I ask Mr. Crowley to make his opening statement on behalf of the Equality and Rights Alliance.

Mr. Niall Crowley: I thank the Chairman for the invitation to participate in this important discussion. We bring our statement on behalf of more than 170 civil society groups and individuals who are involved in equality and human rights issues. There is huge interest in and welcome for the Equality (Miscellaneous Provisions) Bill 2017. We congratulate and acknowledge the initiative of Deputy O'Callaghan. It is timely and important.

The new ground will be important in underpinning and strengthening the links now created between equality and human rights with the establishment of the Irish Human Rights and

Equality Commission. This is important because we need to align our equality legislation with our international human rights commitments, which already contain a prohibition on discrimination with regard to social origin and socio-economic status.

The new legislation can take advantage of the integrated multi-ground equality, diversity and non-discrimination systems adopted by many public and private sector organisations since the enactment of the Employment Equality Act and the Equal Status Act. Those Acts presented a real challenge to these organisations, in moving from one ground to nine grounds. There was a significant burden in gearing up for that legislation. There is no significant burden for private and public sector organisations in gearing up from nine grounds to ten grounds. It is merely the addition on one ground to the already developed multi-ground equality and diversity systems. The proposed legislation can serve as a valuable and necessary complement to social policy in this field. For too long we have lived with the contradiction where we allow discrimination on the socio-economic status ground to undermine our aspirations regarding poverty policy and social policy in that field.

The proposed legislation is not a surprise. It has been argued for since the Employment Equality Act 1998. In that legislation the response to the demand for more than nine grounds was made by the Minister at the time by including a review clause requiring the Minister to assess, within two years, the need to add further grounds. Already the pressure was there that it was not sufficiently comprehensive legislation and there was a need to go further. As part of that review, in 2002 the former Equality Authority proposed the introduction of a socio-economic status ground, highlighting high levels of socio-economic discrimination in the labour market, as Deputy O'Callaghan has just done.

In response to the proposal from the former Equality Authority, a research report of 2004 commissioned by the Department of Justice, Equality and Law Reform suggested that a socio-economic status ground would serve the objectives underpinning the equality legislation. Importantly, the report also pointed out that it would allow a more sophisticated intersectional approach to its implementation. Many of the grounds do not operate alone in incidences of discrimination. They combine to produce a cumulative disadvantage. Research from the Economic and Social Research Institute, ESRI, and the Irish Human Rights and Equality Commission, IHREC, has shown that socio-economic status affects the exposure to discrimination and responses to discrimination. Most of the grounds intersect with the ground of socio-economic status. It is crucially important, even in protecting the other grounds, that we include the ground of socio-economic status.

The Equality (Miscellaneous Provisions) Act 2015 introduced housing assistance as a new ground into the Equal Status Act in order that people in receipt of housing assistance and social welfare payments could not be discriminated against in the provision of accommodation or related services. This was the beginnings and the foundation for the socio-economic status ground. This Bill will complete and build on that foundation.

As for the history of the Bill, the Irish Human Rights and Equality Commission, in a 2015 submission to the UN, highlighted the need to prohibit discrimination on the basis of socio-economic status in equality legislation. The UN committee noted its regret that Irish legislation does not provide protection against discrimination on all grounds of discrimination prohibited by UN human rights covenants.

The case for the enactment of the Equality (Miscellaneous Provisions) Bill has been well made over time. In this regard, most assistance has been given by the CSO's regular quar-

terly national household survey, QNHS, equality module, which is produced every four years. This has highlighted a significant lack of comprehensiveness in the coverage of our equality legislation. We can also look to developments across Europe and the European Union, where provision for such a ground is increasingly evident in equality legislation. The analysis of the 2014 QNHS equality module highlighted high levels of discrimination; 12% of the population aged 18 or over reported experiencing some form of discrimination in the previous two years. This is a high figure even in comparison with other EU countries. Within this figure the survey identified very high levels of discrimination beyond the coverage of our existing legislation with 29.6% of those who reported discrimination stating that it was on grounds other than those covered by the current equality legislation. This is a major challenge if we want our equality legislation to function and to meet its goals.

In an analysis of the previous quarterly national household survey equality module, the Economic and Social Research Institute, ESRI, and the then Equality Authority identified that this other ground, this 29.6%, is most related to income, location or address. To the extent that was possible on the data that was there, the evidence was that the missing ground is that of socioeconomic status. Looking across Europe, our research noted that in 2015 the European network of legal experts at the European Commission identified that equality legislation now provides protection against discrimination on the ground of socioeconomic status in 20 of the 35 European countries they cover. Ireland broke new ground with the Employment Equality Act 1998 and the nine grounds it covered. We were the leaders across Europe. We are now the laggards. One of the areas in which we lag behind relates to socioeconomic status and the introduction of that ground.

We also note that research by Equinet, the European network of equality bodies, found that it takes time for this ground to become embedded and understood, as Deputy O'Callaghan has pointed out. However, it has shown its value over time, with increased and more comprehensive casework. These cases now cover the fields of employment, social services, public and private housing, health care and social protection. We have no reason to believe that Ireland will be any different from other European countries in that regard.

Finally, I will address the question of definition. The definition of the socioeconomic status ground does present challenges. Everybody has acknowledged that. However, it is not unique to this ground. The definitions of the race ground and the disability ground, in particular, have presented challenges in the past. This has not proved in any way to be an impediment to their implementation, both through law and through practice of public and private sector organisations. Equality legislation has never worked on the basis of large numbers of cases coming forward. Every time we introduce new grounds, there is a prediction that it is going to open the floodgates and there will be thousands of cases. That never happens. Equality legislation, for various reasons, functions on the basis of a small number of strong and successful cases that serve to generate a culture of compliance. That reflects what we are trying to do with equality legislation: to build a culture of compliance so that discrimination does not happen in the first place. That is why this ground is so important.

We need to be careful not to define the ground too narrowly so that it does not play that role. The definition needs to be broad enough to encompass those who experience the discrimination. It needs to be specific enough to allow for action to prevent such discrimination, which is the ultimate goal, and to enable cases to be brought forward. We believe the definition outlined in the Bill matches this requirement, but also matches the proposals already put forward in the past and reflects current practice across the European Union. The Equality Authority suggested

using a number of indicators to establish socioeconomic status, in a similar way to the definition in this Bill. These include family background, geographical location, home ownership, educational background, and economic situation. The 2004 report of the Department of Justice, Equality and Law Reform noted the use of the following indicators in defining the ground: level of education; level of literacy; homelessness; geographic location; source of income; level of income; type of work or profession; and employment status.

