



Stephen Tyler v Paul Carr Estate Agents *DSS discrimination*

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Garden Court Chambers

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“No DSS”



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What does “No DSS” mean?

- “No DSS” indicates that the landlord/letting agent will not accept applicants who receive benefits.
- The effect is that people on benefits are automatically rejected, without any consideration of their individual circumstances.
- It could be a company-wide policy or it could apply to just one landlord or just one property.
- It can be stated on the website, or communicated verbally to an applicant, or advertised in the window...



**We Don't Accept
Housing
and Benefit
or DSS!**

*SORRY FOR ANY INCONVENIENCE



Scale of “No DSS” within the private rented sector

- Of 13,000 PRS advertisements collected between 2003 and 2005, 1/3 barred HB claimants. Only 1/6 of the remainder, when contacted, said they would accept a HB tenant.
- A survey of 1,000 landlords in 2013 found that 78% were not willing to let to HB tenants.
- In 2014, a representative of the National Landlords Association told the Work and Pensions Select Committee that 52% of their members surveyed said they wouldn't take HB tenants.
- A survey of 1,009 landlords in 2019-2020 found that 41% of landlords had an outright bar on letting to HB tenants. 22% preferred not to.



The Equality Act 2010



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EA 2010: an overview

- EA 2010 prohibits certain unfavourable treatment in respect of the “*protected characteristics*”.
- The protected characteristics are set out Pt 2, Ch 1.
- The types of unfavourable treatment are set out in Pt 2, Ch 2.
- The circumstances in which this treatment is unlawful are set out in Pts 3-7.
- How to take enforcement action is set out in Pt 9.



The protected characteristics

- Age
- Disability
- Gender reassignment
- Marriage & civil partnership
- Pregnancy & maternity
- Race
- Religion or belief
- Sex
- Sexual orientation



The unfavourable treatment

- Discrimination: ss13-19.
- Failing to make reasonable adjustments for disabled persons: ss20-22.
- Harassment: s26.
- Victimisation: s27.



Discrimination

Direct discrimination: s13(1)

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

Indirect discrimination: s19(1)

“A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.”

Indirect discrimination

S19(2):

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.



Circumstances where unfavourable treatment is prohibited

Provision of services to the public: s29(1)

“(1) A person (a “service-provider”) concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.”

Disposing of premises: s33(1)

“(1) A person (A) who has the right to dispose of premises must not discriminate against another (B)—

- (a) as to the terms on which A offers to dispose of the premises to B;*
- (b) by not disposing of the premises to B;*
- (c) in A's treatment of B with respect to things done in relation to persons seeking premises.”*



Enforcement

- A person who has been treated unlawfully under the EA 2010 may bring a claim to the County Court: s114(1).
- Such a claim must be brought within 6 months, although this can be extended by the Court if just and equitable to do so: s118(1).
- The County Court can award any remedy which could be granted by the High Court in a claim for judicial review or tort: s119(2). This includes damages for injured feelings: s119(4).



“No DSS” and the Equality Act 2010



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Does D have a PCP of not accepting applicants in receipt of benefits?

- “*Provision, criterion or practice*” should be given a wide interpretation: *Ishola v Transport for London* [2020] EWCA Civ 112.
- It can potentially include “*any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions*”: *Equality Act Code of Practice: Services, public functions and associations* (EHRC, 2011).
- It can include a one-off decision: *Ishola v Transport for Transport for London* [2020] EWCA Civ 112.



Does C have a protected characteristic?

- **Disability:**
 - A physical or mental impairment which has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities: s6 EA 2010.
 - An impairment is long-term if it has lasted or is likely to last at least 12 months: Sch 1, para 2.
- **Sex:**
 - Being a man or a woman: s11 EA 2010.
- Other protected characteristics may be relevant.



Does the PCP apply to people without that protected characteristic?

- Indirect discrimination occurs where the PCP is of (apparently) neutral application.



Does the PCP put people with whom C shares the protected characteristic at a particular disadvantage? (1)

***Essop v Home Office (UK Border Agency)* [2017] UKSC 27:**

- Indirect discrimination is about group disadvantage.
- Not necessary to explain why the PCP puts the group at a disadvantage.
- No requirement for a causal link between the protected characteristic and the particular disadvantage.
- Not necessary for every member of the group to be put at the disadvantage.
- Commonplace for the disadvantage to be demonstrated with statistical evidence.



