

B E T W E E N:

THE CO-OPERATIVE DEVELOPMENT SOCIETY LIMITED

Claimant

and



(By her Litigation Friend, the Official Solicitor)

Defendant

JUDGMENT

Introduction

1. These are possession proceedings under s.7 of the Housing Act 1988 (“HA 1988”). I heard the trial on 11 and 12 March 2025.
2. As the Defendant alleges disability discrimination, I sat with an Assessor, Mrs Ade Aleyae, an experienced Tribunal member with expertise in disabilities. Ms Aleyae did not give expert evidence as such but provided me with valuable assistance in evaluating the evidence about Defendant’s disabilities and the proportionality assessment¹. I am very grateful to her for that assistance and the insight she was able to provide in this case.
3. Mr Strelitz of Counsel represented the Claimant. Mr Nicol of Counsel represented the Defendant. I am grateful to them, and those who instruct them, for their assistance in this case.

The Proceedings

4. On 28 October 2020 the Claimant let a property (“the Property”)², to the Defendant under an assured tenancy.

¹ See Laidley v Metropolitan Housing [2025] EWCA Civ 448.

² For reasons given in an ex tempore judgment on 20 May 2025 I agreed that the address should be redacted from this judgment.

5. The terms of the tenancy include obligations by the Defendant not to commit anti-social behaviour and to take all reasonable steps to ensure that other occupiers and visitors to the Property do not do so (clause 3.12, which includes a non-exhaustive list of examples of such behaviour), and not to permit any source of noise to be played or create noise that causes a nuisance or annoyance to neighbours (clause 3.15). The terms also include the repairing and other obligations described in the section of this judgment dealing with disrepair.
6. On 1 March 2023, Colchester City Council served an abatement notice on the Defendant under the Environmental Protection Act 1990 (“the EPA”), by which the Defendant was required to abate nuisance caused by shouting and amplified sound and was prohibited from causing, permitting or otherwise allowing any recurrence of the nuisance.
7. On 14 June 2023, the Defendant was convicted, in her absence, by the Colchester Magistrate’s Court of seven breaches of the noise abatement notice.
8. On 19 July 2023, the Claimant served on the Defendant a Notice Seeking Possession (“the s.8 Notice”) in accordance with s.8 of the HA 1988, and the pre-action letter required by the Pre-action Protocol for possession claims brought by social landlords.
9. On 11 September 2023, the Claimant issued these proceedings claiming possession of the Property. The Claimant relies on the following grounds under Schedule 2 to the HA 1988:
 - a. Ground 7A, Condition 5 which, so far as relevant, is that the Defendant has been convicted of an offence under s.80(4) of the EPA (breach of abatement notice in relation to statutory nuisance) and that the nuisance concerned was noise emitted from the dwelling-house which was a statutory nuisance by virtue of s.79(1)(g) of the EPA (noise emitted from the premises so as to be prejudicial to health or a nuisance).
 - b. Ground 12, an obligation of the tenancy (other than one related to the payment of rent) has not been performed.
 - c. Ground 14 which, so far as relevant, is that the tenant or a person residing in or visiting the dwelling-house has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting, or otherwise engaging in a lawful activity in the locality.

10. The particulars of these grounds are set out in an Annex to the Particulars of Claim (“the Annex”). The particulars of Ground 7A allege fourteen breaches of the abatement notice between 2 March 2023 and 14 June 2023, including a number of allegations of making threats to and intimidating neighbours as well as of excessive noise. The Claimant relies on the same allegations under Ground 12, and a further fourteen allegations dating between 20 January 2022 and 1 March 2023, albeit two of those allegations (paragraphs l. and o.) are not of conduct by the Defendant. The particulars under Ground 14 rely on the allegations made under Grounds 7A and 12. Although the Annex is dated 2 September 2023, and refers to “[t]he continued anti-social behaviour taking place at the Property” to support the Claimant’s assertion that it is reasonable to order possession, the Annex does not give particulars of any such behaviour after the Claimant’s conviction on 14 June 2023.
11. As set out further below, the Defendant has a long history of extreme personal trauma and domestic violence, giving rise to mental health difficulties. She lacks capacity to conduct litigation and the Official Solicitor acts as her litigation friend. Her Defence sets out only a limited response to the Annex, the substance of which may be summarised as follows:
- a. In respect of Ground 7A, she does not admit the service of an abatement notice on her. She denies the allegation of breach. She does not admit the proceedings in the Colchester Magistrates Court or their outcome and asserts that she has no personal knowledge of them. She avers that she was subjected to domestic violence until her partner left in 2022 and, if the Claimant relied on any incidents arising before that date in obtaining an order from the Magistrates Court, it discriminated against the Defendant by reason of her sex, either directly or indirectly, contrary to the Equality Act 2010 (“the EA 2010”). I note that, as set out above, it was Colchester City Council, not the Claimant, that brought the proceedings in the Magistrates Court.
 - b. In response to the Claimant’s specific allegations of breach of the abatement notice, the Defendant states that, due to her mental health difficulties, she finds it very difficult to recollect what happened on any particular date. She refers to one occasion when she spoke to a neighbour following a letter she had received saying she was noisy, and says that she had no intention to intimidate the neighbour on that occasion. Following this, a number of men came to her door and told her to keep quiet and she left the Property because she was scared and has only recently returned. Sound insulation between her flat and the neighbouring flats is poor and she can hear minor

sounds from the flat above hers, such as the microwave door shutting, the toilet flushing and her neighbour talking on the phone. She was not aware that her television had been loud enough to cause a nuisance and, if the neighbours had alerted her at the time, she could have adjusted accordingly. In any event, she had no television between January 2022 and January 2024.

c. In response to the Claimant's further allegations under Ground 12, the Defendant pleads that a number of the allegations, which are identified in the defence, "would appear to arise from incidents in which the Defendant was the victim of domestic violence" and pleads that it is unreasonable as well as discriminatory on the grounds of sex to rely on such matters to seek possession. She denies having made racist comments.

12. The Defendant denies that it would be reasonable to order possession, setting out amongst other things her history of personal trauma and mental health problems. She also avers that she is disabled as a result of her history of trauma, her mental ill-health and her physical condition and the Claimant has unlawfully discriminated against her contrary to sections 15, 20 and 35 of the EA 2010.

13. The Defendant also brings a counterclaim for damages for breaches of the Claimant's repairing covenants, listing a number of items of disrepair which she claims the Claimant has not rectified despite her complaints. She also claims damages for injury to her feelings arising from the Claimant's breaches of the EA 2010.

14. The Claimant has served a Reply and Defence to Counterclaim traversing the contents of the Defendant's Defence and Counterclaim but it is not necessary for me to say more about that statement of case in this part of my Judgment.

Outline of the Possession Claim

15. The claim for possession is the most significant of the above issues for the parties and occupied most of the time at trial.

16. The Claimant relies on a letter from Colchester City Council dated 21 June 2023 as evidence of the Defendant's conviction for breach of the noise abatement notice. That letter states that the summons is attached and that the breaches included loud music, shouting, arguing and

banging in the evening and early hours of the morning. Although the letter refers to seven offences and the fines imposed for each, it does not give any details of the factual basis for those convictions. However, the trial bundle includes copies of the summons, and the witness statements of Samantha Riley dated 17 May 2023 and 6 June 2023, which provided the evidence to support the convictions. Those documents show that the summons was based on evidence, including Noise App recordings, of shouting, arguments and amplified noise emanating from the Defendant's property which ranged from intrusive to highly intrusive. Ms Riley's statements included some evidence from an unidentified resident about the impact of the noise on them, in particular disturbing their sleep. Although the Annex suggests that the breaches of the abatement notice included threats and intimidation, Ms Riley's statements did not include any evidence of such behaviour by the Defendant and it appears that there was no such evidence before the magistrates. Therefore, none of the offences for which she was convicted was based on such behaviour.

17. Mr Strelitz accepted that, for the purposes of Ground 7A, the Claimant could only rely on the fact that the Defendant had been convicted of seven offences, not the fourteen allegations set out in the Annex. It follows from what I have set out above that the convictions cannot be relied on as evidence of threats or intimidation. The Claimant continued to rely on the other allegations for the purposes of Grounds 12 and 14 as well as in support of the Claimant's response to the defence under the EA 2010 and its case as to the reasonableness of ordering possession on Grounds 12 and 14. As I shall set out below, the Claimant called no direct evidence to support any of those further allegations but relied entirely on hearsay evidence.
18. Mr Nicol, who appeared for the Defendant, accepted that he could not dispute that the Defendant had been convicted of seven offences of breach of the abatement notice but, as set out below, relied on the absence of evidence of the factual basis of those offences in his submissions directed to the defence under the EA 2010. However, as I have set out above, Ms Riley's statements show that the factual basis for the convictions was the loud noise described in those statements and recorded through the Noise App.
19. Therefore, Ground 7A is made out on the facts and, as it is a mandatory ground, the Claimant is entitled to an outright order for possession unless the defence under the EA 2010 is successful. Furthermore, if possession is ordered on a mandatory ground, the Court's power to postpone the date for possession is limited by s.89 of the Housing Act 1980 to fourteen days

unless satisfied that the Defendant would suffer exceptional hardship, when the date may be postponed by up to a maximum of six weeks.

20. The offences found by the Magistrates also amounted to breaches of the Defendant's obligations under her tenancy agreement referred to above for the purposes of Ground 12, and to conduct causing or amounting to a nuisance or annoyance, or likely to do so, for the purposes of Ground 14. Therefore, facts supporting those grounds are also made out. However, as they are discretionary grounds, the Court may only make a possession order on those grounds if satisfied that it is reasonable to do so and, when making such a possession order, has the extended discretion given by s.9 of the HA 1988 to adjourn the proceedings or to stay or suspend the possession order or postpone the date of possession on such conditions as it thinks fit.
21. Of course, the reasonableness of making an order and the extended discretion do not arise if the mandatory ground is satisfied. However, the defence based on the EA 2010 is capable of being a defence to a claim for possession based on mandatory (as well as discretionary) grounds even if the factual basis for those grounds is made out.
22. For those reasons, the defence based on the EA 2010 is necessarily the main issue on which the claim for possession turns. However, as I canvassed with Counsel during submissions, the focus on proportionality which is central to the analysis under the EA 2010, and includes consideration of whether less drastic steps are available, makes it possible that it would be discriminatory for the Claimant to rely on mandatory grounds but not discriminatory to rely on discretionary grounds. I address this in more detail below.

The EA 2010

23. I deal with the expert evidence about the Defendant's disabilities later in this judgment, but it is not disputed that she meets the description in s.6 (1) of the EA 2010, which is as follows:

“(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.”

24. The Defendant therefore has the protected characteristic of disability. She also has the protected characteristic of sex, in accordance with s.11 of EA 2010.

25. S.15 of EA 2010 provides:

“(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.”

26. The evidence I refer to below shows that the Claimant knew about the Defendant’s mental illness by January 2023, and therefore that she might be disabled, although it may not have known the full extent of her resulting disability until the Defence and/ or the expert evidence were served in January 2024 and June 2024 respectively.

27. S.19 of the EA 2010 provides:

“(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.”

The relevant protected characteristics listed in sub-section (3) include sex.

28. S.20 of the EA 2010 requires the Claimant to make reasonable adjustments in respect of the Defendant’s disabilities, but did not feature in the arguments Mr Nicol pursued at the trial.

29. S.35(1) of the EA 2010, so far as it is relevant, provides as follows:

“(1) A person (A) who manages premises must not discriminate against a person (B) who occupies the premises –

- (a)
- (b) by evicting B (or taking steps for the purpose of securing B’s eviction);
- (c) by subjecting B to any other detriment.”

30. S.136 (1), (2) and (3) of the EA 2010 provide:

“(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.”

31. In his submissions, also Mr Nicol relied on the public sector equality duty (“PSED”) set out in s.149 of the EA 2010, albeit that duty is not pleaded in the Defence and Counterclaim. S.149 is as follows:

“(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.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having regards, in particular, to the need to –

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation of such persons is disproportionately low.