Finally, in our research, the Equality and Rights Alliance noted four clusters of indicators in the provision on this ground in equality legislation across Europe. These include the focus on social origin in Belgium, Croatia and Hungary; the focus on social status, social position, social condition or social class in Bulgaria and Croatia, and in a proposal before parliament in France, wealth income, property, economic situation or financial status in Belgium, Bulgaria, Croatia and Hungary; and education in Bulgaria. We have found that the most effective approaches to resolving the definitional issues involve a situation-specific analysis, which is why these indicators are so important, and an asymmetrical protection focused on the issue of disadvantage, and those in a disadvantaged socioeconomic situation.

We believe we have the infrastructure in place to ensure the effective implementation of this ground. We have an Irish Human Rights and Equality Commission, which is now well established and well resourced. This is very welcome. The commission has a key role in awareness-raising around such a ground, and in providing guidance to employers and service-providers on the indicators that might be covered by it. We have in place a functioning Workplace Relations Commission, WRC, which is increasingly improving its performance on equality cases. That body is there, along with the courts, to provide necessary interpretations. That is the way legislation has always worked. We have the infrastructure to make this work.

Ms Maeve McElwee: I thank the joint committee for the opportunity to present our position and to set out the views of employers on this issue. I will commence by noting that IBEC is very keenly aware of the challenges that individuals face in accessing good jobs and the quality of life that is associated with secure employment. To be clear right from the get-go, we do not necessarily believe that the measure proposed in this Bill is the appropriate way of achieving these goals, and we see that there is significant potential and risk that this particular proposal may increase social stratification and stigmatisation.

IBEC is of the view that a fully integrated labour market activation approach to education, training and employment needs to be formulated, so that all individuals can have the same chance to compete for jobs and opportunities within the labour market. We absolutely recognise that business has a central role to play in tackling issues such as long-term unemployment and youth activation, and that business can play an important role in opening up workplaces to persons who are unemployed and helping develop links to the world of work.

In this regard, IBEC has been proactively engaged in the promotion of diversity and inclusion for over a decade, working with employers and other stakeholders to support early years intervention and labour market activation. I will come back to this point.

I would like to address some of the key points in this particular piece of legislation with which IBEC has considerable concern. The Bill defines disadvantaged socio-economic status as meaning: "a socially identifiable status of social or economic disadvantage resulting from poverty, level or source of income, homelessness, place of residence, or family background". The breadth of this definition and the lack of clarity around it give rise to certain concerns for businesses and employers generally. The first concern is that the Bill may unfairly stigmatise

certain districts or postal addresses as disadvantaged or in some way undesirable. We believe that the Bill also risks stigmatising the reliance on social welfare for a period, which is unlikely to be of assistance in achieving the broader goal of greater social integration and mobility.

Given the lack of clarity within the definition, there is a strong risk that it will include individuals not intended to be protected by this piece of legislation. Fundamentally, the definition provided for in the Bill provides no assistance to employers who wish to ensure that they comply with their obligations under employment equality law.

In fact, we believe that the definition will create more questions than it will answer. The Minister of State at the Department of Justice and Equality, Deputy David Stanton, has already identified some of the flaws in the definition in a recent Dáil debate. From personal experience of 15 years as a practitioner in front of the Labour Relations Commission, Equality Tribunal, Employment Appeals Tribunal and now the WRC, I am very conscious of how we need to present this information. Several questions will arise for employers. How will a disadvantaged income level be defined? Will such a definition be relative to a specific income threshold? Will everyone on a social welfare payment be considered disadvantaged? Would the definition include persons living in rural areas who are not necessarily poor but have more limited opportunities to access employment, or perhaps limited access to broadband? Given that the equality legislation requires us to demonstrate who our comparator is, how would the comparators who are not so disadvantaged be identified? Would this question be relative to a specific income threshold? Would those individuals not in receipt of a social welfare payment automatically be regarded as an appropriate comparator?

The reference to family background is particularly ambiguous, and would certainly pose a huge difficulty for employers. For employers, this turns on its head the requirement with which we generally operate, the requirement to prove a case. In this instance, we would almost be required to prove an absence of knowledge in order to be able to demonstrate whether or not there had been any question of discrimination.

The Employment Equality Acts quite correctly provide for significant redress for employees or job applicants who are subjected to discrimination in the workplace, or in the course of accessing the workplace. Given the really wide definition of discrimination, and the financial impact of falling foul of the legislation, it is crucial for employers to be able to precisely understand their obligations and what constitutes discrimination.

Legislators have a responsibility to ensure that statutes are clear, certain and precise. Those who are expected to comply with legislation should be able to understand what it means and who is captured by it. Legislators also need to recognise that employment equality legislation provides for very significant redress, including compensation of up to two years' remuneration for every breach as well as potential reputational damage. That is a very heavy onus on a clear understanding of what that legislation requires someone to do.

IBEC is of the view that more targeted measures are required to address the issues which are the subject of this Bill. We have already had very significant engagement in trying to address measures to increase labour market activation. Intreo on the Employment and Youth Activation Charter is one such example. This business-led initiative enables employers to sign up to a charter to commit that at least 50% of candidates considered for interview will be taken from the unemployment register. In addition, employers commit to a selection of other measures aimed at addressing long-term and youth unemployment. There are currently 430 companies signed up to the charter.

While not operating at the moment, the Ballymun pilot Youth Guarantee is another good example of how this activation works. It was a partnership of public employment services, employer and trade union representatives, education and training providers, local development organisations and youth organisations. It aimed to guarantee that all of those on the unemployment register would be supported to secure or receive work experience, training or educational opportunity within a short period of becoming unemployed. If we are serious about addressing inequality, focus needs to be on supporting the well-documented learnings and reform proposals coming from this project.

There is a compelling economic and social case for new initiatives to raise levels of education skills. In our broader submission we have already sent to the committee, we have set out some of the detail on the correlation between education and work. Levels of earnings and security in employment are clearly adversely affected by low levels of proficiency in basic skills. In our view effective education policies and programmes are critical to achieving positive economic and social outcomes that deliver for individual citizens and the country as a whole.

We acknowledge that there are matters of social justice which need to be addressed. We recognise that there are concerns about the stratification of Irish society. However, the employment equality legislation, and specifically this initiative, is not the vehicle to achieve greater socioeconomic equality. This needs to be done by way of a strong State education system, effective labour market activation measures and other social supports, particularly early years intervention.

