

# General Form of Judgment or Order

|                                |             |
|--------------------------------|-------------|
| In the County Court at<br>York |             |
| Claim Number                   | F00YO154    |
| Date                           | 2 July 2020 |



|            |   |
|------------|---|
| [REDACTED] | <b>1<sup>st</sup> Claimant</b><br>Ref ROSE ARNALL |
| [REDACTED] | <b>1<sup>st</sup> Defendant</b><br>Ref            |

Before District Judge Mark sitting at the County Court at York, Piccadilly House, 55 Piccadilly, York, YO1 9WL.

UPON hearing Counsel for the Claimant (Ms Buchanan) and Counsel for the Defendant (Mr Stanger)

UPON considering the Particulars of Claim, Defence, Reply, and attached Statement of Reasons

AND UPON the parties agreeing to the terms below

IT IS DECLARED THAT:

1) The Defendant's former policy of rejecting tenancy applications because the applicant is in receipt of Housing Benefit was unlawfully indirectly discriminatory on the grounds of sex and disability contrary to sections 19 and 29 of the Equality Act 2010.

## **BY CONSENT IT IS ORDERED THAT**

2) The Defendant is to pay the Claimant the sum of £3,500 in respect of her claim for damages, inclusive of interest. 37. The Court is therefore requested to use its power under s119(2) EA 2010 to make a declaration, as agreed by the parties, in final resolution of this matter.

Dated 1st July 2020

3) The Defendant is to pay the Claimant's costs, to be assessed if not agreed.

## **STATEMENT OF REASONS**

### Introduction

1. This case concerns a challenge by the Claimant to the legality of a policy operated by the Defendant whereby it did not accept tenancy applications from applicants who were in receipt of Housing Benefit. Such policies are often referred to as, or indicated by the shorthand, "No DSS", which is a reference to the now-abolished Department of Social Security. The Defendant ceased operating this policy on June 2019.

### Summary of facts

2. The Claimant is a 44-year-old woman (date of birth 5 June 1976). She is the single mother of two children aged 21 and 16. She is disabled, as defined by s6 of the Equality Act 2010 ("EA 2010") by reason of her Attention Deficit Hyperactivity Disorder, anxiety, and depression.

---

The court office at the County Court at York, Piccadilly House, 55 Piccadilly, York, YO1 9WL. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 01904 688550 Fax: 01264 347919. Check if you can issue your claim online. It will save you time and money. Go to [www.moneyclaim.gov.uk](http://www.moneyclaim.gov.uk) to find out more.

3. The Defendant is an estate and lettings agent.

4. In October 2018, the Claimant, who was living in a privately-rented property at the time, was told that her landlord wanted the property back for a family member to live in. She began to look for somewhere else to live.

5. On 26 November 2018, she saw an advert for a two-bedroom property, 17 Marquis Court, York, YO26 5TE, which the Defendant was advertising as being to let for £795 per month. The Claimant contacted the Defendant stating:

*I am interested in the property you have for rent on Marquis Court, Sovereign Park. I have excellent references, payment history, I work part time and receive some Housing Benefit. Please could we arrange a viewing?*

6. The Defendant responded as follows:

*Many thanks for your enquiry regarding the above property for let. Unfortunately we do not accept housing benefit so could not proceed with a let on this basis.*

7. The Claimant replied querying why the Defendant did not accept people on Housing Benefit. The Defendant responded stating that “*Rather than it being on an ad hoc basis we have had a policy for many years not to accept housing benefit tenants*”.

8. On 20 May 2019, after the exchange of pre-action correspondence, the Claimant lodged a claim at the County Court seeking a declaration, damages, interest, and costs.

### Legal framework

9. The EA 2010 applies to the protected characteristics which are set out at s4 EA 2010. One of these protected characteristics is disability, defined at s6 EA 2010 as a “*physical or mental impairment*” which has a “*substantial and long-term adverse effect*” on the person’s “*ability to carry out normal day-to-day activities*”. Another protected characteristic is sex, defined at s11 EA 2010 as being a man or a woman.