(4) The step involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to-

(a) tackle prejudice, and

(b) promote understanding

(6) Compliance with the duties in this section may involve treating some persons more favourably than others, but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act."

The relevant protected characteristics listed in sub-section (7) include disability.

32. I can address the indirect sex discrimination defence under s.19 of the EA 2010 relatively shortly. Mr Nicol submitted in his skeleton argument that I could take judicial notice of the fact that women are significantly more likely than men to be the victims of domestic violence. Therefore, if the Claimant sought to apply to her their provisions on anti-social behaviour despite the fact that the alleged noise nuisance arose from her being a victim of domestic violence, that would amount to indirect discrimination in relation to her sex, in contravention of s.19. For the purposes of this judgment, I assume that such a defence might succeed in an appropriate case where the necessary facts are established. However, Mr Nicol accepted in closing submissions that he could not show that the offences for which the Defendant was convicted were all the consequence of domestic violence perpetrated on her. In fact, it appears from her own pleadings that none of them were connected with domestic violence, given that the offences occurred in 2023 and her pleaded case is that her abusive partner left in 2022. In those circumstances, it is not necessary for me to consider this aspect of the Defendant's case further.

33. The combined effect of s.15 and s.35 of the EA 2010 is that a landlord must not discriminate against a disabled tenant by evicting him or by taking steps for the purpose of securing his eviction, which will include bringing possession proceedings. A landlord will breach that

provision if the possession proceedings, or the enforcement of a possession order, amount to unfavourable treatment which arises in consequence of the tenant's disability and the landlord cannot show that they are a proportionate means of achieving a legitimate aim.

34. In Aster Communities Ltd v Akerman-Livingstone [2015] AC 1399, the Supreme Court recognised the principle, derived from Lewisham LBC v Malcolm (Equality and Human Rights Commission intervening) [2008] AC 1399, that unlawful discrimination can give rise to a defence to possession proceedings to which there could be no other defence. Thus, if the tenant established that the landlord had brought the proceedings in breach of s.15 and s.35 of the EA 2010, the court could not make a possession order. In Aster Communities, the tenancy had been granted by the landlord pursuant to arrangements with a local housing authority ("LHA") in furtherance of the LHA's duties under Part VII of the Housing Act 1996. After the LHA brought its duties to an end, the landlord was entitled to serve a notice to quit and then to recover possession on expiry of that notice. In the possession proceedings that followed, the tenant raised defences under both Article 8 of the ECHR and s.15 and s.35 of the EA 2010. The judge decided that the court's approach to the assessment of proportionality inherent in both of those defences was the same, and that neither gave rise to an arguable defence.

35. The Supreme Court disagreed, holding that the substantive right to equal treatment protected by s.35(1)(b) of the EA 2010 was different from, and stronger than, the substantive right which was protected by Article 8. The effect of s.136 of the EA 2010 was that, once the possibility of disability discrimination was made out, the burden was on the landlord to show that there was no unfavourable treatment because of something arising in consequence of the tenant's disability contrary to s.15(1)(a), or that an order for possession was a proportionate means of achieving a legitimate aim under s.15(1)(b). It could not be taken for granted that the aim of vindicating the landlord's property rights would almost invariably prevail over a tenant's right to have due allowances made for the consequences of his disability. Where social housing was involved, the aim of enabling an LHA to comply with its statutory housing duties might have to give way to the equality rights of a particular disabled person. Therefore (unlike the approach to Article 8 defences) it would not normally be appropriate to dispose of a disability discrimination defence summarily if the claim was genuinely disputed on substantial grounds and disclosure or expert evidence might be required. However, the appeal was dismissed because the Supreme Court held that in all the circumstances, including developments since

the judge's decision, a trial judge would be bound to conclude that the eviction would be a proportionate means of achieving a legitimate aim.

36. Although the circumstances of this case are very different, and the aims of the Claimant are different from the aims of the LHA that were in play in Aster Communities, it is common ground that the same principles apply. There was some narrowing of the issues arising under s.15 and s.35 in that Mr Nicol accepted that these proceedings are in pursuit of a legitimate aim and Mr Strelitz accepted that they amount to unfavourable treatment which the Claimant is required to justify in accordance with s.15(1)(b). The crux of the defence under these sections is therefore whether a possession order and/ or eviction are a proportionate means of achieving that legitimate aim.

37. Baroness Hale of Richmond, JSC pointed out in her judgment in Aster Communities that, unlike other protected characteristics such as race or sex, there is no comparator for disability discrimination under s.15. If the unfavourable treatment is because of something arising in consequence of a disability, then the landlord is required to justify it and there is no need for a comparison with how it would treat a non-disabled person in the same circumstances. A landlord may have to treat a disabled person differently than it would a non-disabled person in similar circumstances. Landlords may be required to accommodate, or continue to accommodate, a disabled person when they would not be required to accommodate, or continue to accommodate, a non-disabled person. At paragraph 31, she said:

“No landlord is allowed to evict a disabled tenant because of something arising in consequence of the disability, unless he can show eviction to be a proportionate means of achieving a legitimate aim. He is thus obliged to be more considerate towards a disabled tenant than he is towards a non-disabled one. The structured approach to proportionality asks whether there is any lesser measure which might achieve the landlord's aims. It also requires a balance to be struck between the seriousness of the impact on the tenant and the importance of the landlord's aims. People with disabilities are “entitled to have due allowance made for the consequences of their disabilities””.

And, at paragraph 38, she said of the assessment of proportionality:

“It is, however, clear that in possession actions generally, and in discrimination cases in particular, the role of the court is not akin to judicial review. It has to undertake the proportionality exercise itself.”

38. Therefore, the court’s function when considering disability discrimination in the context of possession proceedings is not limited to a review of whether the landlord’s proportionality assessment was lawful and rational; the court is required to undertake its own assessment itself based on the evidence before it. That assessment involves “structured” consideration of the two factors identified by Baroness Hale: first, whether there is any less drastic measure that might achieve the landlord’s aims, which requires an evaluation of the other options available to the landlord and whether the landlord has done *“all that could reasonably be expected of it to accommodate the consequences of the disabled person’s disability”* (see para 32 of Baroness Hale’s judgment); second, the balance between the seriousness of the impact on the disabled person of eviction and the legitimate aims the landlord is seeking to pursue, which requires an assessment of the likely effects of the eviction on the disabled person as compared with the importance of the landlord’s aims in seeking possession. As both factors are in play in the assessment of proportionality, it is not sufficient for a particular landlord to show that there is nothing further they could have done to support the disabled person if the impact of eviction would be disproportionate to the landlord’s legitimate aims. It is inherent in a balancing exercise of this kind that the greater the detriment to the disabled person, the more significant or serious the landlord’s interests need to be for the possession proceedings to be proportionate to that detriment; and, conversely, the more important the interests of the landlord, the greater the gravity of the detriment to the disabled person needs to be to amount to a defence.

39. As noted above, the Defence and Counterclaim did not refer to the PSED but Mr Nicol relied on it in his submissions. Mr Strelitz did not suggest that the Claimant is not a public body subject to the PSED. Mr Nicol referred me to the decision of Turner J. in London and Quadrant Housing Trust v Patrick [2019] EWHC 1263 (QB) (on appeal from a decision of the county court in possession proceedings). At paragraph 42, Turner J. set out the following list of factors which he said were likely, at least in many instances, to be the most relevant in the context of possession proceedings (I have omitted the footnotes that appear in the judgment):

“Application of the PSED

(i) When a public sector landlord is contemplating taking or enforcing possession proceedings in circumstances in which a disabled person is liable to be affected by such decision, it is subject to the PSED.

Nature and scope of the PSED

(ii) The PSED is not a duty to achieve a result but a duty to have due regard to the need to achieve the results identified in section 149. Thus when considering what is *due* regard, the public sector landlord must weigh the factors relevant to promoting the objects of the section against any material countervailing factors. In housing cases, such countervailing factors may include, for example, the impact which the disabled person's behaviour, in so far as is material to the decision in question, is having upon others (e.g. through drug dealing or other anti-social behaviour). The PSED is "designed to secure the brighter illumination of a person's disability so that, to the extent that it bears upon his rights under other laws it attracts a full appraisal".

Making inquiries (*sic in Law Report*)

(iii) The public sector landlord is not required in every case to take active steps to inquire into whether the person subject to its decision is disabled and, if so, is disabled in a way relevant to the decision. Where, however, some feature or features of the information available to the decision maker raises a real possibility that this might be the case then a duty to make further enquiry arises.

The importance of substance over form

(iv) The PSED must be exercised in substance, with rigour and with an open mind and should not be reduced to no more than a "tick-box" exercise.

Continuing nature of the duty

(v) The PSED is a continuing one and is thus not discharged once and for all at any particular stage of the decision making process. Thus the requirement to fulfil the PSED does not elapse even after a possession order (whether on mandatory or discretionary grounds) is granted and before it has been enforced. However, the PSED consequences of enforcing an order ought already to have been adequately considered by the decision maker before the order is sought and, in most cases, in the absence of any material change in circumstances (which circumstances may include the decision maker's state of knowledge of the disability), the continuing nature of the duty will not mandate further explicit reconsideration.

The timing of formal consideration of the PSED

(vi) Generally, the public sector landlord must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before seeking and enforcing possession and not merely as a "rear-guard action" following a concluded decision. However, cases will arise in which the landlord initially neither knew nor ought reasonably to have known of any relevant disability. The duty to "have due regard" will then only take on any substance when the disability becomes or ought to have become apparent. In such cases, the lateness of the knowledge may impact on the discharge of the PSED. For example, cases may arise in which countervailing interests justify a less formal PSED assessment than would otherwise have been appropriate. Thus a tenant whose anti-social conduct has already been adversely

affecting his neighbours for a considerable time but whose disability is raised at the eleventh hour may well find that the discharge of the PSED does not necessarily mandate a postponement of the date or enforcement of a possession order. Of course, the obligation to have "due regard" still arises but the result of the discharge of that obligation may well be less favourable to the person affected where, through delay, the landlord's options have been limited and the rights and reasonable expectations of others have assumed a more pressing character. Each case will, of course, depend on its own facts.

Recording the discharge of the duty

(vii) An important evidential element in the demonstration of the discharge of the PSED is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements. Although there is no duty to make express written reference to the regard paid to the relevant duty, recording the existence of the duty and the considerations taken into account in discharging it serves to reduce the scope for later argument. Nevertheless, cases may arise in which a conscientious decision maker focussing on the impact of disability may comply with the PSED even where he is unaware of its existence as a separate duty or of the terms of section 149.

The court must not simply substitute its own views for that of the landlord

(viii) The court must be satisfied that the public sector landlord has carried out a sufficiently rigorous consideration of the PSED but, once thus satisfied, is not entitled to substitute its own views of the relative weight to be afforded to the various competing factors informing its decision. It is not the court's function to review the substantive merits of the result of the relevant balancing act. The concept of 'due regard' requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. In short, the decision maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognise the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors."

40. It is not necessary for me to further summarise that clear explanation of the main considerations which arise when applying the PSED in this context but I note that, unlike the proportionality assessment, the court's function is similar to a judicial review in that, if it is satisfied that the landlord has carried out a sufficiently rigorous consideration of the PSED, it should not substitute its own assessment for that of the landlord. I note also that the question is one of substance, rather than form.

41. Mr Strelitz referred me to Aldwyck Housing Group Ltd v Forward [2020] 1 WLR 584, which was decided by the Court of Appeal after Patrick, although Turner J. referred to the first-

instance decision of the Cheema-Grubb J. which was the subject of that appeal. The effect of Forward is that, even if the court finds that there has been a breach of the PSED, it may still make a possession order if it is satisfied that the decision would not have been substantially different if the breach of duty had not occurred. Therefore, a breach of the PSED will only be a defence to the possession proceedings if the decision to bring possession proceedings would have been substantially different but for that breach.