In reality, many of the barriers to employment that exist in Ireland relate to the absence of required levels of work experience, qualifications and skills rather than by reason of discrimination because of an applicant's background. IBEC is happy to continue to engage with all stakeholders on achieving socioeconomic equality. We are available at any time to discuss any of the other initiatives we already support in this regard. However, the Irish business community cannot support a Bill that proposes such an inappropriate method of dealing with the issues it proposes to address.

Chairman: I thank Ms McElwee. I give members the opportunity to contribute. Not surprisingly, Deputy O'Callaghan is the first to indicate.

Deputy Jim O'Callaghan: I thank the representatives of the Equality and Rights Alliance and IBEC for coming in and making their contributions. I will certainly reflect on everything that has been said and I know that other committee members will also reflect on it before it reaches Committee Stage before the select committee.

I want to emphasise that we cannot just be satisfied with equality legislation that is on the Statute Book and which we do not believe needs to be reviewed and updated on an ongoing basis. Sometimes politicians are satisfied to state that we have equality legislation in place and that ticks the box. It is important for us to continually review and update it. I was interested by what Mr. Niall Crowley said about comparators in other countries. Obviously the last thing I would want to do is introduce something that might have a significant negative impact on business or individuals who were trying to secure employment. People who deal with this on the WRC are sensible people who can interpret the purpose behind the new ground being introduced. Unfortunately this type of discrimination occurs and there is a responsibility on us, as legislators, to take steps to try to ensure that does not occur. We have to do it in such a way that it does not impinge too much on or cause any difficulties in the area of business. The fact that there are some fears about it is not sufficient to suggest that we should not proceed with it.

I thank people for their contributions and I know we will all reflect very carefully on them.

Deputy Donnchadh Ó Laoghaire: I thank the witnesses for coming. It is a reality that discrimination on a socioeconomic basis happens; I would say it is quite widespread. I acknowledge that legislation is not always a panacea. The Equality (Miscellaneous Provisions) Act 2005 included housing assistance as a new ground. While that was welcome, unfortunately people will find ways around it. At least it has made discrimination on the basis of HAP or rent supplement more difficult even though many Deputies will be of the view that it still happens anyway. Legislation clearly has a role but it is not a panacea.

Mr. Crowley's point that a small number of cases can encourage a culture of compliance is a point well made. The Bill does not simply apply to employment, but also applies to services. I dare say that public bodies are equally culpable or potentially as culpable as employers in discriminating. Unfortunately in our constituency offices we also come across discrimination against people on the basis of who they are, where they are from or their background in accessing public services.

I do not agree with the point made about stigmatisation. I hope this would empower people. A point was made about places being identified as disadvantaged. The State identifies places as being disadvantaged. It is a recognition of reality and where properly done - sometimes it is not - it involves additional resources and supports. It is important to recognise the reality on the ground where communities are disadvantaged and that we work with them on the basis of that.

I have the following question for both the Equality and Rights Alliance and for IBEC. If somebody felt they had been discriminated against on the basis of their address or on the basis that they applied for a job and somebody less qualified got the job - perhaps it was a job within a legal firm and the son or daughter of a lawyer got the job and a more qualified person who was the son or daughter of an unemployed person was unsuccessful - under what grounds would they be able to take an action? How would they be able to make a case that they had been discriminated against? Is there space within the nine grounds or within other legislation for them to say, "I believe there has been discrimination here on the basis of who I am, where I am from or what my parents did. I can prove it." If it can be proved, under what grounds is that actionable?

There has been a fair bit of talk about the definition. The Equality and Rights Alliance believes it should not be defined too tightly. While I agree with that, it is important to strike the balance between broadness and precision. I put this question to IBEC also. How closely does the definition in this legislation resemble international comparators?

Chairman: Deputy O'Callaghan's contribution did not contain a specific question that I could turn to the panel. However, Deputy Ó Laoghaire has focused particularly on a couple of areas. As his first question was addressed to IBEC, Ms McElwee and Ms Harkin might like to respond. He also brought IBEC into the second question that I will then put to the representatives of the Equality and Rights Alliance.

Ms Maeve McElwee: I will address the comments. If I omit anything, please let me know. A point was made, including by colleagues, that a small number of cases would lead to a culture of compliance. That is often the aim of legislation and, in certain circumstances, it may be effective where we can readily identify the issues and people can in future examine cases and outcomes, see what a particular ground means and apply and understand the legislation. In that type of environment, it can be easier to have a small number of cases leading to a culture of

compliance. However, the question of socioeconomic background is so broad that every case would be challenging.

As to the practical reality on the ground and some of the issues that arise, I will first address the question of stigmatisation that Deputy O'Callaghan raised.

(Interruptions).

Chairman: I apologise for interrupting, but I can pick it up in my ear - someone's phone is not in the "off" position. There is a little interference and I do not want Ms McElwee's response in the recording to be in any way interfered with. Just to be on the safe side, people might check their phones, as we are picking up a little interference in the background.

(Interruptions).

Chairman: There you are. You can all hear it now.

Deputy Mick Wallace: They are as guilty as hell.

Ms Maeve McElwee: We will switch them off to be sure. They were on silent.

Chairman: I only said it because I did not want Ms McElwee's contribution to be interfered with in any way. Please resume.

Ms Maeve McElwee: Regarding stigmatisation, an example was given of individuals coming from a particular local authority estate and saying that they were finding difficulty gaining employment where they must submit a particular address. In order to prove that issue, we potentially must define that estate as an area of socioeconomic disadvantage. We must then inform employers that it is an area of socioeconomic disadvantage, who may then have to consider that circumstance for every applicant from the area. How would we manage that? Would the local authority estate be in a different postal district, for example? The challenge is determining how anyone would know what the socioeconomic background was in advance of someone coming through.

When we consider the practical reality of how to prove-----

Deputy Donnchadh Ó Laoghaire: I might clarify. There are existing definitions of "disadvantaged community". Take for example job applicants from designated RAPID and CLÁR areas. We would not be expecting employers to devise new definitions.

Ms Maeve McElwee: No, but equally there are many places without formal designations that would also be encompassed by the definition in this proposed legislation.

Another challenge is how to decide whether everyone in a particular area is disadvantaged and how to distinguish between one person with a disadvantage and another who, due to different circumstances, may have every advantage but happens to live within the same area. How would an employer ever prove this point?

