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Homelessness and the Public Sector Equality Duty

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What are we going to cover?



1. Introduction to the PSED and how it applies to homelessness decisions – Emma Dring
2. Case law update, including the Court of Appeal in *Watford BC v McMahon* – Catherine Rowlands and Rowan Clapp
3. The PSED in practice: tips for decision makers – Kuljit Bhogal and Tara O’Leary
4. Questions and answers

••• Introduction to the PSED and how it
••• applies to homelessness decisions

Emma Dring

Section 149 Equality Act 2010



- (1) A public authority must, in the exercise of its functions, have **due regard** to the need to
- (a) **eliminate discrimination**, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance **equality of opportunity** between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) **foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.

How does the duty apply to homelessness decision making?



- The legislation exists to assist vulnerable groups. But PSED does add something.
- Vulnerability: how would disabled applicant cope when homeless? *Hotak (SC)*.
- Suitability, inc. reasonableness of refusing offer. *Hackney v Haque, Poshteh (CA)*.
- Intentionality: e.g. whether acts were 'deliberate'. *Pieretti (CA - predecessor legislation)*
- Homelessness: whether reasonable to remain: *Chatokai (CC)*

Key aspects of the duty in the homelessness context



1. Comply with duty before the decision is made, approach it with an open mind.
2. General regard to 'equality issues' is not enough.
3. Substance, not form. No box-ticking.
4. Process, not outcomes. Weight to be given to equality implications vs. other factors is for the decision maker.

••• Case law update – *McMahon and*
••• *Kiefer*
•••

Catherine Rowlands and Rowan Clapp

McMahon and Kiefer: introduction and facts



- Both McMahon and Kiefer applied for housing assistance, which was refused as the applicants were homeless, eligible, but not in priority need (s.189(1) HA 96). Both appealed to the County Court.
- Test from *Hotak* - reviewing officer to focus very sharply on:
 - Whether the applicant is under a disability or has another relevant protected characteristic;
 - The extent of such a disability;
 - The likely effect of the disability (together with other features) on the applicant if made homeless;
 - Whether the applicant is as a result vulnerable.
- Mr Kiefer's medical conditions included a limp, severe wrist pain and diabetes, whilst Mr. McMahon had chronic back pain, and neck shoulder and arm pain.

McMahon and Kiefer: the dispute



- Challenge was to the extent to which decision maker needs to spell out whether A is disabled before applying the PSED
- Take-away points:
 - No need to make express findings
 - Don't confuse the two
 - Be practical. It's about how A lives with the condition – understanding how that affects ability to cope with homelessness
 - PSED does not change the HA96 duty

McMahon: the unresolved dispute



- Issue was whether section 31(2A) of the Senior Courts Act 1981 applies in appeals under section 204 HA96
- These are “akin to judicial review” but does the “highly likely” test carry over into s.204?
- Did not arise in this case as no breach of PSED so we await clarification.

Clarity on some issues



- *Guiste*: there is no added requirement of functionality
- But there must be a causative link
- PSED applies with most force at the investigative and reporting stages of the review
 - Don't wait for A to self-report as disabled
- Different test to *Durdana* – possession proceedings – it's all about the function the local authority is performing



Practical tips and lessons

Kuljit Bhogal and Tara O'Leary

Practical tips and lessons



- Decision makers need to *understand* how the PSED impacts on their decision making – needs to be *embedded* into your decision making.
- Training, and keeping up to date on developments.
- Not a box ticking exercise but a pro-forma or template can be helpful to remind officers of the issues they should be considering.
- BUT don't simply repeat a mantra, helpful for letters to demonstrate officer's understanding.
- If the s.184 DL or minded-to letter includes a cursory look at the PSED, and you receive reps on PSED, make sure you cover the PSED in greater detail, document the enquiries, aim to be able to show the Judge your thought process through your document trail.

Practical tips and lessons



Don't forget the other protected characteristics:

- Age [NB s.189(1)(c) – older *and* younger people]
- Sex
- Sexual orientation
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief

Practical tips and lessons



- *SS v LB Waltham Forest*, Central London CC, Sept 16
- Remember: same PSED principles apply
- Focus very sharply on: (1) whether there is a PC, (2) the extent of the PC, (3) the likely effect of PC on applicant if and when homeless, taken together with all other circumstances; (4) whether applicant is vulnerable as a result.
- *Hotak* [79], *McMahon* [50]: a conscientious review will “*very often*” comply with the duty even if RO was unaware PSED was engaged

Homelessness & domestic violence



- [MHCLG announcement](#) Saturday 2 May 2020:
 - £76 package of support for “vulnerable” persons during the pandemic
 - *“A change to the rules will also mean that those fleeing domestic abuse and facing homelessness as a result will be automatically considered as priority by their council for housing...”*
- Note Reg. 6 of the Priority Need Order 2002:
 - *“A person who is vulnerable as a result of ceasing to occupy accommodation by reason of violence from another person or threats of violence from another person which are likely to be carried out.”*



Questions and Answers



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