10. The EA 2010 prohibits discrimination on the basis of these protected characteristics in certain situations. Discrimination may be direct or indirect. This case concerns indirect discrimination, which is defined at s19 EA 2010:

*(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.*

11. Part 3 of the EA 2010 is concerned with prohibited conduct in respect of, inter alia, the provision of services. S29(1) EA 2010 states that:

*(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.*

### Reasons for this Order

12. The parties agree that the criteria under s19 EA 2010 were met, and the policy was unlawfully indirectly discriminatory, as follows.

#### ***Provision, criterion or practice***

13. The Defendant had a policy (now abandoned) of not accepting applications from applicants who were in receipt of Housing Benefit (a “No DSS policy”). This constitutes a provision, criterion, or practice for the purposes of s19 EA 2010.

#### ***Protected characteristic(s)***

14. The Claimant has the protected characteristic of sex: she is a woman.

15. She also has the protected characteristic of disability. She has suffered from anxiety and depression since her late teenage years. She was also diagnosed with Attention Deficit Hyperactivity Disorder in 2015. Because of her disabilities, she is only able to work part-time.

### ***Policy of neutral application***

16. The policy applied to persons with whom the Claimant does not share the protected characteristics, namely men and non-disabled people, as well as women and disabled people.

Particular disadvantage

17. The policy put persons with whom the Claimant shares the protected characteristics of sex and disability (namely women and disabled people) at a particular disadvantage when compared with persons with whom the Claimant does not share the characteristics (namely men and non-disabled people).

18. Shelter has analysed statistics relating to two pools within which to compare men and women, and disabled people and non-disabled people, respectively. The first pool consists of private rented sector tenants. The second pool consists of occupiers of housing more generally. These pools provide a sound base for determining the discriminatory impact of the No DSS policy.

### **Sex**

19. In respect of the protected characteristic of sex, Shelter looked at the number of Housing Benefit claims by gender, household type, and housing type from the Department for Work and Pension's Stat-Xplore analysis tool for March 2018. These figures come directly from the Department for Work and Pension's administrative database and are therefore an exact count of the numbers of claims administered. These figures were then examined in conjunction with other official data on the size and make-up of the population taken from the English Housing Survey, the 2011 Census, and the Office for National Statistics.

20. In respect of private tenants:

- a. The total number of women renting privately is 4,377,051. Of these:
  - i. 3,554,470 (81.2%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and
  - ii. 822,581 (18.8%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.
- b. The total number of men renting privately is 4,538,305. Of these:
  - i. 3,974,199 (87.6%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and
  - ii. 564,106 (12.4%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.

21. It is also helpful to consider the figures when couples (and other multi-adult households) are excluded. When this is done, the difference is even more stark. Again in respect of private tenants:

- a. The total number of women renting privately in single-adult (including single-parent) households is 1,025,081. Of these:
  - i. 480,350 (46.9%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and
  - ii. 544,731 (53.1%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.
- b. The total number of men renting privately in single-adult (including single-parent) households is 842,435. Of these:
  - i. 556,179 (66.0%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and
  - ii. 286,256 (34.0%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.

22. It is clear from this that a No DSS policy puts or would put women at a particular disadvantage. 53.1% of female single-adult households renting privately claim Housing Benefit compared to 34% of male single-adult households. When households with couples are included, 18.8% of women renting privately claim Housing Benefit compared to 12.4% of men. This means that, in the private rented sector, using whichever of the two analyses set out above, women are more than 1.5 times as likely to rely on Housing Benefit, and thus be excluded by a No DSS policy, than men.

23. In respect of occupiers of housing generally:

- a. The total number of female housing occupiers is 23,068,681. Of these:
  - i. 20,426,727 (88.5%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and
  - ii. 2,641,954 (11.5%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.
- b. The total number of male housing occupiers is 22,160,039. Of these:
  - i. 20,443,538 (92.3%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and

ii. 1,716,501 (7.7%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.

24. When couples (and other multi-adult households) are excluded from this analysis, the figures are as follows, again in respect of occupiers of housing generally:

a. The total number of female housing occupiers in single-adult (including single-parent) households is 5,618,105. Of these:

i. 3,748,143 (66.7%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and

ii. 1,869,962 (33.3%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.

b. The total number of male housing occupiers in single-adult (including single-parent) households is 3,290,607. Of these:

i. 2,346,098 (71.3%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and

ii. 944,509 (28.7%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.