Deputy Ó Laoghaire asked how a person could take an action if someone less qualified but who was the child of two highly professional parents got the role. The requirement on employers is to be able to demonstrate in any interview process what their criteria were for the role and how they scored one candidate against any other. From our experience, we get plenty of requests for feedback on how people have interviewed. An employer is obliged to have a trans-

parent process in place.

It would be difficult for any claimant or employer to prove whether discrimination took place, given that every individual comes with a different set of skills, qualifications, fit and enthusiasm for the role, which are legitimate aims for an employer to consider in an interview context. The challenge is to be able to define how discrimination took place.

In light of the fact that our society is becoming more diverse and more people are joining it, which is great, how do we determine whether any recruiter or employer has knowledge of an individual's background? Where the case is made that discrimination has happened based on family or socioeconomic backgrounds, how would any employer ever know in the first instance? We would be under an obligation in front of third parties to prove that we did not know a piece of information as opposed to we did not actively discriminate based on that information.

I will cite an example from my experience. I grew up in Dundalk. I do not understand the school system in Dublin. People talk about this school and that school and how they went to one or the other. It does not mean anything to me. As an employer hiring someone, I would have no knowledge of one school being different from any other. I would be considering someone's background, qualifications, education and presentation. Many people will simply not have those. In an interview, I would have no indication of someone's social or family background. As more people enter our society from various EU countries and elsewhere, they will have no knowledge or understanding of what might be considered socially disadvantaged. The Deputy mentioned that some of these issues are well known out there and that people understand, but many do not understand. From Donegal to Kerry, people do not understand what may be a socially deprived area in any other county.

The width of this definition and the requirement to prove to a third party that a person did not know something and factor it in pose a significant challenge. Once the *prima facie* case is made that there may be a ground for discrimination, the burden falls on the employer to demonstrate that he or she did not discriminate. How could the employer prove that?

We keep coming back to the question of what the threshold for the areas of discrimination would be. How would I know if someone was on a social welfare payment? How would I know if someone was in receipt of housing supplement or family income supplement or had been out of work for a time and was in receipt of social welfare? Even if social welfare is the marker, maternity payments count as social welfare, as do carer's leave payments. There are many social welfare payments that we would have to enumerate in terms of whether they should be included or excluded for the purposes of determining someone's income and background.

There are simpler and more pragmatic ways of addressing some of these points. Most of my younger colleagues have no memory of ever putting an address on an application form or CV because people use their email addresses now instead. No one posts them a form to fill out. Everything is done by email. Most employers will never see a person's address until after they have made a job offer, in which case that job offer has already been made. If someone has a concern about education, there is no requirement to state what school that person attended. Someone simply needs to outline his or her educational attainment and work experience on a CV. The ways to address the points that the Deputy raised are evolving.

Chairman: I thank Ms McElwee. Would Mr. Crowley like to address Deputy Ó Laoghaire's points?

Mr. Niall Crowley: Yes. The Deputy asked what could be done now where discrimination on this ground occurred. There are many barriers to accessing work based on socioeconomic status and discrimination legislation alone will not deal with all of them. Good labour market activation is important, but it does not deal with the significant barrier of discrimination. It is the same regarding people with disabilities. Labour market activation supports people with disabilities to enter the workforce, but anti-discrimination legislation is necessary to complement it and ensure that it works.

Second, business does have role in this regard in terms of the steps outlined. Business can takes steps to prevent discrimination on a socio-economic status ground and the better businesses do. IBEC plays an important role in supporting businesses to do that and it is exceptional at a European level in this regard. We all know that not all businesses take steps to prevent discrimination occurring. There is not a level playing field for business in this regard and, therefore, anti-discrimination legislation that pushes all businesses to take the preventative steps is good for businesses. In the absence of legislation, people can do nothing about that discrimination. In circumstances where people can do nothing about that type of discrimination, it breeds alienation, a sense that change is not possible and that this type of discrimination is normal and we have to put up with it, which is not good for society and our economy.

In regard to the definition, I did not suggest that it should not be drawn too tightly, I said it should not be drawn too narrowly. It is important that the breadth of the definition is good, as is the case in the current draft. All studies elsewhere, in terms of this ground, suggest that if the definition is drawn too narrowly it will not work. It should be tightly drawn, and I believe it is in comparison with other European countries. There are three tests in the definition: socially identifiable, although I am not sure how necessary that test is, social or economic disadvantage, and the various indicators in that regard. The definition is drawn significantly more tightly than it is in all other jurisdictions where it has been found to work without problems for those making complaints or those against whom the complaints are being made, or potentially made. Looking at this issue in terms of the challenge to employers, it is important to say that employers do get a lot of information, more than service providers, in relation to job applicants in terms of CVs and job application forms, so there is a lot of knowledge available to them. The first burden of proof lies with the person who is being discriminated against. He or she faces the difficulty and must make the *prima facie* case. It is only when he or she has made that *prima facie* case that the burden shifts to the employer to prove there was no discrimination on the specified ground. Also, cases are rarely fought to the end. The better employers, when it is pointed out to them what has happened, resolve the issue well before it goes to the Workplace Relations Commission, WRC, and a sanction is applied. There is a lower sanction applied in job application cases.

It is not accurate to say that legislation of this nature could stigmatise areas, people or groups. I do not think women, people with disabilities or black minority ethnic people have been stigmatised by anti-discrimination legislation. In reality, they are empowered by such legislation and they can become agents of change in their own situations because of this legislation. That is why it is so important and so good for society. It is invigorating for society. The reality is that it is stigma that already exists that is breeding this discrimination. Legislation to counter this discrimination will break the stigma. It will show people in a different light. It will show them as agents of change in their own lives.

The points made by IBEC in regard to the cases could have been said about any of the other grounds, particularly the disability ground, which is more broadly drawn than is the case in any

other European jurisdiction. It includes the term "other medical condition", which I welcome. It is important and it works. It has worked and it does contribute to a culture of compliance. We have in place an infrastructure which, again, is unique at a European level. In many of the European countries that have this ground, provision is made only for a tribunal-type body to hear and resolve cases. They do not have a promotion-type body like the Irish Human Rights and Equality Commission to provide guidance and support to employers and service providers. Ireland is uniquely well placed to put this ground into place effectively because not only do we have an institution to deal with the cases when they occur, we also have an institution to support employers and service providers to ensure they do not happen in the first instance. I think we are well placed to move ahead on this ground.

