

“Can the court summarily dispose of a defence to possession based on an allegation of unlawful disability discrimination?”

Akerman-Livingstone v. Aster Communities Ltd [2015] UKSC 15



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The Facts

Mr Akerman-Livingstone suffered from a severe stress disorder and was consequently disabled within the meaning of s.6 of the Equality Act 2010. In 2010 he became homeless and was accommodated by his local authority in temporary accommodation provided by the Claimant under s.193(2) of the Housing Act 1996. He refused a number of offers of permanent accommodation. The local authority made a final offer of accommodation which he did not accept. The local authority then notified him that it considered that it had discharged its s.193 duty and no longer had a responsibility to house him. The Claimant subsequently commenced possession proceedings. Mr Ackerman-Livingstone defended the proceedings on the grounds that a possession order would amount to a breach of his Article 8 rights and that the bringing of possession proceedings by the Claimant amounted to unlawful disability discrimination. He relied on the report of a psychiatrist which indicated that his refusal of numerous offers of accommodation and his inability to engage constructively with the process of identifying such accommodation arose as a result of his disability. He asserted

that in seeking possession, the Claimant was treating him unfavourably because of something that had arisen in consequence of his disability, and that this was not a proportionate means of achieving a legitimate aim, and therefore that amounted to unlawful disability discrimination contrary to s.15 and s.35 of the Equality Act.

Procedural History

At first instance the court determined the defence based on disability discrimination and the Article 8 defence summarily. It determined that neither defence was seriously arguable and made a possession order. The Defendant appealed. The Court of Appeal held that the Court should approach a proportionality defence raised under s.15 of the Equality Act in the same way as it would a defence raised under Article 8. It held that the court should consider the issue summarily at the first hearing of the possession action, and should only refuse to make a possession order at that stage if it was satisfied that the defence was 'seriously arguable'. It further held that the threshold of 'seriously arguable' in the context of disability discrimination was a high one, which would be met in only a small proportion of cases.

The Supreme Court's Decision

The Supreme Court rejected this approach. It held that the court should not determine a proportionality defence raised under s.15 of the Equality Act summarily, save in very clear cases. The protection afforded to disabled occupiers by s.15 of the Equality Act is stronger and more specific than that given to the general run of occupiers under Article 8. The court has to take a structured approach to the issue of proportionality in the context of disability discrimination, and there is no presumption that the legitimate aim of the social landlord in managing its housing stock will prevail. Further, and in contrast to Article 8 cases, the burden of proof in relation to the issue of proportionality lies on the person bringing the proceedings, once the court is satisfied that possession is being sought due to something which has arisen as a result of the occupier's disability. The cases in which the issue can be disposed of summarily will be rare.

Defences based on indirect disability discrimination will therefore in the future require a full hearing save in the clearest of cases. It is considered that unless the defence is being raised by someone who is clearly not disabled as defined by s.6 of the Equality Act, or it is obvious that the landlord is seeking possession for reasons that are entirely unconnected to the occupier's disability, the proceedings will in all likelihood be adjourned, with such directions as are necessary to take the matter to a full hearing. Further, it is worth bearing in mind that, unlike Article 8 or s.149 of the Equality Act (the general equality duty), s.15 of the Equality Act is of general application, and will apply to proceedings brought by a private landlord in the same way as it applies to proceedings brought by a public authority.

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