25. It is again clear from this that a No DSS policy puts or would put women at a particular disadvantage. 11.5% of female housing occupiers claim Housing Benefit compared to 7.7% of male occupiers, meaning that such women are nearly 1.5 times as likely to be excluded by a No DSS policy. When couples are excluded, the disparity is somewhat reduced (33.3% of female single-adult households claim Housing Benefit compared to 28.7% of male), but women are still more likely (some 1.16 times as likely) to be affected.

26. This overall picture is also borne out by the simple calculation which shows that, whilst women make up 50.6% of the population, they constitute 61% of Housing Benefit claimants.

27. It is therefore evident that women are substantially more likely than men to claim Housing Benefit and thus more likely to be adversely affected by a No DSS policy.

#### Disability

28. In respect of the protected characteristic of disability, Shelter looked at data taken from the Understanding Society survey. This is a UK Household Longitudinal Study based at the Institute for Social and Economic Research at the University of Essex. It was chosen because it is the largest available official survey which collects detailed information relating to the claiming of benefits. Although statistics relating to disability and Housing Benefit are available from the Department for Work and Pensions, unlike with gender they cannot be cross-referenced, and therefore do not provide a useful framework for analysis in respect of disability.

29. The Understanding Society survey is released in waves. Shelter looked at data taken from wave 9. The data collection for this wave took place between January 2017 and January 2019. The total sample size was 29,750. Shelter then identified the relevant variables, namely housing tenure, receipt of Disability Living Allowance (“DLA”) or Severe Disablement Allowance (“SDA”) (the chosen proxy for disability), and receipt of Housing Benefit. Shelter then extracted the figures relating to these variables and applied the appropriate weighting scheme to the data. From this process, the below figures were identified.

30. In respect of private tenants:

a. Of the 29,750 households surveyed in the Understanding Society survey, 3,592 (12%) rent in the private rented sector.

b. Of these 3,592 households, 168 (4.7%) claim DLA or SDA. Of these 168 households:

i. 93 (55.4%) do not claim Housing Benefit, and therefore would not be excluded by a No DSS policy; and

ii. 75 (44.6%) do claim Housing Benefit, and therefore would be excluded by a No DSS policy.

c. Of the 3,592 households renting privately, 3,424 (95.3%) do not claim DLA or SDA. Of these 3,424 households:

i. 2,906 (84.9%) do not claim Housing Benefit, and therefore would not be excluded by a No DSS policy; and

ii. 518 (15.1%) do claim Housing Benefit, and therefore would be excluded by a No DSS policy.

31. It is clear from this that a No DSS policy puts or would put persons who are disabled at a particular disadvantage. 44.6% of households who claim DLA or SDA claim Housing Benefit compared to 15.1% of households who do not claim DLA or SDA. This means that, in the private rented sector, disabled households are almost three times as likely to rely on Housing Benefit, and thus be excluded by a No DSS policy, than non-disabled households.

32. In respect of all occupiers of housing:

- a. Of the 29,750 households surveyed, 1,551 (5.2%) claim DLA or SDA. Of these 1,551 households:
  - i. 1,034 (66.7%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and
  - ii. 517 (33.3%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.
- b. Of the 29,750 households surveyed, 28,199 (94.8%) do not claim DLA or SDA. Of these 28,199 households:
  - i. 26,308 (93.3%) do not claim Housing Benefit and therefore would not be excluded by a No DSS policy; and
  - ii. 1,891 (6.7%) do claim Housing Benefit and therefore would be excluded by a No DSS policy.

33. Again, it is clear that a No DSS policy puts or would put persons who are disabled at a particular disadvantage. 33.3% of households who claim DLA or SDA claim Housing Benefit compared to 6.7% of households who do not claim DLA or SDA. This means that, in terms of housing occupiers generally, disabled households are almost five times as likely to rely on Housing Benefit, and thus be excluded by a No DSS policy, than non-disabled households.

***Claimant was put at that disadvantage***

34. The policy was applied to the Claimant. She was not allowed to view the property at 17 Marquis Court because she was in receipt of Housing Benefit.

***Justification***

35. The burden is (or would be) on the Respondent to prove that the policy was a proportionate means of achieving a legitimate aim.

36. The parties are agreed that the policy was not justified.

***Conclusion***