42. Mr Strelitz also provided me with a copy of Metropolitan Housing Trust Ltd v TM (A Protected Party) [2021] EWCA Civ 1890, which Mr Nicol mentioned during the oral evidence in support of an objection he made that a proportionality assessment should not be carried out in the witness box. In fact, the observations of the Court of Appeal to which he referred were directed at an assessment for the purposes of the PSED, rather than proportionality. Those observations do not necessarily apply with the same force to proportionality assessments, precisely because the court is required to carry out its own assessment on the evidence, giving such weight to the landlord's assessment as it thinks fit. It might, therefore, be appropriate for the court to hear oral evidence from the landlord relevant to proportionality, even if that evidence is given for the first time or supplements an otherwise inadequate proportionality assessment, provided that can be done without unfairness to the tenant. Ultimately, the court is not bound to accept the landlord's views, or even to treat them with the deference that might be appropriate on a judicial review, but has to come to its own conclusion on the issue. The Court of Appeal also held that, although the PSED can be relied on as a defence to a claim for possession, the court is not obliged to dismiss the possession claim if the landlord subsequently complies with the duty, however belatedly. The Court of Appeal referred to dicta in previous cases to the effect that the PSED is a duty to carry out a proper process, not to procure any particular outcome, and that it must be exercised "*in substance, with rigour and with an open mind.*"

The evidence about the grounds for possession

43. The only witness for the Claimant was Ms Nkechi Eneh, a Housing Services Officer, who made a single witness statement dated 16 September 2024. The documents exhibited to Ms Eneh's statement include a witness statement from PC Nicholas Pulham dated 11 May 2023, which contains evidence about noise he heard on a visit to the Defendant's property on 8 May 2023 and other reports about the Defendant's behaviour that had been made to the police, Samantha Riley's first witness statement dated 17 May 2023 (referred to above) and nuisance

diaries filled in by residents whose names have been redacted. The Claimant's disclosure also includes some emails between unidentified residents and the Claimant complaining about the Defendant's behaviour.

44. The Defendant did not attend the trial. She did not make a witness statement, because she lacks capacity. Her solicitor, Kerry Bland, made a short witness statement to which she exhibited a statement of the Defendant's wishes and feelings based on her instructions. That statement of wishes and feelings contains a significant amount of information about the Defendant's background and mental health and her case about disrepair at the property. It does not engage with the majority of the Claimant's allegations, although it contains a small number of admissions and denies that the Defendant has intimidated or been racist towards her neighbours. It states that the Defendant became confused and could not remember dates or what each incident referred to. When the Defendant was interviewed by Dr Katrina Bayliss, she informed Dr Bayliss, amongst other things, that she sleeps during the day and is awake at night, spent all night drinking and doing drugs, and did not agree with the complaints that had been made against her. It is notable that her response to being told that neighbours had complained about her hoovering at night was that it was her flat and she didn't see why she should not be able to Hoover when she wanted to. This shows that she lacks insight into the impact of her behaviour on her neighbours, bearing in mind that she refers to poor sound insulation between the properties as part of her own case.

45. Ms Eneh has no direct knowledge of any of the allegations made against the Defendant or the impact of her behaviour on her neighbours. Her evidence about the nuisance refers to and summarises reports that the Claimant received from residents about the Defendant's behaviour on various dates, as well as the prosecution brought by Colchester City Council. According to paragraph 36 of her statement, the latest incidents of noise reported to her happened between April and July 2024. The nuisance diary sheets exhibited to her statement include incidents, mostly of shouting and arguing with a visitor to her property, up until 14 September 2024, over a year after these proceedings were issued and even longer after the Defendant's conviction. However, the Claimant did not call any of the residents who have complained about the Defendant's behaviour to give oral evidence, or even serve a witness statement from any of them. As a result, there was no direct evidence, or witness statement verified by a statement of truth, from any of the residents about those matters.

46. The Claimant does not need to rely on the hearsay reports from neighbours to prove that it has grounds for seeking possession because, as I have explained above, it has established a factual foundation for those grounds based on the Defendant's convictions. However, insofar as the Claimant seeks to prove other allegations of anti-social behaviour, going beyond the convictions, Ms Eneh has no direct knowledge of those matters and the Claimant relies on the hearsay evidence set out in her statement and the documents. The additional allegations include allegations of threats, intimidation and harassment, which are inherently more serious than the noise that is the subject of most of the complaints. Although Ms Eneh's statement refers to a small number of reports of such threatening behaviour, those references generally lack any detail about the context of the allegations, which is important when considering the nature and gravity of the behaviour and its effect on the Defendant's neighbours. As Mr Nicol submitted, the impact of the Defendant's noise and other behaviour on her neighbours is an important consideration in the proportionality assessment, but the Claimant provided no witness statements from them addressing that important issue.

47. In her witness statement and oral evidence Ms Eneh repeatedly said that residents are unwilling to be identified and provide direct evidence, fearing reprisals and revenge attacks, and that they are unwilling to provide signed statements and attend Court to give evidence. This is a common problem in possession proceedings based on anti-social behaviour. Hearsay evidence is admissible in such proceedings, as in other civil proceedings, subject to the court considering the factors listed in section 4(2) of the Civil Evidence Act 1995, insofar as they are relevant, when deciding what weight to give to that hearsay. Mr Nicol referred me to the following extract from paragraph 140 of the judgment of Brooke L.J. in Moat Housing Group – South Ltd v Harris and Hartless [2005] H.L.R. 33:

“While nobody would wish to return to the days before the Civil Evidence Act 1995 came into force, when efforts to admit hearsay evidence were beset by complicated procedural rules, the experience of this case should provide a salutary warning for the future that more attention should be paid by claimants in this type of case to the need to state by convincing direct evidence why it was not reasonable and practicable to produce the original maker of the statement as a witness. If the statement involves multiple hearsay, the route by which the original statement came to the attention of the person attesting to it should be identified as far as practicable. It would also be desirable for judges to remind themselves in their judgments that they are taking into account the s.4(2) criteria so far as they are relevant.”

48. Ms Eneh did not give any details to support her assertions that residents were unwilling to give evidence. In cross-examination, she accepted that, other than the conversation in April 2024 referred to at paragraph 36 of her witness statement, she had not spoken to any of the residents but relied on what they said in emails to the Claimant. Most of the complaints referred to in her statement are about noise from shouting, screaming, arguing and amplified noise. As I have mentioned, her statement contains a small number of reports of allegations of threatening behaviour, intimidation or harassment but those reports are lacking in detail and factual context. The statement of PC Pulham refers to two occasions when the Defendant was heard using threatening language about or directed at a neighbour, but there is no evidence that she made any attempt to act on those threats on either occasion or that she has otherwise perpetrated violence. The noise nuisance diary refers to noise such as shouting, swearing, arguing and banging at various times of the day and night, and to cannabis use, but not to any threats or intimidation. I have looked carefully through the emails from residents disclosed by the Claimant, which are heavily redacted, but I have not found anything in the unredacted contents to support the assertion that those residents were unwilling to give evidence or make witness statements. Ms Eneh's statement does not contain any evidence of, for example, discussions with residents about whether they were prepared to make witness statements and/ or attend court, any reference to specific threats or intimidation that deterred them from doing so, discussions about protective measures that could be put in place by the court, or whether they would be willing to make anonymised witness statements setting out their evidence (as was done in Harris and Hartless and is common in cases of this kind). Ms Eneh's evidence falls well short of what is expected by the above passage in Harris and Hartless. The Claimant has not provided an adequate explanation in this case for its reliance on hearsay, or its failure to at least provide anonymised witness statements from residents who have been affected by the Defendant's behaviour, explaining the impact of that behaviour on them and why they are unwilling to be identified or give oral evidence, if that is indeed the case. Although such witness statements would have been hearsay (if the makers were not called to give oral evidence), they would have been verified by statements of truth in the form required by the CPR and therefore, in principle, capable of attracting greater weight than statements or reports that are not so verified, or multiple hearsay such as Ms Eneh's summaries of what residents have reported.

49. An obvious issue which arises when a claimant landlord relies entirely on hearsay is that the defendant does not have the opportunity to challenge that evidence by cross-examining the

residents who have complained. That in itself is of relatively limited significance in this case, given that the Claimant has established factual grounds for possession in any event and the Defendant has not advanced a substantial positive alternative case that could have been put to the residents; but she might have been able to challenge any evidence about threats, intimidation or harassment, to put her case that at least some of the disturbance was due to poor sound insulation between the properties rather than her making excessive noise, and to ask appropriate questions relevant to proportionality. A more significant issue is that I have not received oral evidence or witness statements from the Defendant's neighbours about the specific impact of the Defendant's behaviour on them, despite the obvious importance of such evidence to the issues of proportionality and, in respect of the discretionary grounds, reasonableness.

50. I am not satisfied that the Claimant has shown that it would not have been reasonable and practicable to call any of the Defendant's neighbours to give evidence (s.4(2)(a) of the 1995 Act), or at least to have obtained anonymised witness statements verified by statements of truth. As a result, I give no weight to the hearsay evidence in Ms Eneh's statement that the Defendant has threatened, intimidated or harassed her neighbours, given the lack of detailed evidence about the allegations referred to in Ms Eneh's statement and their context. I do give weight to the statements of PC Pulham and Ms Riley, as their professional duties include making accurate statements for the purposes of proceedings and their statements are verified by statements of truth, which makes it more likely that their evidence is reliable. I also give weight to the noise nuisance diary, which is designed to provide a contemporaneous record (s.4(2)(b) of the 1995 Act) and is consistent with the other evidence about the noise emanating from the Defendant's property.
51. The Defendant's statement of wishes and feelings is also hearsay evidence. I give it weight, bearing in mind the circumstances in which it was obtained, but I bear in mind that the Claimant has not had the opportunity to cross-examine the Defendant about disputed factual matters.
52. Based on the evidence as a whole, I accept that the Defendant has persistently caused or permitted noise from shouting, screaming, arguing (including swearing and other abusive language) and amplified sound to disturb her neighbours, including late at night and in the early hours of the morning. She has continued to do so despite her conviction and despite the Claimant having brought these proceedings, as shown in the nuisance diary sheets and

Ms Eneh's statement. It is likely that she has had occasional confrontations or arguments with neighbours and sworn at them, as set out, for example, in PC Pulham's statement, but I do not find on the balance of probabilities that she has threatened, intimidated or harassed them.

53. It is inherently likely that the behaviour I have found has had an adverse impact on the Defendant's neighbours. However, as I have explained, there are no statements from residents describing the impact on them in more detail. The hearsay evidence about its impact is limited. Ms Riley's statement and the emails disclosed by the Claimant contain references in rather general terms to particular residents complaining about being disturbed by the Defendant's noise during the night, being unable to sleep, and the effect of lack of sleep on their mood, quality of life or mental health. There is no objective evidence (such as, for example, medical evidence or evidence of being signed off work) that the Defendant's behaviour has adversely affected any other resident's health. Mr Strelitz submitted that the nuisance had blighted other residents' lives and deprivation of sleep could lead to profound mental health difficulties and impair people's functioning in certain jobs, such as bus drivers and nurses. However, those submissions were not founded on specific evidence about the effect of the Defendant's behaviour on any of her neighbours or that they are engaged in such employment. I shall return to this in my consideration of proportionality.