Chairman: I thank Mr. Crowley for his responses. Would Deputy Ó Laoghaire like to ask a supplementary question?

Deputy Donnchadh Ó Laoghaire: No, but I might come back in later.

Chairman: Yes. The next speaker is Deputy Clare Daly.

Deputy Clare Daly: I thank the witnesses for being here today. In some ways this is so obvious there is almost nothing to say. I do not mean that in a derogatory sense. Everybody would agree that this discrimination has existed from time immemorial. We all know that people who come from particular areas feel they cannot disclose it because it will result in their being treated less favourably. It is almost instinctive in some ways in attitudes. There are cultural problems also. That almost 30% of people who are discriminated against are outside the current grounds verifies this. In terms of the statistics available, I am sure we would all agree that this is a very real problem. What we are discussing now is how best we can address it and whether the legislation before us will do that. We will not solve all society's ills by way of this legislation but we need to consider whether it helps or hinders address of the issue. Based on what I have heard, I believe it helps. I say that conscious that other legislation brought in has not culturally changed things. For example, in regard to the housing payment, we are inundated with representations from people who believe they are not being provided with housing because they are on the housing assistance payment scheme or on rent allowance and so on, even though current legislation clearly states that that is not on. The couple of test cases that have been taken will help to bring about change in this regard. That is all we can do here. To me, this is a good measure.

Mr. Crowley spoke about stigma, which is one of the issues I wanted to raise. Many areas are stigmatised, and by including this clause we are helping to educate people. Is it not the case that the absence of knowledge is a ground for defence? Does knowledge not have to be proven in cases of discrimination? For example, a person could fill out an application form and not state in that application where he or she comes from and then say he or she is being discriminated against because of where he or she comes from, but if an employer can demonstrate that he or she did not have that knowledge then he or she would be home and dry. That is just one example. Also, the point was made that an employer would not know that a person was in receipt of social welfare benefits, but if there was a five-year gap in terms of employment or study on the person's curriculum vitae, then the employer would know the person was long-term unemployed. Presumably, if a person does not have the skill set or experience required because he or she has been long-term unemployed, the employer is not obligated to employ that person. That is my understanding of it but I would welcome a little more clarity around that issue.

To me, it obvious we should have this although I do not think it is a panacea. I do not think

it puts an onerous burden on employers. From the point of view of access to services, similar to Traveller discrimination in terms of access to pubs, a publican could choose to refuse access to people from a particular estate because the view is that everybody who lives in that estate is rough or because they dress in tracksuits and the pub requires a particular dress code. There are ways around this. As I said, it is not a panacea but it does help to raise cultural understanding and from that point of view it is good.

Chairman: I believe Deputy Daly's question is specific to Ms McElwee so I invite her to respond first and then I will bring in Mr. Crowley.

Ms Maeve McElwee: The point was made about the ability of the tribunals to make decisions on complex and widely defined grounds under the equality legislation, such as disability, but even in the case of disability, generally, somebody can rely on a qualified medical opinion to be able to make that decision. That means there is a qualified ground there if there is a dispute or question as to whether someone has or does not have a disability or has one of the particular grounds under the Act. A qualified opinion can be sought to help everybody to decide and for the WRC to use to make its decision on any case. That will not be effective in terms of many of the grounds that will be captured under this proposed tenth ground of socio-economic status.

On the absence of knowledge, I can clearly see where Deputy Daly is coming from and, in some cases, it may be a defence to say that it was not on the applicant's CV and the employer did not know. However, what am I to do in the case of a claimant who asserts, for instance, that someone in human relations knows his or her mother and hence knows where he or she lives? It is those types of ambiguities and broader issues that make it very difficult to be able to determine whether some form of discrimination has taken place in that instance, because it would then have to be proven that nobody or anybody knew, or if someone's address was known, that it was also known that it was an area of socio-economic disadvantage. While the claimant does have to provide the *prima facie* case, that is, quite rightly, a relatively low bar in being able to present that, with the defence then falling back to the employer. In principle, we are not at odds in any way that we need to address the issue of socio-economic status, but addressing it under equality legislation, where an employer's hands are tied in many ways in terms of knowing in many circumstances across a wide range of criteria whether somebody ticks any of these boxes or anyone in the team has that knowledge, and then to prove that, is extraordinarily difficult and at a very high cost if discrimination is found to have occurred. It is a real challenge.

The member is correct, and I could not disagree, that if somebody has been unemployed for five years and has no independent means of wealth obvious to an interviewer, it may be obvious that the person is on a social welfare payment or unemployment benefit. The challenge remains to say whether they were judged on skills and ability or whether there was indirect discrimination in terms of skills and ability in that he or she has been out of the workforce for five years and the person who was hired has not been, so the fact they were on social welfare meant there was indirect discrimination. How would an employer manage a claim of that nature? The complexity within the legislation and the burden of proof that would fall is very significant and challenging in this area. That is why we feel this tenth ground gives no certainty at all to an employer as to how they would apply the legislation.

We have lots of other challenges. When we return to clarity of areas that are designated as disadvantaged, I reiterate the point that many people will not be aware of that unless we pin up a notice to say that these are areas of acknowledged disadvantage and regularly update them. We also have many people from other countries who have come here to work. I would guess that there are very few people who know what an area of disadvantage is in, say, Lithuania, Poland,

France or Spain and how we would identify that for a candidate from a different jurisdiction who is coming here to work. We would have no knowledge necessarily, even if it was declared in an address or different format, that somebody has experience of one of these socio-economic grounds. That may not be understood here. Where would the obligation lie on an employer to determine whether any of these pieces of information provided in an application are grounds that the employer must consider under the equality grounds?

It is not the principle of what the legislation is trying to achieve but the absence of certainty in the legislation with which employers must comply and to which they must conform and how we would do that. How do we set the income thresholds? What is an income limit that makes someone part of a socio-economically disadvantaged group? How would I know that? Test cases will differ because an income limit in Dublin city centre might be very different from family income supplement in Monaghan, Cavan or somewhere in the midlands, for instance. There is a difference between what that income and background may be, and when we move out into a family background, the possibilities are innumerable. We can say that we know things intuitively, but intuition is not an adequate point of law when a case is being prosecuted or defended.

