



The Equality Act 2010 & Housing Law

Zia Nabi
Doughty Street Chambers

**'at the
heart of
human
rights'**



The Equality Act 2010

- 16 parts
- 218 sections
- 28 schedules



Protected characteristics – s.4

- Age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation



Prohibited conduct

- Direct discrimination: s.13
- Discrimination arising from disability: s. 15
- Indirect discrimination: s.19
- Failure to make reasonable adjustments: s. 21
- Harassment: s.26
- Victimisation: s.27



Section 15: discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.



“... because of something...”

- The court must identify the “something” that is the reason why B was treated unfavourably: *P v Governing Body of a Primary School* [2013] UKUT 154 (AAC) [52]
- This may mean looking behind the purported grounds for possession, or may involve an analysis of why the decision was taken in cases under the accelerated procedure or introductory tenants
- There may be more than one reason why possession is sought - was it “a significant influence”: *Nagarajan v London Regional Transport* [2000] 1 A.C. 501



“... arising in consequence ...”

- Excluded conditions
- Edmund Nuttall Ltd v Butterfield [2006] I.C.R. 77 at [29(6)]
“... if the legitimate impairment was a reason and thus an effective cause of the less favourable treatment, then prima facie discrimination is made out notwithstanding that the excluded condition also forms part of the employers' reason for that treatment”:
- Applied in respect of s. 15 in P v Governing Body of a Primary School [2013] UKUT 154 (AAC)



“...of B’s disability.”

- B must be a disabled person within the meaning of s.6: see *Hainsworth v Ministry of Defence* [2014] EWCA Civ 763 [2014] 3 C.M.L.R. 43



Knowledge

- Burden on landlord
- Actual or imputed knowledge: A must show it *“did not know, and could not reasonably have been expected to know, that B had the disability.”*
- Knowledge is of the facts constituting disability, A cannot rely on advice that B was not disabled: Gallop v Newport [2013] EWCA Civ 1583
- *“...where the reason for seeking possession (or, if relevant, the landlord's knowledge), changes during the course of the procedure, it may be that an exercise, which had started off as lawful, could thereby become unlawful under the 1995 Act”* Lord Neuberger in Malcolm, at [133]



Section 20: reasonable adjustments

- *First requirement: “where a **provision, criterion or practice** of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”*
- *Second requirement: “where a **physical feature** puts a disabled person at a substantial disadvantage”*
- *Third requirement “where a disabled person would, but for the provision of an **auxiliary aid**, be put at a substantial disadvantage”*



Rent arrears

- Duty applies only if the landlord *“receives a request from or on behalf of the tenant or a person entitled to occupy the premises to take steps to avoid the disadvantage”* sch. 4 paras. 2(6) and 3(5).
- Record requests in cover letter or preamble: (Poplar HARCA v White)
 - To contact solicitors / named person before restoring / seeking warrant
 - To provide rent statements to named person
 - To refer to welfare advisors
 - To communicate by text message ... etc



Section 29(6): Public functions

“a person must not, in the exercise of a public function, do anything that constitutes discrimination...”

- Part 3 only applies where not covered by the services, premises, work or education provisions of the Act: s. 28(2)(a)
- Part 3 applies to provision of accommodation where:
 - for the purpose of short stays by individuals who live elsewhere (e.g. decants) s. 32(3)(a); or
 - where accommodation is provided solely for the purpose of providing a service or exercising a public function (e.g. homeless accommodation): s. 32(3)(b).



Section 35

- Section 35 applies to public and private landlords
- A full defence to possession: *LB Lewisham v Malcolm* [2008] UKHL 43 at [19], [101], [104], and [160]
- Mandatory grounds: *Malcolm* at [99] and [143-144] (disapproving *Floyd v S*) [2008] 1 W.L.R. 1274)
- No need to plead a counterclaim: *Manchester CC v Romano* [2004] EWCA Civ 834 at [63–64].
- Although damages are available for injury to feelings: s. 119(4) *Vento v Chief Constable of West Yorkshire Police* [2003] IRLR 101; *Da’Bell v NSPCC* [2010] I.R.L.R. 19



Section 35: Managers of let premises

- (1) *A person (A) who manages premises must not discriminate against a person (B) who occupies the premises—*
- (a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;*
 - (b) by evicting B (or taking steps for the purpose of securing B's eviction);*
 - (c) by subjecting B to any other detriment.*



Public sector equality duty – s.149

- Public authorities and those who exercise public functions must have due regard to the need to inter alia advance equality of opportunity between persons who share a relevant protected characteristic and those who do not



Procedure

- Jurisdiction: s. 114
- Assessors must be appointed “unless the judge is satisfied that there are good reasons for not doing so.” s. 114(7)
- Burden of proof: s. 136 / *Igen Ltd v Wong* [2005] EWCA Civ 142
- Time limits: s. 118; “expiry of the period in which they might reasonably have been expected to” make adjustment: s. 118(6); *Matuszowicz v Kingston upon Hull* [2009] I.R.L.R. 288
- Remedies: s. 119



Disability: section 6

- Section 6(1) Equality Act 2010 ('EA 2010') provides that a person has a disability if: -
 - a) P has a physical or mental impairment; and,*
 - b) the impairment has a substantial and long term adverse effect on P's ability to carry out normal day to day activities.*
- "Substantial" means more than minor or trivial (section 212), and "long term" means the effect has lasted at least 12 months, is likely to last at least 12 months, or is likely to last the rest of the person's life (Schedule 1 para 2 EA 2010).



Defences

- Lack of knowledge
- Proportionality



Proportionality

- **Akerman-Livingstone v Aster Communities Ltd (formerly Flourish Approach Homes Ltd)** [2015] UKSC 15; [2015] 2 W.L.R. 721 has confirmed that on a s. 15 defence the County Court must apply the structured to proportionality
- **Birmingham City Council v Stephenson** [2016] EWCA Civ 1029, [2016] HLR 44, CA: unlawful to apply a binary approach



Homelessness and the PSED

- **Pieretti v Enfield LBC [2010] EWCA Civ 1104 [2011] PTSR 565**
- **Hotak & Others v LB Southwark & Others [2015] UKSC 30 [2016] AC 811 (SC (E))**
- **Birmingham City Council v Wilson [2016] EWCA Civ 1137**
- **Hackney LBC v Haque [2017] EWCA Civ 4**
- **Poshteh v RLBC Kensington & Chelsea [2017] UKSC 36**

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- Suitability
- Applications and reviews
- Allocations



Allocations

- **R (HA) v Ealing LBC [2015] EWHC 2375 [2016] PTSR 16**
- **R (XC) v Southwark LBC [2017] EWHC 736 (Admin) [2017] HLR 24**
- **R (C) v LB Islington [2017] EWHC 1288 (Admin) [2017] HLR 32**
- **LB Ealing v R(H & Others) [2017] EWCA Civ 1127 [2018] PTSR 541**