The Defendant's disabilities

54. The Defendant relies on the report of Dr Katrina Bayliss dated 19 June 2024. Dr Bayliss interviewed the Defendant and assessed her, including by use of various psychometric tests, on 30 May 2024.
55. It is clear from the personal history set out in Dr Bayliss's report, which I need not repeat in detail, that the Defendant has suffered a number of traumatic and other adverse events in childhood, adolescence and adulthood. In summary, these include the death of her father in her presence, the death of her mother from complications of alcoholism on the day of her father's funeral, forming relationships with significantly older men leading to teenage pregnancies, the first of which was when she was 15 years old, the death of her fourth child during birth when she was 21 years old, and repeated exposure to serious domestic violence and abuse during a number of her relationships (including physical assault, rape, strangulation and coercive and controlling behaviour): the chronology recorded by Dr Bayliss

includes a referral to MARAC (Multi-Agency Risk Assessment Conference) in 2018, which indicates that she was considered at the highest risk of domestic abuse, and I understand that her move to the property was in response to domestic abuse. The Defendant has a long history of self-harm by cutting herself and has made a number of attempts at suicide, including by jumping from a building in 2019, which caused her serious injuries, including fractures to her left leg which required fixing with pins. The Defendant has been abusing drugs (including crack cocaine) and alcohol since her teens.

56. Dr Bayliss's report refers to entries in the Defendant's medical records showing that she has, in the past, been referred to drug and alcohol services, has been diagnosed as suffering from anxiety and depression and has been referred to mental health services or taken to hospital following mental health episodes. An entry dated 15 October 2018 records that the Defendant had a *"very complex history of mental health problems, including anxiety and depression. She was under the Crisis Team back in April as well ... nothing helps with her anxiety and depression. She feels as if she is "losing the plot". She is currently on two-weekly prescriptions. She struggles with sleep. We have tried Zopiclone on and off, and currently is just on a week supply of Diazepam as she was losing the plot due to anxiety."* On 13 November 2018, her GP referred her to the mental health team, stating that they were struggling to manage her mental health issues. I note at this point that Dr Bayliss also recorded that there were multiple missed appointments for both GP and mental health services, something which Mr Strelitz, understandably, emphasised during his submissions.

57. Dr Bayliss's opinion is that the Defendant has severe mental health difficulties, including severe depression, severe anxiety and panic attacks, post-traumatic stress disorder, substance misuse issues and self-harming behaviours. These difficulties constitute multiple disabilities within the meaning of section 6 of the Equality Act 2010. She was screened for borderline personality disorder and it is highly likely that she meets the criteria for such a diagnosis but it is not possible to make a definitive diagnosis due to her substance abuse and other mental health issues. As a consequence of those mental health issues, the Defendant does not have the capacity to litigate in these possession proceedings. She also does not have the mental capacity to manage her housing/ tenancy or abide by the behaviour conditions. She has severe mental health issues, she is emotionally dysregulated and is unable to manage her feelings. She is not able to obey or comply with any order in relation to the possession proceedings.

58. In answering the question whether the allegations against the Defendant arise in consequence of her disability, Dr Bayliss said the following:

“[The Defendant] has experienced some of the most extensive and severe traumas I have assessed in my career as a clinical psychologist ... the complex traumas, depression, anxiety, substance misuse issues, self-harm and panic attacks are overwhelming and [the Defendant] has not accessed mental health support to help her cope with them. Despite being referred to crisis teams and the community mental health team on several occasions by her GP she has been unable to engage with these services due to her appointment letters being taken away from her from ex-partners, her anxiety about her leaving her home, and from her moving home and not receiving them. [The Defendant] is also incredibly fearful of going out and leaving her home due to her experiences with past abusive partners and is worried that she may be seen or found by those ex partners again. [The Defendant] has developed unhealthy coping strategies such as drinking excessive amounts of alcohol on a daily basis and using drugs (crack cocaine). [The Defendant] is emotionally dysregulated, hypervigilant, fearful and unable to cope when she feels overwhelmed. When emotionally triggered, she can feel out of control and unable to understand her emotions or how to respond to them, this has resulted in her feeling “attacked” by her neighbours when confronted about the noise issues and responding with anger and panic. [The Defendant] is also very vulnerable and has been exploited by her brother ... Due to [the Defendant’s] severe trauma, she is fearful to sleep at nighttime due to what has happened to her with previous partners, and she will keep herself awake at night engaging in tasks to keep her mind occupied such as hoovering, watching TV or listening to music. [The Defendant] will also drink excessively at this time and may lose sense of what time it is and the amount of noise that she is making.”

59. In Dr Bayliss’s opinion, the Defendant has complex mental health and substance abuse issues and will need intensive and consistent treatment over a number of years to help her to manage/ reduce the behaviour that has been complained about. Dr Bayliss states that she will need to be referred to adult social care due to her vulnerability and recommends that a Care Act assessment is completed as soon as possible. She will also need to access the community mental health team to access support for her significant mental health issues, and local organisations who can support her with her substance abuse.

60. Dr Bayliss states that it is highly likely that eviction from the property will leave the Defendant in a state of severe distress and it is probable that this will increase her self-harming and

substance abuse issues. It may also be likely that she may experience suicidal ideation and suicidal intent.

61. Both parties put questions to Dr Bayliss following her report, which she answered on 3rd March 2025.
62. In answer to questions put by the Defendant's solicitors, Dr Bayliss stated that she had been unable to contact to carry out an up-to-date assessment of the Defendant's capacity: she had tried to telephone twice but the Defendant did not answer or had her phone switched off. Whilst she had not assessed the Defendant at the time of the incidents of nuisance leading to the noise abatement notice and the prosecution, her longstanding and severe mental health conditions strongly suggest that she likely had significant impairments in understanding statutory nuisance, refraining from the behaviour in question, and meaningfully engaging in legal proceedings. Given the chronic nature of her PTSD it is highly likely that these impairments were present at the time of the incidents, although Dr Bayliss could not retrospectively determine her exact capacity during that period. Dr Bayliss was asked whether she agreed with a GP mental health assessment which found "*No indication or needs identified for specialist mental health services.*" She referred to other entries in the Defendant's medical records and concluded that the GP appeared to agree that there are significant mental health issues including depression, anxiety and self-neglect and the GP had referred for specialist support from the primary care mental health team. A triage assessment of the Defendant highlighted significant issues of substance abuse, domestic violence, trauma and depression, which were described as chronic and highlighted a need for the Defendant to address drug and alcohol issues, which Dr Bayliss agreed with. She stated "*it is prudent that [the Defendant] reduces her drug and alcohol intake in order to address her enduring and chronic mental health issues.*" In terms of treatment, she recommended that the Defendant first accessed services to address her substance misuse, through the community mental health team or drug and alcohol services who can work with both substance misuse and mental health issues. Once she has reduced her drug and alcohol consumption, she will be more able to engage in therapeutic interventions. Dr Bayliss recommended Dialectical Behavioural Therapy, which is suitable for patients who are at high risk of self-harm, suicidal ideation and emotional dysregulation. In her view, it is highly probable that the Defendant will engage in self-harming behaviours and experience suicidal ideation and intent if evicted.

63. The questions put by the Claimant's solicitors started with questions about why Dr Bayliss had not summarised entries from the Defendant's medical records after 20 December 2021, how many entries there were after that date, and asked her to summarise each entry relating to a missed appointment. Dr Bayliss explained that there were thousands of pages in the medical records alone, including 400 to 500 pages after 20 December 2021. Funding to read the documents in their entirety had not been approved and she had been instructed that the best option would be to stop reading after a certain amount of time, seeking to prioritise key documents. It was not feasible for her to comment on the number of entries given the volume of papers or to summarise all of the many entries relating to missed appointments. It was routine practice to summarise missed appointments as she had done at paragraph 4.35 of her report.
64. Mr Strelitz was critical of the approach that Dr Bayliss had taken to the medical records, submitting that she should have skim read all of the records and identified key documents rather than stopping when the meter ran out. As a result, she had not referred to any entries post-dating 20 December 2021 despite the large number of entries after that date, and she had not summarised what the missed appointments were. I agree that the most recent records might have provided further insight into the Defendant's conditions and the fact that she missed appointments is relevant to questions about her engagement with support that has been made available or that she might be able to obtain in future (albeit noting that Dr Bayliss recorded, presumably based on what the Defendant told her, that a number of missed appointments were due to the Defendant's partner removing the appointment letters). However, according to Dr Bayliss, the Defendant's conditions are chronic and rooted in long-standing trauma complicated by alcohol and substance misuse and the Defendant has not accessed appropriate treatment; therefore, they will not have resolved since December 2021. Furthermore, Mr Nicol pointed out that all of the medical records had been disclosed to the Claimant, so the Claimant's solicitors could have gone through them with a view to identifying any entries that might have undermined Dr Bayliss's conclusions. Mr Strelitz disputed this, but Ms Bland checked the position and Mr Nicol informed me that she had sent an email to the previous fee earner at the Claimant's solicitors on 8 May 2024 containing a link to all of the medical records. In my view, therefore, Dr Bayliss's failure to read and summarise the records after 20 December 2021 or the missed appointments does not undermine her fundamental conclusions.

65. In answer to questions about the relationship between the Defendant's substance and alcohol misuse and her mental health, Dr Bayliss stated that, while drugs and alcohol can complicate the presentation of mental health symptoms, the Defendant's substance use is more likely a coping mechanism that developed in response to significant trauma. Her mental health issues predate the substance misuse and may have been exacerbated by the trauma. The use of drugs and alcohol may mask or temporarily alleviate the emotional pain caused by the trauma but it is not the cause of the mental health conditions. The Defendant's primary mental health conditions existed before the use of substances and are likely being exacerbated by them. Dr Bayliss agreed that the use of illicit substances and alcohol can significantly affect the success of treatment. The Defendant's drug and alcohol use is a dysfunctional coping strategy developed in response to her significant trauma and is likely to delay progress in therapy. It is important that she seeks support for her substance misuse issues first before accessing therapeutic support. In answer to a specific question about whether the use of illicit drugs or alcohol could lead to the mental health conditions she has diagnosed, Dr Bayliss reiterated her view that the Defendant's mental health conditions did not arise directly from drugs or alcohol but from her significant childhood trauma and the use of substances as a coping mechanism for managing the resulting emotional distress; the use of substances can exacerbate existing mental health conditions but, in this case, was not the primary cause. Dr Bayliss agreed that the Defendant's behaviour was unlikely to improve unless she accessed support for her drug/ alcohol issues and significant mental health problems.

66. The Claimant asked a number of questions about Dr Bayliss's assessment of the Defendant's capacity. I need not summarise her answers in detail, but I note that she distinguished between capacity as defined by the Mental Capacity Act 2005 and an issue referred to in case law about whether a party is "truly incapable" of complying with a possession order. The Act does not require a party to be "truly incapable" but examines their functional ability to make a particular decision at the relevant time. Dr Bayliss also pointed out that there is a difference between making poor choices and lacking capacity. Under the Act, a party is not to be treated as lacking capacity simply because they make unwise decisions. However, the Defendant's mental health conditions significantly impair her ability to make decisions at all in certain situations, rather than leading to poor decision making. When the Defendant is experiencing severe anxiety, panic and trauma related distress, her ability to engage with and process information is compromised. Her conditions can lead to cognitive overload, dissociation, and

emotional dysregulation, which prevent her from effectively understanding, retaining, or weighing up the necessary information to make a decision.

67. The evidence of Dr Bayliss shows that the Defendant has a number of disabilities due to her experiences of trauma, mental health conditions and substance misuse. As a result of those disabilities, she lacks the capacity not only to litigate but also to comply with the obligations in and maintain her tenancy. She is vulnerable and it is highly probable that, if she is evicted, this will increase her self-harming and substance misuse and she will experience suicidal ideation and intent. As Mr Nicol put it in his skeleton argument *“This means that the Defendant would harm herself, possibly fatally, if she were evicted.”*

68. In his closing submissions, Mr Strelitz submitted that the Defendant had adopted a nocturnal lifestyle and there was no assessment that this stemmed from her disability. He referred to a passage in the ASC (Adult Social Care) Assessment by Essex County Council which records that the Defendant said that she sleeps all day and is awake all night. Her sleep routine had been like this for about 6-7 years. She would get up at about 6pm, stay awake all night and sleep all day. Mr Strelitz submitted that the expert had not grappled at all with the underlying reasons for this and I therefore had to accept that it was a lifestyle choice. I do not agree with those submissions. The passage from Dr Bayliss’s report quoted at paragraph 57 above clearly links the Defendant’s nocturnal habits with her traumatic background: she stays awake all night because she is fearful to sleep due to her experiences with her previous partners. In my judgment, taken as a whole, Dr Bayliss’s evidence shows that the Defendant’s anti-social behaviour is not a simple lifestyle choice but is a product of her disabilities, which cause her to lack the capacity to regulate her behaviour. It follows that the pursuit of possession proceedings on the grounds of that behaviour is unlawful discrimination unless it is a proportionate means of pursuing a legitimate aim. Mr Nicol accepted that securing tenants’ compliance with the obligations in their tenancy agreements, preventing anti-social behaviour and protecting other residents from such behaviour are all legitimate aims which could, in principle, be pursued through possession proceedings. The key question is whether such proceedings and/ or the Defendant’s eviction are proportionate in the circumstances of this case.

