

The Equality Act, Human Rights and Housing Litigation

Kuljit Bhogal KC & Tara O'Leary

13 October 2025 – Housing Day 2025

Summary of session

- Main housing matters where discrimination arguments arise.
- Forms of discrimination - sections 13, 15, 19-21 of the Equality Act 2010.
- Key definitions - PCP, disadvantage etc.
- Proportionality.
- Avoiding challenge.
- Remedies and damages



"Parliament has enacted that discriminatory acts proscribed by the [Equality Act 2010] are unlawful. The courts cannot be required to give legal effect to acts proscribed as unlawful"

Lord Bingham of Cornhill - **Lewisham LBC v Malcolm (EHRC intervening)** [2008] AC 1399



Discrimination in Housing

**Part 6
HA 96**

**Part 7
HA 96**

**Possession
claim
defences**

**Injunction
applications
/disrepair
claims**

Policies

**Free-
standing**

Jurisdiction

- Section 113(1) EA 2010 - "proceedings relating to a contravention of this Act must be brought in accordance with this Part"
- Section 113(1) does not prevent "a claim for judicial review" (113(3)(a)) but is otherwise subject to any express provision of 2010 Act conferring jurisdiction (s.113(4))
- Section 114(1): County Court has jurisdiction to deal with contraventions of the Act – e.g. Part 3 services and public functions and Part 4 premises
- Adesotu v Lewisham LBC [2019] EWCA Civ 1405: s.204 appeal **not** "a claim for judicial review" within the meaning of s.113(3)(a) – discrimination claims for separate civil case
- Public Sector Equality Duty **is** a legitimate issue for a s.204 appeal but is **not** actionable in damages: s.156 EA 2010
- Limitation provision: section 118(1)

- “(1) This section applies to any proceedings relating to a contravention of this Act.
- “(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- “(3) But subsection (2) does not apply **if A shows** that A did not contravene the provision.”

Burden of Proof

Section 136, Equality Act 2010



The Equality Act 2010 – Part 2

Section 13

(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.

- *Read whole section for bespoke definitions. E.g.:*

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

Section 15

(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.

- *See section 6 & Schedule 1 for definition of disability*

Equality Act 2010 – Part 2

Section 19

- (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.
- (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.

Section 20

- (3) The first requirement is a 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.
- (4) The second requirement is a requirement, where a **physical feature** 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.
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an **auxiliary aid**, be put 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 provide the auxiliary aid.

See further Schedules 2 and 4 on reasonable adjustments in services, public functions and management of premises

Housing and the key equalities concepts

01

Direct – s.13

LF v United Kingdom
(2022) 75 E.H.R.R. SE5

R (Z and another) v LB Hackney [2020] UKSC 40
[2020] 1 W.L.R. 4327

02

Disability – s.15

Thiam v Richmond Housing Partnership
[2025] EWHC 933 (KB)

Nightingale v Bromford Housing Association
[2024] EWHC 136 (KB)

03

Indirect – s.19

R. (AK) v Westminster City Council [2024] EWHC 769 (Admin)

R (Begum) v Tower Hamlets LBC [2025] EWCA Civ 1049

04

Reasonable Adjustment – s.20

R (Rowley) v Minister for the Cabinet Office [2021] EWHC 2108 (Admin)

TG v SosHD [2025] EWHC 596 (Admin)

Key definitions

Proportionality

Disability

Disadvantage

PCP

Disability

Section 6

(1) A person (P) 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.

Schedule 1

2(1) The effect of an impairment is long-term if—

- (a) it has lasted for at least 12 months,
- (b) it is likely to last for at least 12 months, or
- (c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

- See Equality Act 2010 (Disability) Regulations 2010/2128

Provision, Criterion or Practice

Code of Practice, 5.6 [Under review]

The first stage in establishing indirect discrimination is to identify the relevant provision, criterion or practice. The phrase 'provision, criterion or practice' is not defined by the Act but it should be construed widely so as to include, for example, **any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions**. A provision, criterion or practice may also include decisions to do something in the future such as a policy or criterion that has not yet been applied, **as well as a 'one-off' or discretionary decision**.

Examples

- Tenancy term (a "term of the letting" - see Schedule 4, para. 2(3))
- Policy provision
- Decision to seek possession/other remedy?
- But remember **R (Begum) v Tower Hamlets LBC** [2025] EWCA Civ 1049

Disadvantage

Code of Practice, para. 5.10 [Under review]

'Disadvantage' is not defined by the Act. It could include **denial of an opportunity or choice, deterrence, rejection or exclusion**. The courts have found that 'detriment', a similar concept, is something that a reasonable person would complain about so **an unjustified sense of grievance would not qualify**. A disadvantage does not have to be quantifiable and the service user **does not have to experience actual loss (economic or otherwise)**. It is enough that the person can **reasonably say that they would have preferred to be treated differently**.

Uses

- Indirect discrimination - "2(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..."
- Reasonable adjustments – "(3)The first requirement is a 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."