Mr. Niall Crowley: It is important to bear in mind that this absence of certainty has not been an impediment to the introduction of other grounds of discrimination or to employers taking effective action to prevent discrimination in the other grounds. It is very evident in the religion ground, in race in terms of ethnic origin, and it is most evident in the disability ground. Not only is it broadly drawn in terms of other medical condition, which is not defined but has some indicators around it, but there are also issues of hidden disability that are not evident, such as mental health issues, where there have been successful cases in that regard. Consider the complexity of disability yet how effective and important a ground it has been. Consider how effective it has been in terms of people with disabilities being able to assert their rights not to be discriminated against and how effective it has been in the cultural change that Deputy Clare Daly spoke about in terms of how we view people with disabilities and their situation.

Looking briefly at indirect discrimination, first it must be acknowledged that there are very few cases, and even fewer successful cases, of indirect discrimination. They are very hard to prove. The data are usually not available, statistics are difficult to get, but also there is a defence that if the employer can objectively justify the policy or regulation, there is an exemption that indirect discrimination cannot be found. It is about groups rather than individuals.

That brings us back to how cases are dealt with and how they are argued, whether direct or indirect. "Do not know" and "Did not intend" are not good defences in cases, even if they can be made. There are much more effective defences which are used by employers. The applicant would have to prove first a *prima facie* case that he or she was less favourably treated. The employer then has to show that there was another reason that the applicant was treated less favourably. That is the way in which it happens. To take a very simplistic case, say a woman goes for promotion, proves that she was less favourably treated, and the employer shows that while she did not get the promotion, it was because the person who got it was more qualified. When I was in the Equality Authority we won many cases where the employer could not prove that and where the person who got the job was less qualified and therefore the case was won. That is my final point. When discrimination happens and is found to have happened, it is almost certain that the employer or service provider does know.

The arguments that IBEC is making relate to the complexity of anti-discrimination legislation and proving cases but we are well tried and tested in that regard, having had nine grounds over such a long period. Dealing with one further ground which is as complex as the other

grounds, but no more complex, is not an argument for not introducing it. We have a capacity to do it, employers have done it on grounds of disability, race, and religion, and we have the capacity to support them to do it with a very strong and well-resourced equality and human rights body and with an increasingly effective Workplace Relations Commission.

Ms Maeve McElwee: I wish to respond to those issues. On grounds and how we define them, let us take the example of mental health grounds. If somebody says that he or she has a mental health difficulty and asserts that he or she is being discriminated against on those grounds, it is open to the individual and the employer to ask for a qualified medical opinion, and when that has been determined, it allows us to proceed from there with some certainty around what we are dealing with. Looking at the example which Mr. Crowley has given of a male and a female and an allegation of discrimination in terms of access to a particular role, the employer will be familiar with the fact that the female has a female background and that may be an area of discrimination. It is for the employer to be able to demonstrate that, all else being equal, the appropriate candidate won the day on the basis of skills and ability. If either of two male or female colleagues were disputing an appointment on the basis that the decision not to appoint was taken based on his or her family background, socio-economic status or income, who will tell the employer at what point the income threshold becomes a disadvantage and against what comparator that disadvantage is to be weighed up? How would a person know this and if, for any reason, it was known, how would it be possible to demonstrate whether it had been used as a factor in a decision between two candidates competing for promotion in the same place of employment and in whom the employer has clearly invested? In addition, both candidates will have clearly met the criteria or threshold to allow them to apply for the promotion and both will, therefore, be valued employees. Again, this comes back to the other grounds for discrimination. We need some structure in terms of what level would be regarded as discriminatory in order that some kind of determination can be made. The problem we have with the socio-economic grounds is in determining who would set the bar and in what circumstances one would determine that a certain level of income places a person at a socio-economic disadvantage.

Chairman: It would be remiss of me not to share a thought that struck me while Ms McElwee was speaking. Notwithstanding the current protections, I can say we can never have enough protection. During my years as a Member of the Oireachtas, I can recall two cases involving women in specific employments who acknowledged they had experienced an episode of depression in their lives. The outcomes in both cases were wholly unsuitable and the women were most certainly discriminated against. It strikes me every May when I wear the green ribbon aimed at helping to end the stigma associated with mental health issues and encouraging people to speak up that, all too sadly and with relatively recent echoes, these protections are not in place. These cases, one of which involves a woman in State employment, have been a cause of significant concern to me and I have raised the matter at every appropriate level. I am sharing this because I feel compelled to place it on record.

Ms Maeve McElwee: The Chairman and I are not at odds in any way. I am not suggesting there is no discrimination in society or employment. As we stated, it is appropriate that there are some significant penalties for discrimination in the Employment Equality Act. Despite these, unfortunately and regrettably, discrimination continues. The challenge for the vast majority of employers who wish to comply with the legislation is that they need to be able to understand how they can possibly comply with something that has no limits or structures around it. How will we define these? It is not a case of not supporting a more equal and accessible workplace.

Chairman: I appreciate that.

Deputy Mick Wallace: I did not expect the two organisations before the joint committee to agree, just as members do not always agree. There will always be different views on legislation of this nature.

I have employed a few thousand people in my time and I personally did most of the interviews for employees. I see the challenges that will arise in areas such as this. Although I now live in Dundalk, I lived in Dublin for a long time and the discrimination in this city is so blatant as to be frightening. I have seen it all my life and I see inequality increasing.

I agree with Deputy O'Callaghan that legislation needs to be revised and updated. We need only consider the financial implications of the Finance Bill. No sooner had we removed the double Irish than the double malt appeared as a means of avoiding taxation. There is a reason the Oireachtas makes amendments to legislation and introduces new legislation in various areas. As legislators, it is part of our job to do this and it is clearly necessary that we do so in many areas.

To take as an example schools in Dublin, a person looking for a job in a large financial institution will enjoy a major advantage if he or she attended a private school. A person before the courts will also be at an advantage if he or she attended a private school. He or she will only need to put on the old school tie. We see this every day. Mr. Crowley pointed out that tinkering with legislation such as this helps to build a culture of compliance and challenges the *status quo* and we have done this in some areas. For example, a Minister got in trouble in the Houses a few months ago because he asked a woman in a job interview whether she was married or had children. Such questions would probably not have been a problem 20 years ago but they are now and the same applies regarding the need to legislate in this area.

I respect that some of the witnesses have issues with the legislation and I accept that employers will sometimes be wrongly accused of discriminating against someone. On the other hand, sometimes employers will get away with discrimination. I lost a case for unfair dismissal in which I believed I was in the right but was found to be in the wrong. That is how the system works sometimes.