69. Before turning to the evidence about that issue, I shall return briefly to the ASC Assessment carried out by Essex County Council. That Assessment was carried out at the request of the

Defendant's accordance with Dr Bayliss's recommendations. The Assessment records that the Defendant informed Essex that she would like to move to Clacton to be closer to other members of her family. She agreed to be supported by Peabody to apply on the Gateway to Home Choice housing to be considered for such a move. She had come to the point where she wanted to change her life around and felt that moving home would be a positive move from the area where people know her, come to her door and she would allow them into her flat and they would drink and take drugs together. She agreed to referrals to Peabody to assist with opening a bank account and to Open Road to gain support with alcohol and drug misuse and it appears that those referrals were made. An email was sent to her GP requesting bereavement counselling. She was given details of other organisations, such as Mind, a bereavement service and Citizens Advice that she could contact in her own time. However, Essex assessed that she did not have eligible care and support needs under the Care Act 2014 and, other than providing advice and guidance and making the above referrals, closed her case. Mr Nicol informed me that the Official Solicitor has asked Essex to review that decision and they have agreed to carry out a further assessment, but that had not been completed by the date of the trial.

Proportionality

70. In her witness statement, Ms Eneh stated amongst other things that, when the Claimant granted the tenancy, so far as it was aware the Defendant had no formal diagnosis of any disability or mental health illness. However, over time it became concerned that there may be an underlying undiagnosed issue but, due to the Defendant's failure to engage with the Claimant, they were unable to explore this further. The Claimant subsequently made referrals to the Safeguarding Team and a Mental Health Practitioner but the Defendant failed to engage with those services and thus the Claimant had no knowledge of any mental health difficulties. After the possession claim was issued, the Defendant provided a letter from her doctor addressed to her then employer dated 15 December 2015 which stated that the Defendant has a history of severe mental health problems including depression, PTSD, severe anxiety and depression and had recently been admitted with a history of deliberate self-harm, but the Defendant had not disclosed this information previously and she failed to engage with the Claimant or any service following referrals made on her behalf. The Claimant had now considered the report of Dr Bayliss, including her conclusions as to the Defendant's mental health conditions but, in the Claimant's view it showed that the Defendant had a clear

understanding of the complaints against her and what behaviour is expected of her, although Ms Eneh acknowledged that Dr Bayliss had stated that the Defendant lacks the capacity to manage her housing, abide by the behaviour conditions or comply with any order made in the possession proceedings. The Claimant's view was that the Defendant would benefit from supported accommodation where she could access the support and services required to help her mental health issues and substance abuse but, unfortunately, the Claimant did not have such accommodation and the Defendant should consider liaising with the Council for suitable housing.

71. Ms Eneh referred to evidence showing that, with the Defendant's consent, the Claimant had referred details of her mental health to a community mental health nurse attached to the Environmental Protection Team at Colchester City Council in the context of their investigations into the noise leading to the noise abatement notice and prosecution. That is the referral to a Mental Health Practitioner referred to in paragraph 69 above. The Claimant also made a safeguarding referral on 23 January 2023, because of concerns that the Defendant was the victim of domestic violence. Ms Eneh asserted that the Claimant had had repeated contact with the Defendant throughout the course of the tenancy and had always tried to address the reports of anti-social behaviour with her directly. The Claimant had telephoned the Defendant on 26 January 2022 to discuss the issues and the Defendant did not dispute the allegations and promised to reduce the noise. On 15 March 2022 the Claimant wrote to her about her behaviour and enclosed an Acceptable Behaviour Contract, which the Defendant did not return. Further warning letters were sent on 12 July 2022 and 28 November 2022. Thus, Ms Eneh says, the Defendant has repeatedly failed to engage with the Claimant by failing to reduce the noise or enter into an Acceptable Behaviour Contract, and she has also failed to engage with any referral services in regard to any mental health difficulties and substance misuse.

72. In the section of her witness statement headed "Reasonableness and Proportionality", Ms Eneh referred to the convictions and that the Defendant has failed to provide any reason for her denials or alternative version of events, and said: *"To simply state that if the allegations are found true they are likely to be a consequence of her mental health difficulties or appear to arise from incidents of domestic violence is not sufficient. The medical report confirms that the defendant has an understanding of what behaviour is expected of her and therefore there is no reason why the defendant cannot properly respond to the allegations against her."*

Accordingly, the claimant avers that, considering all the circumstances of this particular case, it is necessary, reasonable and proportionate to make an outright order for possession against the defendant as there is no cogent evidence that the future will be any different and the claimant's actions of serving a notice and seeking possession are a proportionate means of achieving a legitimate aim having exhausted lesser measures. The defendant was asked to enter an Acceptable Behaviour Contract but has still failed to address her behaviour. A suspended order would not be suitable as the defendant has failed to acknowledge any responsibility for her conduct despite being prosecuted for the matters of complaint and without any acknowledgement there is unlikely going to be any change." The statement went on to assert that the Defendant's behaviour had had a negative impact on her neighbours' well-being and day to day life, including young children, and have taken a toll on them. The Claimant must balance the Defendant's needs and rights against the needs and rights of her neighbours and ensure that adequate protections are in place for those at risk. An outright possession order should be granted. The Claimant is not a provider of last resort and, if possession is granted, the Defendant will be able to seek more suitable accommodation where she can obtain any necessary support to sustain housing in the future.

73. In summary, therefore, Ms Eneh's position is that the Claimant has done all it can to try to resolve the issue by lesser measures but the Defendant has failed to engage with the Claimant or any support services to which she has been referred; lesser measures such as an Acceptable Behaviour Contract and the noise abatement notice served by Colchester City Council have not brought about any improvement in the Defendant's behaviour; a suspended possession order would not be appropriate because the Defendant does not acknowledge her behaviour and there is no realistic prospect of change if such an order is made; the needs and rights of the Defendant's neighbours outweigh her needs and rights; the Defendant needs support, including supported accommodation, which the Claimant is unable to provide; the Defendant will be able to access such supported accommodation if a possession order is made.

74. The Claimant has carried out three written proportionality assessments. The first, prepared by Ms Eneh, is misdated 3 January 2023: she confirmed under cross-examination that it was, in fact, prepared on 3 January 2024. The second, signed by Folake Agbaje, a Housing Services Manager, is dated 20 September 2024 and the third, signed by Ms Eneh, is dated 14 February 2025. All of them post-date the issuing of these proceedings and no proportionality assessment was carried out before the decision was taken to serve the notice seeking

possession or to issue the proceedings. In those circumstances, there is an obvious danger that they were created to provide ex post facto justification for the proceedings that had already been issued, rather than an open minded appraisal of whether it was proportionate to continue the proceedings and, in my judgement, that appears to be what has happened. Although the proportionality assessments reflect the same considerations as are in Ms Eneh's statement, in my judgment none of them adequately recognises the extent of the Defendant's disabilities, the relationship between those disabilities and her anti-social behaviour, or the impact on her of an eviction. For example, the most recent assessment answers the questions about what negative or positive impacts of the proceedings the Defendant might experience as follows: *"As a last resort, the landlord is taking possession proceedings and there is a risk of eviction. However, the defendant has failed to engage with any support services to help sustain her tenancy. There is also no cogent evidence offered by [the Defendant] that she will address the matters of complaint against her and therefore the future will not be any different with her continuing to create excessive noise in breach of her tenancy causing nuisance, annoyance and disturbance to her neighbours. The landlord is not a provider of last resort and following [the Defendant's] eviction, it is hopeful she will find suitable supported accommodation and engage in the support required to maintain a tenancy."* In the section asking whether there is any alternative to eviction, it is asserted that *"An injunction will not address the matters of complaint as the defendant does not accept any accountability for her conduct and therefore possession is the last resort available to the claimant and is a proportionate means of achieving a legitimate aim."*

75. In my judgment, the above statements do not properly recognise the relationship between the Defendant's disabilities and her behaviour or adequately address the important question of the likely impact of eviction on the Defendant. In truth, the section of the third assessment quoted above which purports to address that issue does not actually do so, except by reference to the possibility that the Defendant might obtain suitable alternative accommodation. The references to her failures to engage with support services, to provide cogent evidence that she will address the matters of complaint, or to accept any accountability for her actions all imply that she was able to do so, but there is no recognition or reference to the fact that she has been found to lack capacity to engage in this litigation, to manage her tenancy or to regulate her behaviour. Although the assessment contains references to Dr Bayliss's conclusions, those references are brief summaries, and the assessment does not assimilate her findings or analyse how they relate to the anti-social

behaviour or the impact on the Defendant if she is evicted. By contrast, a great deal is said about her failure to engage with the Claimant and other support services and the impact of her behaviour on her neighbours. Those are obviously important issues in the balancing exercise, but, in my view, the proportionality assessment as a whole is unbalanced because it fails to consider Dr Bayliss's conclusions properly. Similar observations could be made about the previous two proportionality assessments, which are also inadequate.

76. Mr Nicol submitted that the proportionality assessments are not worth the paper they are written on. I would not put it that way but, in my judgment, they are unsatisfactory and inadequate. As Mr Nicol submitted, any consideration of the proportionality of a course of action begs the question "proportionate to what?" In my judgment, the proportionality assessments fail to adequately consider what detriment or harm the Defendant might suffer as a result of eviction and ask whether that is proportionate to the legitimate aims of ensuring compliance with tenancy obligations, preventing anti-social behaviour and protecting the Defendant's neighbours from such behaviour. Although the proportionality assessments refer to the impact of the Defendant's behaviour on her neighbours, as I have discussed above the Claimant has not produced any cogent evidence from any of the neighbours on this issue.

77. Furthermore, although I do not think Ms Eneh was trying to mislead the Court, I found her evidence to be unsatisfactory and unreliable in a number of respects. Under cross-examination she had to accept that a number of statements in her witness statement were inaccurate. For example, it is not the case that the Claimant only received information about the Defendant's mental health difficulties after issuing these proceedings. The Defendant gave the Claimant such information in January 2023 and a note made by Ms Eneh on 24 January 2023 recorded that the Defendant had disabilities and was in receipt of disability related benefits. Whilst the letter from the Defendant's doctor was from 2015, it suggested that the Defendant's mental health issues had been of long duration. Ms Eneh accepted that she had that information nine months before the proceedings were issued. She could not explain why there was no reference to it in section 7 of the Particulars of Claim. She also had to accept that there was no basis for her assertion that Dr Bayliss's report showed that the Defendant understood the complaints made against her and the behaviour expected of her. She said she did not know why that was in her witness statement.