Proportionality

01

**Hounslow London
Borough Council v
Powell** [2011] 2 AC 186

Lord Hope at para. 41: court can take for granted LL's legitimate aims of (i) vindicating ownership rights of property and (ii) compliance with duties to manage housing stock

02

Akerman-Livingstone

34...If it is a claim of disability discrimination under section 15, then the landlord would have to show that there was **no less drastic means of solving the problem** and that the effect on the occupier was **outweighed** by the advantages.

03

**Paragon Asra Housing
Ltd v Neville** [2018]
EWCA Civ 1712

Sir Colin Rimer at paras. 50-52: proportionality exercise is undertaken at the point of making the possession order and ordinarily need not be repeated at point of executing order

Reading Borough Council v Tina Holland

The Judge had concluded that eviction without alternative accommodation would *"be very bad for the Appellant's mental and physical health and particular vulnerabilities arising from her EUPD particularly"*. This was not of course a conclusion which the Judge reached in the abstract. The Judge had the benefit of all the same evidence which she had considered in the context of the PSED Issue. The Judge also had the benefit of the evidence from Dr Iles. **While I have my doubts, as I have already explained, that this evidence was evidence upon which the Respondent could rely for the purposes of demonstrating compliance with its PSED, it was evidence upon which the Judge could rely for the purposes of her consideration of the Proportionality Issue.** For the purposes of considering the Proportionality Issue, the Judge was not tied to a consideration of what the Respondent should have done, in order to achieve compliance with the PSED Issue, but was entitled to take into account all of the evidence before her.

Mr Justice Edwin Johnson

[2023] EWHC 1902 (Ch)

Avoiding Challenge

**Consider
protected
characteristics
- section 4**

**Keep good
records**

**Limitation
Section 118(1)**

Avoiding challenge - reasonable adjustments

Part 3 – services and public functions

- Schedule 2, paragraph 2
- Para. 2(7): if offering services, nothing in the duty requires A to take a step which would “*fundamentally alter the nature of the service*”
- Para. 2(8): if exercising public functions, nothing in the duty requires A to take a step which A has no power to take
- **NB** Para. 2(2): the duty applies to “*disabled persons generally*” – i.e. RAs do **not** have to be specifically requested – **an anticipatory duty**

Part 4 – premises

- Schedule 4, paragraph 4 – let premises
- No duty to comply with the second requirement – i.e. to adapt “*physical features*” of a premises to avoid placing disabled persons at substantial disadvantage
- See definition of “*physical features*” at para. 2(9)
- **NB** Para. 2(6) – the duty **only** applies “*if A 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 or provide the auxiliary aid*”

Avoiding challenges - justification

- It is for the Defendant to show that the discriminatory PCP is justified as a proportionate means of achieving a legitimate aim [63]
- However, **no evidence was led to demonstrate that the Defendant had specifically considered the effect** of the reduction in banding on women fleeing domestic abuse and had conducted a proportionality exercise. It is not for the court to fill in the gaps. ... But there was **no evidence before the court that the Defendant had addressed whether the effect of [paragraph] 3.3.3(d) [of the Housing Allocation Scheme] on women fleeing domestic abuse from outside the area was proportionate; and if so, why.**

R (TX) v Adur DC

[2022] EWHC 3340 (Admin)

Margaret Obi (Deputy HCJ)

Remedies: s.119

- County Court has power to grant any remedy which could be granted by the High Court (a) in proceedings in tort; or (b) on a claim for judicial review: s.119(2). See e.g. declarations, injunctions, damages.
- Awards of damages may include compensation for injured feelings, whether or not it includes compensation on any other basis: s.119(4)
- Other causes of action: personal injury, harassment, disrepair etc.

Awards for injured feelings

- *Vento v Chief Constable of West Yorkshire Police* [2002] EWCA Civ 1871
- Presidential Guidance of the Employment Tribunal now updated annually
 - **Lower band of £1,100 to £11,200:** typically a one-off/isolated instance of discrimination
 - **Middle band of £11,200 to £33,700:** more serious cases that do not merit an award in the highest band
 - **Upper band of £33,700 to £56,200:** the most serious cases of long-standing discriminatory behaviour, *“such as where there has been a lengthy campaign of discriminatory harassment”*
- *Rosebery Housing Association v Williams* (2021) EW Misc 22 (CC) – award of £27,400

Human Rights and Housing Litigation

The obvious ones are Article 8, 14 and A1 P1 but do check whether other rights are relevant in your case

Article 8 – Right to Respect for Private and Family Life

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Article 14 – Prohibition of Discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol 1, Article 1 – Right to Peaceful Enjoyment of Possessions (including property)

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties

Article 8 is a “qualified right”

Interference may be lawful.

Ask yourself the following questions:

- a. Is the right engaged?
- b. Has the right been interfered with (or will be right be interfered with by the proposal)?
- c. Is the interference in accordance with or prescribed by law?
- d. Is the interference necessary/proportionate?
 - Is the proposal designed to meet one or more of the **specified objectives**?
 - Are there are **lessor restrictive measures** that could achieve the same outcome?
 - Is the objective justifying the interference is **sufficiently important to justify** limiting the right?
 - Does the proposal strike a fair balance between the rights of the individual and the interests of the community?



clerks@cornerstonebarristers.com