Does the PCP put people with whom C shares the protected characteristic at a particular disadvantage? (2)

Disability

- Disabled households in the PRS are almost 3x more likely to claim HB than non-disabled households
 - Disabled households in the population generally are almost 5x more likely to claim HB than non-disabled households
- (Analysis of Understanding Society survey, wave 9)

Sex

- Women in the PRS are more than 1.5 x as likely as men to claim HB
- (Analysis of DWP statistics in conjunction with data from English Housing Survey, 2011 Census, and ONS)



Did C suffer that disadvantage?

- Question is whether C was put, or would have been put, at that disadvantage
- Indirect discrimination may occur “*where a person is deterred from doing something, such as applying for a job or taking up an offer of service, because a policy which would be applied would result in his or her disadvantage*”: Explanatory Notes.



Was the PCP nevertheless justified? (1)

- PCP is justified if it is a “*proportionate means of achieving a legitimate aim*”: s19(2)(d).
- Burden is on D to justify the PCP: s19(2)(d).
- Court will make its own judgment. There is no “*margin of discretion*” given to D: *Hardys & Hansons plc v Lax* [2005] EWCA Civ 846.
- The more serious the disadvantage, the more compelling the justification will have to be: *Code of Practice* §5.35.
- Costs alone cannot justify a discriminatory measure: *Code of Practice* §5.33.



Was the PCP nevertheless justified? (2)

- “The rent won’t be paid”
- “It would be a breach of my mortgage”
- “My insurance doesn’t cover it”



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The facts

- The Claimant
- Homelessness and the search for accommodation
- Telephone call on 7 September 2018
- Subsequent messages
- Pre-action correspondence



The proceedings

- Claim lodged in March 2019.
- Defence filed in September 2019.
- Trial 8 September 2020 in front of HHJ Stacey (now High Court Judge) sitting with an assessor.
- Issues at start of trial:
 - Did D reject C because he received HB?
 - If so, did this PCP put disabled people at a particular disadvantage?
 - If so, was the PCP justified?
 - If not, what relief should be granted?



The judgment

- Judge accepted C's evidence of the telephone call on 7 September 2018 and found that there had been a blanket policy, in respect of the 3 properties C had enquired about, not to accept HB applicants.
- Criteria at s19(2) were met:
 - Policy amounted to a PCP;
 - It was of neutral application;
 - It put disabled people at a particular disadvantage;
 - It put C at that disadvantage; and
 - D could not show it was a proportionate means of achieving a legitimate aim.



The remedies awarded

Declaration:

“The Defendant unlawfully indirectly discriminated against the Claimant by applying to him the provision, criterion, or practice of refusing to consider applicants in receipt of Housing Benefit for three private rented properties that were being marketed by the Defendant.”

Damages of £6,000 plus interest:

- This was a serious matter that damaged C’s feelings quite considerably.
- Injury to feelings was aggravated by the manner in which D had conducted the proceedings.

Costs on an indemnity basis:

- D’s case was hopeless and could not possibly have succeeded.



A wider look at DSS discrimination



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Common responses

- “It’s my property and I’ll let it to whomever I want.”
- “We were just following the landlord’s instructions.”
- “It had nothing to do with the applicant being a woman.”
- “We didn’t even know the applicant was disabled.”
- “Receiving Housing Benefit isn’t a protected characteristic.”
- “Lots of our tenants are on Housing Benefit.”



Examples of other No DSS cases

- Rosie Keogh: settled with admission, damages, costs.
<https://www.bbc.co.uk/news/education-42979242>
- Emma Loffler: settled with apology, damages, and costs.
<https://www.bbc.co.uk/news/education-51642316>
- Amanda Staples: settled with apology, compensation, and costs.
<https://www.bbc.co.uk/news/education-51642316>
- “J”: declaration made by consent that the agent’s former No DSS policy was unlawfully indirectly discriminatory on the grounds of sex and disability. Damages and costs paid.
<https://www.bbc.co.uk/news/education-53391516>



Looking ahead

- Status of the judgment
- Implications for men/non-disabled people
- A developing consensus
- End of the line for No DSS?



Any questions?



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Thank you

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