78. Ms Eneh also had to accept that aspects of her evidence about the disrepair claim were incorrect but said she did not deal with disrepair. She gave important oral evidence about her

interactions with the Defendant but was unable to explain why that evidence was not in her witness statement and why she had not produced entries from the Defendant's Beacon systems relating to any such interactions, saying only that relevant information had been given to the Claimant's solicitors. I also agree with Mr Nicol's submission that, at times, she appeared reluctant to give direct answers that might undermine the Claimant's case and gave evasive answers. She was unable to explain why the second and third proportionality assessments did not properly address the impact of eviction on the Defendant in the light of Dr Bayliss's report, saying that she did not know or "*no reason*". When asked about whether the risk of suicide might be relevant, she said "*this is not a suicide case*", despite Dr Bayliss's clear and strong conclusions. She did, however, accept that she had not attempted to visit the Defendant after 2022 and had not done anything since January 2023 to try to get support for the Defendant. On the other hand, as Mr Nicol pointed out, there is evidence that, whilst the Defendant has been absent or has failed to engage at times, there have been times when she has been in contact with the Claimant or has responded to contact from them. In my view, Ms Eneh's evidence that the Claimant had made a referral to community mental health services, with which the Defendant had failed to engage, was somewhat overstated because it appears that all the Claimant did was pass on information about the Defendant's mental health to a community mental health nurse working with the Environmental Protection Team at Colchester City Council. Whilst it is asserted that the Defendant did not engage with that mental health nurse, the evidence about this is quite limited. Ms Riley states that the mental health nurse attempted to contact the Defendant to provide her with advice/ support but there was no reply to her voicemails or when, with a colleague, she knocked on the Defendant's door. However, no further details are given about these attempts to contact the Defendant. The Claimant did not make any other referrals to the Community Mental Health Team but appears to have relied on Colchester City Council to follow this up. The City Council was concerned with environmental protection rather than sustaining the Defendant's tenancy: the two are related but the Claimant, rather than the City Council, was responsible for the latter. Ms Eneh's statement said that the Defendant would be better accommodated in supported housing and should be able to access such housing if she is evicted. The bundle contains a letter from the Claimant to Colchester City Council Housing Solutions dated 12 September 2024, asking them to consider providing suitable accommodation. But Ms Eneh accepted that she had not tried to speak to Essex County Council, who would be the "gateway" to supported housing and did not know whether the Defendant would be able to access such supported housing. However, in re-examination she said that she would give

“good weight” to the conclusions of the ASC Assessment, which she said contradicted Dr Bayliss’s report. I assume the person who carried out that assessment was an adult social worker, but it is not clear from the Assessment what other qualifications they had. In my judgment, the contents of that Assessment do not provide a cogent basis for rejecting the clear conclusions of Dr Bayliss about the Defendant’s mental health and capacity. However, Ms Eneh’s answer was, in my view revealing: it suggested that the Claimant does not really accept Dr Bayliss’s conclusions and Ms Eneh was prepared to give greater weight to the Assessment if its conclusions aligned with the Claimant’s position.

79. The impression I am left with is that the Claimant has not properly understood either the Defendant’s disabilities and their impact on her capacity, including her ability to manage her behaviour and her tenancy, or their obligations under the Equality Act 2010. The proportionality assessments, all carried out after the proceedings were issued, give the impression of being an afterthought, completed for the purposes of advancing the Claimant’s case rather than carrying out the thorough and open-minded balancing exercise that is required. Furthermore, it appears to me that the Claimant has demonstrated no substantive, practical awareness of the PSED. My impression is that the Claimant effectively saw it as a foregone conclusion that they should bring possession proceedings including Ground 7A after the Defendant was convicted for breach of the noise abatement notice, without having regard to the PSED or conducting any robust analysis of the proportionality of such proceedings.

80. It is common ground that the burden is on the Claimant to demonstrate that a possession order is a proportionate means of achieving a legitimate aim. Mr Nicol submitted that, in all the circumstances, it had failed to do so. The Claimant’s evidence was poor and failed to demonstrate that it had done all it could reasonably be expected to do to avoid possession proceedings or that the Defendant had failed to engage with support. For example, the Claimant had sent the proposed anti-social behaviour contract to the Defendant by letter but there was no evidence that they had ever tried to meet with her to go through it with her and obtain her agreement to it, even though Ms Eneh accepted that it was common practice to do that. The Claimant had made a referral to a mental health nurse attached to the Environmental Protection Department, but that department does not provide support for people who are mentally ill. The Claimant had not made significant efforts to engage with the Defendant. Although there was evidence of missed phone calls and appointments, there was also evidence of the Defendant telephoning the Claimant or answering their calls on occasions. The Claimant relied on the availability of supported housing but had made no

enquiries as to whether it was available. Housing Solutions at Colchester City Council stated in an email dated 19 September 2024 that they would be unable to assist if the Defendant lacked capacity to hold a tenancy: it was therefore not clear how the Defendant could access such housing even if it were available. The Claimant's letter seeking assistance from Housing Solutions at Colchester City Council dated 12 September 2024 said they were setting up a multi-agency meeting but there was no evidence that such a meeting had taken place. The consequence is that, if evicted, the Defendant would have no alternative housing to go to. Dr Bayliss had provided robust evidence showing that impact of eviction on the Defendant would be of the most serious kind, including self-harm and possible suicide. The Claimant had failed to provide evidence from the neighbours about the nature and seriousness of the Defendant's behaviour or its impact on them which I could weigh against those consequences of eviction for the Defendant. He submitted that I should dismiss the possession claim.

81. As I have mentioned above, Mr Strelitz submitted that the Defendant had adopted a nocturnal lifestyle for reasons which were not necessarily relevant to her disabilities and were a lifestyle choice. That submission is contradicted by Dr Bayliss's evidence and I do not accept it. However, Mr Strelitz submitted that the Defendant has not engaged with the Claimant or other support services, or even with her own doctors, as demonstrated by the reference to missed appointments in Dr Bayliss's report. If she will not engage with services which are signposted to her, there is no point in requiring her landlord to do more than it has done. There was a need to disaggregate the Defendant's mental health from her drug and alcohol misuse. She needed to engage with drug and alcohol services but had not done so. Dr Bayliss had said she did not have the capacity to comply with a possession order, which presumably meant the conditions of a suspended order. That was an important point because R (Jamie Cooke) v DPP [2008] EWHC 2703 (Admin) and Pender v DPP [2013] 2598 (Admin) showed that an antisocial behaviour injunction should not be made against a defendant who was truly incapable of complying with it; there was a distinction between lack of capacity to comply with an order and a personality disorder on account of which a person may be liable to disobey it, but the court should not make an order against somebody who lacks capacity to comply with it. As Dr Bayliss's view is that the Defendant lacks capacity to comply with the order, I should not grant an anti-social behaviour injunction and, by analogy, nor should I make a suspended possession order, because any such order would inevitably be breached. The noise abatement notice was equivalent to an injunction but had not changed the Defendant's behaviour and she had said she would not pay the fine. Her behaviour will not

change until she accepts responsibility for it and engages with the support she needs for her drug and alcohol misuse and mental health. Whatever criticisms might be made of the proportionality assessments, they did not change that fact. A gold-plated proportionality assessment would make no difference. There was no lesser step than eviction that could be taken because there was nothing else the Claimant could do. It was up to the Defendant to take steps that nobody else could take for her. It was not discriminatory to hold her to the same standards as tenants without her disabilities because it was justified to do so. She could not be forced to engage in the therapy that she needs but needed to do that for herself.

82. I accept that there is unlikely to be any change in the Defendant's behaviour until she addresses her substance misuse and her mental health difficulties. There are therefore practical limits to what the Claimant can realistically do, unless and until the Defendant engages in appropriate therapies for a sustained period of time. The Claimant's primary functions are as a landlord and it is unable to provide supported housing of the kind that the Defendant may need or to provide direct support to address her substance misuse and mental health issues, although it can signpost her to and request assistance from other agencies. As Mr Strelitz submitted, the Claimant cannot force the Defendant to engage in the support and therapy that she needs. However, I note that, in her statement of wishes, the Defendant states that she constantly asked for mental health support but none has been provided and that she is willing to engage but feels that nobody cares as no-one has bothered in the past. Even allowing for the limits on what the Claimant can do without the Defendant's engagement and co-operation, I am not satisfied that the Claimant has done all it reasonably could to avoid the need to pursue these possession proceedings once it became aware of the Defendant's potential disabilities. The Claimant had relevant evidence that the Defendant suffered from chronic mental health issues, and was the victim of domestic violence, months before these proceedings were brought but, other than the two referrals I have mentioned, appears to have done very little of substance to consider those issues and what further referrals or support should be offered to the Defendant. As I have discussed above, the fact that the Claimant did not carry out its first proportionality assessment until a year after it first received that information, and several months after it issued the proceedings, shows that it did not properly recognise the need to take further steps to try to avoid these proceedings and it appears to have done little, except correspond with Colchester City Council to no avail, since receiving Dr Bayliss's report, which outlined the full extent of her disabilities.

83. I do not agree with Mr Strelitz's submission that the deficiencies in the proportionality assessments make no difference. As he himself submitted, the question is one of substance rather than form. The purpose of a proportionality assessment is not simply to tick a box before proceedings are issued, or to ratify the decision to bring them after they have begun. A proportionality assessment is an opportunity to bring to bear the "sharp focus" on, or "brighter illumination" of, the tenant's disabilities that is required by the PSED so that they receive the full weight that is necessary when carrying out the structured assessment of proportionality required by Aster Communities.
84. As that case shows, there are two principal questions to be addressed by that assessment: (a) has the landlord done all that can reasonably be expected to accommodate the tenant's disabilities or are there lesser drastic steps that could be taken? and (b) where does the balance lie between the consequences for the tenant of the possession proceedings and the legitimate aims of the landlord. In this case, even if there is nothing more the Claimant could reasonably be expected to do, it is still necessary to show that the effects of eviction on the Defendant are proportionate to the Claimant's legitimate aims of ensuring compliance with tenancy agreements, preventing anti-social behaviour and protecting other residents from it.
85. As Mr Nicol submitted, Dr Bayliss's report together with the other evidence before me shows that, on the balance of probabilities, the effects of eviction on the Defendant will be extremely severe, leading to homelessness, further mental health difficulties, self-harming and possible suicide attempts. Those effects are not adequately addressed by the Claimant's reliance on the Defendant obtaining other, more suitable accommodation, because the evidence before me does not show that such accommodation will be made available to her. The limited evidence shows that it will not be made available from Colchester City Council while the Defendant lacks capacity to enter into a tenancy agreement. Essex County Council are carrying out a further ASC assessment, but it is not clear whether the outcome will lead to a recommendation that suitable housing is made available; at best, this is a possible outcome, but it is currently uncertain. On the evidence before me, the effects on the Defendant of eviction will therefore be draconian.
86. As I have set out above, I have no direct evidence or witness statements from any of the Defendant's neighbours giving specific details of either the Defendant's behaviour or its impact on any of her neighbours. I agree with Mr Nicol that this is crucial information in carrying out the balancing exercise required by my own assessment of proportionality. In

short, I have almost nothing apart from the statements in the email correspondence I have referred to and Mr Strelitz's submissions about the general impact of noise disturbance and loss of sleep on other residents. That is no substitute for detailed and specific evidence about the seriousness of the Defendant's behaviour and its effects on any particular neighbours. In the circumstances, I am unable to carry out any meaningful quantitative or qualitative evaluation of the impact of the Defendant's behaviour on any of her neighbours.

87. As I have explained above, because Aster Communities refers to the need to consider whether there are lesser steps that could be taken, it is possible that it might be disproportionate for a landlord to rely on mandatory grounds, with the limitations on the Court's powers and discretion that follow from that, but proportionate to rely on discretionary grounds, which would enable the Court to adjourn the proceedings or suspend or postpone the order for possession on appropriate terms, and to have continuing discretion over the enforcement of any such order. Neither Counsel invited me to make a suspended possession order in this case when I raised this with them. Mr Nicol submitted that, if the Claimant has not proved that it is proportionate to make a possession order based on the evidence available at the trial, I should dismiss the claim rather than adjourn it to allow the Claimant to carry out a further assessment. Mr Strelitz pointed out that s. 9(3) of the 1988 Act requires the Court to impose conditions when making a suspended possession order. He submitted that case law shows that the Court should not make a suspended order unless there is cogent evidence that the tenant's anti-social behaviour will stop. I note that this is supported by the commentary at paragraph 3A-275 of the White Book³. He submitted that the evidence in this case shows that there will be no change. The Defendant does not accept responsibility for her behaviour and had informed Ms Eneh that she did not intend to pay the fine imposed by the Magistrates. The Claimant had made an open offer of a suspended possession order but the Defendant's solicitors had declined that offer because the Defendant does not have capacity.