Legislation of this nature is progressive and will play a small part in addressing discrimination and rising levels of inequality. I am in my 60s and I have never found society to be as unequal as it is now. Perhaps I was not as aware of inequality in the past but we have a serious problem with rising inequality. While I accept that is a much broader area, small measures such as the Bill before us will go some way towards addressing it.

It is important to listen to both sides of the argument and tease out the legislation. We should have an open mind and listen to both sides of the argument. While we will not always agree, we should listen to each other. I apologise for leaving the meeting in a hurry. I am due to ask a question in the Dáil.

Deputy Jack Chambers: I thank my colleagues, Deputies O'Loughlin and O'Callaghan, for drafting the Bill. I also thank the experts before us for attending.

I will play the role of devil's advocate in asking my questions. Ms McElwee spoke about the threshold of proof, broadening the criteria and presenting evidence. To follow through on that argument, does she agree that one could make the same argument in respect of every discrimination ground? Does she fully accept the current equality legislation or is it also too expansive and broad?

Ms Maeve McElwee: We are not lobbying to change the employment equality legislation in any way. This is important legislation and it is important that the law is revised and reviewed to ensure it is appropriate for what it needs to do. That is not at issue.

Deputy Jack Chambers: Does Ms McElwee accept that the generic argument she has made could be applied to the existing discrimination grounds?

Ms Maeve McElwee: No, I do not. Under the existing grounds, it is more clear cut for the employer and claimant. The third party who ultimately adjudicates is also able to determine, for example, whether a person is male or female, has a disability-----

Deputy Jack Chambers: It says a "disability or a medical condition". Is that not very broad?

Ms Maeve McElwee: It is very broad but we have the ability, if there is any question between the two parties, to send someone to a qualified medical practitioner to determine whether the person has a disability. If a qualified medical practitioner says the person has a disability, the employer has to accept that because that is a professional medical opinion. The employer is not a professional medical practitioner so we have to work from that point. If a person is a member of the Traveller community, has a particular sexual orientation or has a particular family status as we currently understand it, there are ways in which we can understand what those grounds mean and how they apply to the individual who is making a claim. This new proposed piece does not have that clarity. The availability of clarity around this issue is very difficult. We are asking people to comply with a law that carries a very significant penalty. One must bear in mind that most employers in this country are in the small employer category and this type of award is enormously significant, both in terms of reputation and financially. In that context, they need to be able to understand the grounds, how they apply them to a particular individual and what is their level of responsibility in terms of knowing what those grounds mean. If it is the case that they know that socioeconomic grounds can be taken to mean a particular address, are employers obliged to know what that address is or would it be better if they did not know? If employers do not know what the address is, should they have known? Could employers possibly be culpable if the person interviewing with them knew the address, even though it may not have been stated? Do employers need to know that it is a socially disadvantaged area? Do they then need to consider whether the individual is actually socially disadvantaged or has come from an advantaged background but, in this current housing market, happens to have bought a property in an area that is designated as socially disadvantaged? If there is an income threshold, is the individual's income curtailed because he or she has a massive mortgage, is in negative equity, has an exceptionally large family or is on social welfare? At what point will employers be able to determine, in the way that one can determine that someone has a mental or physical disability or a gender issue, whether a person has a socioeconomic ground? How far do employers have to go in terms of knowing or not knowing and what limit do they apply to it? If a person has an issue around income or family background, how far do employers need to go into that before they can securely say they did not discriminate against that person. Ultimately, when that low bar is reached - we have no disagreement with the fact that it is a relatively low bar - the burden of proof is very detailed and appropriately rigorous on employers. In terms of this ground, how would they meet that bar? That is what I am asking this committee, as legislators. The challenge is that in defining legislation, recommending it and proposing it, one must be confident that it can be understood, be complied with and that it is reasonable to comply with it. In no way am I suggesting that we do not need to do something about socioeconomic grounds but when-----

Deputy Jack Chambers: Ms McElwee has mentioned a number of soft measures. Does she think there should be a legislative input around socioeconomic grounds?

Chairman: Before Ms McElwee responds, I will just alert members to the fact that I want to bring in Mr. Crowley on this discussion too.

Deputy Jack Chambers: I was going to ask that Mr. Crowley would respond too.

Chairman: That is fine.

Ms Maeve McElwee: If we are to legislate for a cause of action, it has to be clear, understandable and precise and people have to be able to defend against that cause of action

Deputy Jack Chambers: Ms McElwee would prefer it to be clarified. She has no issue with the ground itself but just wants it to be clarified. Is that correct?

Ms Maeve McElwee: I have a particular issue with the way this is drafted. I could not say that if there was an adequate drafting that would allow us some certainty that it would not necessarily be a good thing. IBEC has spent a lot of the past decade proactively working to address some of these issues of socioeconomic disadvantage.

Deputy Jack Chambers: It is certainty, clarity and amendments that IBEC is seeking but it is happy with the ground and the principle in law. Is that right?

Ms Maeve McElwee: We are happy with the principle that we address it-----

Deputy Jack Chambers: In law? Just to be to be clear, does IBEC believe it should be in law as a general ground if it is made more clear? Is IBEC opposed to the ground being there, once clarified or does it believe that other measures, such as those mentioned in the submission, would suffice? I am trying to understand IBEC's position.

Ms Maeve McElwee: In principle, I see no reason for employers not supporting any measure that would help prevent discrimination in the workforce. In all circumstances, employers are always looking to increase labour market activation, to improve access to the workforce and for people to come through and into the labour market. Legislation around preventing discrimination is not an unwelcome development at all but it must be something that we can reasonably work within, understand and know.

Deputy Jack Chambers: I ask Mr. Crowley to provide a response to some of the points just raised so that we can understand the difference of opinion and how the Equality and Rights Alliance would respond to IBEC.

Mr. Niall Crowley: In terms of legislation we can work with, I have already highlighted the disability ground and the complexity of that. I would also highlight the complexity of the religion ground, which refers to "religious background" and "religious outlook". How clear is that? Have we heard any complaints about the religion ground? No, we have not. How clear is the Traveller community ground? How do I prove that I am a Traveller? Have we heard of any difficulty with that ground? No, we have not.

First, the level of clarity or certainty sought by IBEC seems to be unreasonable. The second point is that the level of clarity and certainty that is provided is quite significant when compared with other European equal treatment legislation which has much more limited definitions. In some cases, the term used is "social origin", while in Belgium "wealth" is used. That legisla-

tion, which has much more limited definitions, has been seen to work very effectively once it settles down. It took a year or two to settle down. The same was true with regard to the HAP scheme, for example. It took a year or two for that to settle down for both sides and for cases to begin to emerge and a culture of compliance to build. It is no less certain than at least three of the other grounds in our current legislation. It is more certain and more clear than the way it is dealt with in human rights covenants to which we have signed up and in other European legislation.