88. I agree that it would not be appropriate to make a suspended possession order with conditions attached because the Defendant lacks the capacity to comply with such an order. This is consistent with Cooke and Pender, referred to above. However, s.9(3) provides that I am not required to attach such conditions to a suspended order if I consider that to do so would cause exceptional hardship or would otherwise be unreasonable. I have therefore

³ This is part of the commentary addressing the Court's discretion under s.84 of the Housing Act 1985 but the same principles apply to s.9 of the 1988 Act.

considered whether, subject to reasonableness, it would be proportionate to make a suspended or postponed possession order without any conditions attached to it. It might be reasonable to make such an order, if it is proportionate to do so, given the persistence of the Defendant's behaviour, her lack of insight into its impact on others, the likelihood that her behaviour will not change unless and until she engages meaningfully in appropriate treatment and therapy, and my finding that her behaviour has had an impact on her neighbours albeit the evidence does not enable me to assess that impact. Such an order would allow the Court to retain discretion over the enforcement of the order and give the Defendant a longer period to engage in therapy and/ or make arrangements to rehouse herself than would be available under a mandatory order. However, I have concluded that I should not make a suspended order, for the following reasons. As discussed above, neither Counsel supported such an order. Making a suspended order without conditions would cause uncertainty and difficulty enforcing the order, as by definition there could not be a breach of any condition that would cause the suspension to be lifted. Postponing the order might also cause difficulties because, arguably, if it is not proportionate to evict the Defendant today, it would not be proportionate to do so on a later date unless the Defendant has secured alternative accommodation. On the evidence available to me, it is uncertain whether she will be able to obtain other, suitable accommodation within any particular timescale but, if she does so, she will presumably vacate the property without the need for a possession order. However, whether she obtains other accommodation is outside the Court's control and it is not the Court's function to supervise her efforts to obtain it.

89. That does not mean, as Mr Strelitz appeared to submit, that because there is no reasonable lesser alternative to a mandatory possession order, it is therefore proportionate to make such an order. To do so would not give adequate weight to the Defendant's disabilities and the serious detriment she will suffer if such an order is made. That detriment is not outweighed by the Claimant's legitimate aims. In my judgment, it is not proportionate to make a possession order.

90. I have come to that conclusion with some hesitation, and it is not a straightforward one, because I recognise that the current position is not sustainable, in that I have accepted that the Defendant's behaviour is having an impact on her neighbours, has persisted over several years, and will not change unless she undertakes appropriate treatment, which she has not yet done despite the chronic nature of her problems. However, this is the result of the Claimant failing to provide sufficiently cogent evidence to show either that it has done all it

reasonably could to deal with the Defendant's behaviour without bringing possession proceedings or that both her behaviour and its impact on her neighbours are so severe that they outweigh the grave detriment that the Defendant will suffer if a possession order is made.

The Defendant's claim for damages under the EA 2010

91. S.119 of the Act provides that, if the county court finds that there has been a contravention of any of the provisions referred to in s.114, it may grant any remedy which could be granted by the High Court in proceedings in tort or a claim for judicial review. It is common ground that damages may be awarded for disability discrimination contrary to s.15 and s.35 of the Act but they may not be awarded for breach of the PSED.

92. Mr Strelitz submitted that the Defendant is not entitled to damages under this head, even if I found the Claimant's proportionality assessments to be defective, because the outcome would have been the same even if they were not defective, and these proceedings are proportionate. The effect of this submission is that the Claimant had not discriminated against the Defendant even if there were deficiencies in its proportionality assessments. However, the consequence of the findings I have made above is that the Claimant has discriminated against the Defendant in breach of s. s.15 and s.35 of the EA 2010.

93. As set out above, the Claimant has made out factual grounds for seeking possession. In his skeleton argument Mr Nicol said that the Claimant might claim that the Defendant should not be compensated for attempts to evict her when the grounds for possession were made out, but he submitted that the damages would be for breaches of the EA, not for the attempts to evict the Defendant as such. Mr Strelitz did not in fact make the argument that Mr Nicol anticipated but, in my judgment, Mr Nicol's analysis is correct. Even though the possession proceedings are founded on the Defendant's anti-social behaviour, including her conviction for breaches of the noise abatement notice, the discrimination consists in failing to recognise that her behaviour was the product of her disabilities and pursuing these proceedings when, as I have found, they are not a proportionate means of achieving a legitimate aim. In that context, in my view, it would not be open to the Claimant to assert, in effect, that the Defendant brought the proceedings on herself, as that would be tantamount to asserting that the discrimination was justified by her behaviour.

94. S.119 (4) of the Act provides that damages for discrimination may include compensation for injury to feelings. Mr Nicol submitted that the Defendant was entitled to such damages in this case. In his skeleton argument, he referred me to Eddie Stobart Ltd v Graham [2025] EAT 14, a decision of the Employment Appeal Tribunal which set out the following principles, which apply to awards of damages for injury to feelings in discrimination cases:

- a. First, there can be no award of compensation if there is no evidence of injury.
- b. Second, while tribunals should avoid making assumptions, it can properly be borne in mind that in every kind of discrimination case a claimant will usually suffer some injury to feelings.
- c. So long as the tribunal does not lose sight of the fact that it is compensating a claimant for the injury suffered, rather than the manner of discrimination, the latter can be a useful guide to inferring the former when evidence is otherwise sparse.

95. That authority shows that it is necessary for the Defendant to prove that the discrimination caused injury to her feelings, although this is something that might readily be inferred.

96. In this case, there is more than one cause of the Defendant's state of mind. In paragraph 22 of his skeleton argument, Mr Nicol acknowledged that the action taken by the Claimant is not the sole cause of the Defendant's current state. In his closing submissions, he accepted that the main reason for the Defendant's distress is her background of trauma rather than these proceedings. Given that the purpose of an award under s.119(4) is to compensate for the injury to feelings caused by the discrimination, it is necessary to distinguish such injury to feelings from the other influences on her state of mind.

97. A further complication is that litigation is commonly stressful and causes its participants anxiety and upset but, as I understood Mr Nicol to accept, damages are not recoverable for the stress and anxiety caused by litigation in other contexts. He submitted, however, that these proceedings should never have been brought because the Claimant should have complied with the Act. Therefore, the Defendant should be compensated for the distress the proceedings had caused. An award of damages would not be for the bringing of proceedings per se but for discrimination contrary to s.35 of the Act. In my judgement, that analysis is correct because, in combination, ss. 35 and 119(4) of the Act contemplate that, whatever the position in other contexts, compensation may be awarded for injury to feelings caused by discrimination under s.35 of the Act, which includes bringing discriminatory possession

proceedings. Mr Nicol said that there is no reported authority in which such an award of damages had been made but, on the other hand, he referred me to the county court decision in Rosebery v Williams (2021), in which HHJ Luba KC awarded the defendant damages for discrimination by the claimant, her landlord, which included (amongst other things) bringing and continuing proceedings against her both for an anti-social behaviour injunction and for possession. Although that decision is not binding on me, it provides support for the proposition that such damages may be awarded which I find very persuasive given that judge's considerable experience in this field.

98. Mr Nicol referred me to paragraph 26 of the Defendant's statement of wishes, which states: *"The court case has affected her. She is scared that she will lose her home and become homeless where she knows she will not cope and probably kill herself. She has difficulty trusting people but has been working closely with her solicitor, Kerry Bland, and a support worker at Beacon House. She feels her landlord is targeting her and not provided any support. They have not considered what she has gone through especially the fact that she was moved to the property for her own safety."*

99. That is the only evidence about the injury to feelings the Defendant has suffered. It is obviously extremely limited, providing little substantive information about the impact of the discrimination (as distinct from other causes) on her state of mind. It is implicit in her references to the court case and her landlord targeting her that she has some perception of being discriminated against, which she associates with the proceedings and the fear of losing her home that she refers to. Apart from that, there is no substantive description of her injury or the effects of the discrimination on her life, health, feelings, activities or state of mind. This may be contrasted, for example, with the indicative matters set out in paragraph 52 of Eddie Stobart, which are largely unaddressed. Based on that limited evidence it is difficult to quantify the degree of injury to her feelings caused by the proceedings or to distinguish it from the mental state caused by her traumatic background and mental health. Eddie Stobart provides that I can take into account the manner of the discrimination to draw inferences about the nature of the injury to feelings. In this case, the manner of discrimination was the bringing of these proceedings when it was not proportionate to do so. It was not a case where the Claimant's conduct included humiliation by way of ridicule or disempowerment or egregiously discriminatory treatment. In my view, the manner of discrimination does enable me to infer that the injury to feelings goes beyond the fear of losing her home and becoming homeless, and the feelings of being targeted and not supported or understood, referred to in

the Defendant's statement of wishes. The Defendant does not state how long those consequences of the discrimination have endured but it is inherently probable, and I infer, that they started when the notice seeking possession was served and have endured since then. There is no specific evidence of the severity of those feelings or any impact on the Defendant's personal life or quality of her life.

100. I am therefore assessing damages for injury to feelings consisting of a fear of being evicted and being made homeless, and feelings of being targeted and not supported or understood, for a period which will amount to about 22 months by the date I have set for delivery of this judgment. In that assessment I allow for the fact that, as Mr Nicol acknowledged, the Defendant's mental state includes negative feelings attributable to her traumatic history and mental illness that are not the product of the discriminatory treatment, which overlap with her injured feelings and for which the Claimant is not liable to compensate her.

101. Mr Nicol submitted that this case falls on the border of the lower and middle Vento bands set out in the Seventh Addendum to Presidential Guidance dated 25 March 2024. That Addendum shows that the lower band for "*less serious cases*" is between £1,200 to £11,700, and the middle band for "*cases that do not merit an award in the upper band*" is £11,700 to £35,200. Mr Nicol did not refer me to any comparator authorities (apart from Rosebery, which he did not use as a comparator and where the discrimination was much more serious than in this case). Although the court is not required to compute such awards precisely by reference to the duration of the injury on a multiplier/ multiplicand basis, duration is a significant factor in this case and it is therefore useful to consider the monthly equivalent sum represented by any award as a cross-check. An award on the border of the lower and middle bands would be around £12,000. That would be equivalent to about £545 per month. Notwithstanding the significant duration of the injury, I consider that figure is too high bearing in mind the limited evidence about the seriousness of the injury and the overlap with other aspects of the Defendant's mental health. In my view, the duration of the injury takes this case into the top part of band 1 notwithstanding that limited evidence and overlap. I assess the damages for injury to feelings in the sum of £8,800, roughly equivalent to £400 per month.

Disrepair

102. Paragraph 24 of the Counterclaim asserts that a number of terms are implied into the tenancy agreement, including the term as to fitness for human habitation implied by s.9A of the 1985 Act, an implied covenant of quiet enjoyment, and the implied repairing covenants under s.11 of the 1985 Act. The tenancy agreement contains an express covenant of quiet enjoyment, so it is not necessary to imply such terms (albeit the Counterclaim does not plead that covenant is relevant in any event). The tenancy also includes the express repairing covenants referred to below, which it is not suggested are any less extensive than the statutory implied covenants.

103. In addition, Paragraph 24 avers that there are implied terms requiring the Claimant to keep any appliances provided with the tenancy in repair and to carry out any works of repair and improvement in a proper manner, with skill, care and competence and with proper materials. The Claimant denies that these two terms are implied into the tenancy. The Counterclaim does not set out any basis for implying them. In my judgment, the common law test for implying terms is not met because neither of those terms is either necessary to give the tenancy efficacy, or obvious, particularly bearing in mind that this is an area in which Parliament has intervened by providing for repairing covenants to be implied into tenancy agreements. S.11 of the Act and/ or the express repairing covenants set out what installations or appliances the Claimant is required to keep in repair. It is inherent in repairing obligations that any works of repair must be carried out to a sufficient quality and standard to ensure that the item in question is put into repair.