In reality, provisions like this do not catch good employers who are concerned about equality and diversity. Good employers who are thus concerned do not deploy irrelevant characteristics, whatever they might mean, in their selection of people. They select them on the basis of clear and necessary characteristics. They do not get caught on issues like family background and not knowing what that means because they choose the candidate who is the best person for the job. I agree with IBEC that many employers have geared up very effectively to the nine ground equality legislation. It is not going to require a change of mindset for them to keep in mind that there is another set of irrelevant characteristics that should not be taken into account. Those characteristics are quite well laid out and are signalled more clearly than in many other European countries. I do not see that there are issues of certainty or clarity in this.

It is hugely important for the people who experience this discrimination to have this ground in the law so that they are empowered to challenge the situation and to be agents of their own destiny. It is also hugely important for society because when we begin to treat different types of discrimination differently we create tensions and divisions in society; tensions and divisions that we can see clearly in other European countries at present. If one looks at Brexit in Britain and the socioeconomic status versus identity status debate that is going on, that is hugely destructive for society because there is a perception that some groups get treated differently from others. It is important for our society that we break that before it begins here and include ten grounds in our legislation.

Chairman: I thank Mr. Crowley. Does Deputy Chambers have any supplementary questions?

Deputy Jack Chambers: In terms of the specific points raised by IBEC, how would a case be navigated around some of its concerns with, for example, postal address or income thresholds? I am playing devil's advocate here and asking how far an employer would have to go to discover a substantive ground? What would be the threshold information? Is it about building a culture of compliance or changing societal expectations? Is this the Equality and Rights Alliance's view on it? I would like to get both sides.

Mr. Niall Crowley: The onus on the employer is not to discover the ground. The onus on employers is about treatment and less favourable treatment. That is the argument they will make. If a case comes against me as an employer I will not be discussing the grounds, I will be discussing the basis for my decision, which has nothing to do with any grounds or any relevant characteristics. That is the way it is set up because of the fact these cases are difficult to approve and difficult to defend. It is not just with regard to this ground. It is set up in a way whereby I, as the person who feels discriminated against, must put forward a *prima facie* case. I must select the ground on which I will fight the case and the comparator of which I will make use. I must also set out a *prima facie* case of less favourable treatment. The employer will not come back and state I was less favourably treated but that he or she did not know the ground, or that I was less favourably treated on another ground. He or she will come back and state it is nonsense and that the decision was made because of relevant characteristics. That is the way

it works.

Deputy Jack Chambers: My next question is to IBEC. What about the points raised by Mr. Crowley regarding religious background or a person from the Traveller community? IBEC has said employers would seek out a medical practitioner with regard to medical grounds. How do the witnesses respond to the points on these two principles? Is there a more specific level of detail than in existing principles? As I have said, IBEC's argument can be thrown into every ground if it wanted to do so. How do the witnesses specifically respond to the two grounds Mr. Crowley mentioned?

Ms Maeve McElwee: It can be more difficult. On the grounds of religion or Traveller status, people will declare these are their religious beliefs or their Traveller background status, if that is the case. Equally they do not need to declare this until such time as any issue comes up, but in the determination of any discrimination people must put forward some ground that they have been discriminated against in this way because they have declared their religious affiliation or Traveller status, in which case there is evidence and it can be determined whether the people are of the religion they say they are or that they are a member of the Traveller community. It is more clearly defined. The question of whether someone has a socioeconomic status based on his or her level or source of income is much more difficult to determine. An employer will have no knowledge of this and cannot ask a person to produce evidence of his or her bank account or from where a person's sources of income come.

Mr. Niall Crowley: It is not clear at all to me how it can be determined if a person is in a religion or not. We have had a lot of discussion about this in Ireland with regard to the census and whether a person is Catholic or not. I do not think it can be determined if a person is a Traveller or not a Traveller. I cannot think of a proof. Likewise, I do not think it can be determined with certainty whether a person is a member of an ethnic group. At what point do I stop being a member of an ethnic group if I have parents from two ethnic groups or grandparents from four ethnic groups? These are all uncertain. The legislation is set up to deal with uncertainty. This is why employers come back and state a decision was not based on an irrelevant characteristic but on the basis of A, B and C and the candidate got it with X, Y and Z and that is it. Where they cannot prove this they get into trouble, because then irrelevant characteristics are at play.

Chairman: I am very happy to say that members of the Traveller community, through no small thanks to this committee, are members of a formally recognised ethnic group, and quite properly. Deputy Fiona O'Loughlin is very welcome to our committee. A number of colleagues of all hues and descriptions have been and gone. Would the Deputy like to make a small intervention?

Deputy Fiona O'Loughlin: I thank the Chairman for his welcome.

Chairman: The Deputy was a party to the Bill.

Deputy Fiona O'Loughlin: That is correct. I thank the Chairman for this opportunity. I was at another meeting, unfortunately. I look forward to listening to the contributions from the witnesses and it will certainly inform us. I will not comment on what has been said because I heard a small piece from Mr. Crowley and IBEC. The genesis of this was the fact that I and my party recognised, as many of us do, that there can be often discrimination based on a person's socioeconomic status. We want to put something in place that would alleviate this. Having a conversation about this is also extremely important. We have no doubt people who live in poverty and are from disadvantaged backgrounds possibly have limited access to justice and rights.

We also acknowledge there is protection at European and international level, and the aim of the Bill is to try to bring us up to an international norm. I look forward to listening, later this evening or tomorrow, to the playback. I will then have an opportunity to comment further. I thank the Chairman for the welcome and the opportunity to say a few words.

Chairman: On behalf of the committee, I thank our friends from the Equality and Rights Alliance and from IBEC. I thank them for their respective contributions and their attendance. I thank committee members for their participation. There is other business in the House and, on the screen, I see Deputy Wallace is in the Dáil. We understand why we are down to small numbers at this point.

Before adjourning I remind members of the joint committee that next week's meeting is a joint committee meeting on the ombudsman and the week after we will have a select committee meeting to continue our address of the Judicial Appointments Commission Bill.

The joint committee adjourned at 11.15 a.m. until 9 a.m. on Wednesday, 31 January 2018.