104. The landlord's repairing obligations in the tenancy agreement include the following:

“(3) To keep in good repair the structure and exterior of the Property including:

- (a) Drains, gutters and external pipes;
- (b) The roof;
- (c) Outside walls, outside doors, window sills, window catches and window frames including necessary external painting and external decoration;
- (d) Internal walls, floors and ceilings, doors and frames, door hinges and skirting boards but not including internal painting and decoration;
- (e) Pathways, steps or other means of access;

- (f) Plasterwork (excluding minor repairs which would normally be dealt with during internal redecoration);
- (g) Boundary walls and fences, but only those fences and walls erected by CDS Co-operatives;
- (h) Broken window glass;
- (i) Chimneys, chimney stacks and flues (if any), but not including sweeping, re-lining or other related works which are necessary solely in order that the Tenant may burn solid fuels (for instance, coal or wood) in a fireplace;
- (j) Internal garages and stores (if any);

Except where a repair is only necessary because of damage caused by the Tenant, a member of their household or an invited visitor.

(4) To keep in good repair and proper working order the installations provided by CDS Co-operatives for space heating, fire fighting equipment, water heating and sanitation and for supply of water, gas and electricity including:

- (a) Basins, sinks, baths, toilets, flushing system and waste pipes;
- (b) Electric wiring including sockets and switches, gas pipes and water pipes;
- (c) Water heaters, fireplaces, fitted fires and central heating systems.”

105. These covenants broadly reflect the covenants implied by s.11 of the Landlord and Tenant Act 1985, albeit their express requirements are set out in more detail than the statute and they may go further in some respects than what the statute requires.

106. The Defendant’s obligations under the tenancy agreement include the following:

- a. Clause 3(5) of the tenancy agreement requires her to report promptly to the Claimant any repairs for which the Claimant is responsible in the structure or exterior of the property, or any installation in the property or common areas for which the Claimant is responsible.
- b. Clause 3(7) requires her to keep the interior of the property in good and clean condition and to decorate all interior parts as frequently as necessary to keep the Property in good decorative order.
- c. Clause 3(8) requires her to make good any damage caused wilfully or by neglect or carelessness on her part or by any member of her household or visitor, to the property, including broken glass in windows and the repair or replacement of any damaged fittings and installations, or to meet the cost of any such repairs that the Claimant agrees to carry out.

- d. Clause 3(11) requires her to allow the Claimant's employees, agents or contractors access at all reasonable hours of the daytime to inspect the condition of the property or carry out repairs or other works to it.

107. The Counterclaim alleges the following items of disrepair:

- a. Since October 2020, bricks to the outside of the front entrance door have been coming away from the wall.
- b. Since October 2020 there has been damp to the bathroom and bedroom wall.
- c. Since October 2020 there has been a leak to the waste pipe to the toilet.
- d. Since October 2020 the toilet flush has not worked.
- e. Since October 2020 the kitchen sink has not been fixed into the worktop.
- f. Since October 2020 the hot tap in bathroom has not worked.
- g. Since October 2021 the bath has not been attached to the wall.
- h. In about October 2022 the gas cooker was condemned and has since been inoperable.
- i. Since about October 2022 electric wires have been hanging from the wall area where a cooker could be installed.
- j. Since about October 2022 the washing machine water goes into the sink.

108. The Defendant claims special damages of £50 for clothes disposed of due to damp/mould and general damages for the impact of the disrepair on the Defendant. The specific effects of the disrepair pleaded at paragraph 26 of the Counterclaim are a constant smell due to damp and leakage which has impacted on the Defendant's health and wellbeing, the Defendant has been unable to cook due to the cooker being condemned and this has affected her mental health, and the Defendant's clothes smell as a result of the dampness and issue with the washing machine, which makes the Defendant feel unclean, affecting her self-confidence.

109. It is common ground that a landlord will not be in breach of its repairing obligations in respect of disrepair falling within the tenant's demise unless they have had notice of the disrepair and a reasonable opportunity to carry out the necessary repairs.

110. In the Defence to Counterclaim, the Claimant averred that it was not notified of any allegations of disrepair until December 2023, whereupon it carried out the following works

within a reasonable period of time (albeit it was delayed because the Defendant did not allow earlier access): digging out and renewing the silicone around the bath; installing worktop fixing to secure the kitchen worktop and installing silicone around the entire worktop and the sink; installing one brick around the door where missing, securing the threshold with mortar and re-pointing the bricks around the threshold. Save for those repairs, the Claimant does not admit the items of disrepair alleged by the Defendant or, alternatively, that they are matters for which the Claimant is responsible.

111. The Defendant addresses the issues of giving notice of the disrepair and access to the Property at paragraphs 30 to 34 of her statement of wishes (which also refer to a rat infestation which is not part of her Counterclaim). According to those paragraphs, she has reported all of the problems by telephone on numerous occasions from the beginning. The Claimant assured her that they would sort out the issues but nothing happened. They often made appointments and did not turn up, or turned up unannounced. Paragraph 32 gives a specific example of such a missed appointment, but does not date it, and refers to photographs, a video, and other information given to the Claimant.

112. I have referred above to the inaccuracy of Ms Eneh's evidence in her witness statement, which asserted that the Defendant did not report any disrepair to the Claimant and it was not until December 2023 that concerns about the state of the Property came to the Claimant's attention. As Mr Nicol submitted, the Claimant's disclosure in these proceedings shows that the Defendant reported items of disrepair in both January 2023 and December 2023. Beyond accepting that her evidence was incorrect, Ms Eneh was unable to assist because she said she did not deal with repairs. The emails disclosed by the Claimant also show that the boiler at the Property was replaced in December 2023, so the Claimant was able to gain access to the Property at that time. The Claimant has not disclosed the records kept by the department responsible for the repairs and did not call anybody from that department to address the disrepair claim. In the absence of such evidence, and given the inaccuracies in Ms Eneh's evidence and her limited knowledge of these matters, I am not satisfied that the Claimant was inhibited in carrying out repairs because the Defendant failed to give reasonable access.

113. On the other hand, there is no evidence other than the statement of wishes showing that the Defendant reported the disrepair before January 2023. Whilst her statement of wishes states that there was disrepair from the outset of her tenancy and that she reported

all the problems on numerous occasions by telephone, it does not contain any details of precisely what she reported to the Claimant and the dates when she did so.

114. Paragraphs 28, 29, 35 and 36 set out the Defendant's evidence about the disrepair at the Property, including the items referred to in her Counterclaim. She also relies on the report of Stephen Cockram, who inspected the Property on 14 May 2024. In a table at paragraph 25 of his skeleton argument, Mr Nicol lists 17 items of disrepair referred to in the Counterclaim, the statement of wishes and Mr Cockram's report, but he accepts that items 11 to 17 are not part of the pleaded Counterclaim, although they are mentioned by Mr Cockram (electric power points, boarded up window, rodent infestation, defective ironmongery to front door, no fire resisting internal doors, blocked eaves guttering, and loose floorboards in entrance hall). Items 1 to 5 had been repaired by the time Mr Cockram inspected (defective bricks outside front door, damp and mould to the bathroom and bedroom, leak to toilet waste pipe, inoperative toilet flush and kitchen sink not fixed to the worktop). It appears from the statement of wishes that these items were fixed in about January 2024. Item 6 (bathroom hot tap) was fixed in June 2024, item 7 (bath not fixed to wall) was fixed in January 2024. Items 8, 9 and 10 (gas cooker, exposed electrical wires and the cause of the washing machine surging back into the sink) had not been repaired at the time of the statement of wishes. The bundle includes a repair completion report dated 25 November 2024 which shows that the waste pipe from kitchen sink to stack entry point was found to be blocked, and steps were taken to unblock it, on 18 November 2024. The problem was noted to be recurrent. The evidence before me does not show whether it has recurred since then.

115. However, although some repairs had been carried out by the time of his inspection, Mr Cockram found evidence of mould growth limited to a bedroom wardrobe and the grouting in the bathroom. The extractor fans to both the bathroom and kitchen are inoperative and, in his opinion, this contributes to the build-up of condensation, causing damp. I note that his report states that there is no natural light or ventilation in the bathroom, because it is an internal room which, therefore, does not have a window. Although the toilet flush is working, a push button operating the flush was broken. He found that it was difficult to get hot water from the bathroom mixer, not that the hot tap was completely inoperative but, as I have mentioned, it appears from the statement of wishes that that issue was resolved in June 2024.

116. In my judgment, the condemned gas cooker is an appliance that falls outside the Claimant's repairing obligations so that the Defendant cannot claim damages for failing to repair or replace it.

117. Mr Strelitz submitted that damp attributable to condensation is not, in itself, attributable to disrepair even if it is contributed to by the extractor fans not working. He submitted that the extractor fans do not fall within the Claimant's repairing obligations as they are not part of the structure or exterior of the Property and they do not fall within the limited installations that the Claimant is required to keep in repair. An extractor fan is not necessary because the primary means of ventilation are the windows and the extractor fans are supplementary: that submission is incorrect in respect of the bathroom which, as noted above, does not have a window. Mr Nicol submitted that an extractor fan is structural because, if it is removed, there will be a hole in the wall.

118. Mr Nicol referred me to the decision of the county court in Aden v Birmingham City Council (July 2013), noted in the December 2013 edition of *Legal Action*, in which HHJ McKenna found that an extractor fan was part of the structure. The brief note in *Legal Action* states that he distinguished this from the decision of a circuit judge in O'Neill v Sandwell MBC [2007] EWHC 2004 (QB) but does not state how that decision was distinguished. However, I note that the report of the appeal from the decision of the circuit judge (HHJ Simon Brown QC) shows that he decided that the extractor fans were fixtures making use of the supply of electricity rather than part of the installations for the supply of electricity and therefore fell within the express exception in s.11(1)(b) of the 1985 Act. That decision was upheld by the High Court Judge (Nelson J.) on appeal but turned on the implied covenants in the 1985 Act. There is no such express exception in the Claimant's repairing covenants I have referred to at paragraph 103 above but, on the other hand, the express language of those covenants does not extend to appliances for making use of electricity. In any event, the implied covenant to keep in repair installations for the supply of electricity is a separate covenant from the implied covenant to keep in repair the structure and exterior of the property. Based on what is stated in the note in *Legal Action*, I infer that HHJ McKenna distinguished O'Neill on that basis.

119. Neither Counsel referred me to any other authority discussing the meaning of "structure and exterior". In Irvine's Estate v Moran (1992) 24 H.L.R. 1, Recorder Thayne Forbes QC held (in the context of the statutory implied repairing covenants) that "*...the structure of the overall dwellinghouse consists of those elements of the overall dwellinghouse which give*

it its essential appearance, stability and shape. The expression does not extend to the many and various ways in which the dwellinghouse will be fitted out, equipped, decorated and generally made to be habitable ... in order to be part of the structure of the dwellinghouse a particular element must be a material or significant element in the overall construction. To some extent, in every case there will be a degree of fact to be gone into decide whether or not something is or is not part of the structure of the dwellinghouse. It is not easy to think of an overall explanation of the meaning of those words which will be applicable in every case and I deliberately decline to attempt such a definition.” In Grand v Gill [2011] EWCA Civ 554, the Court of Appeal held that Irvine’s Estate v Moran provided a good working definition of “the structure...of the dwelling-house”.

120. I find it difficult to see how, in general, an extractor fan falls within this definition notwithstanding Mr Nicol’s submission that, if it is removed, there will be a hole in the wall. A fan that is in situ but inoperable does not compromise or amount to disrepair to the overall structure of the building. However, given that the bathroom does not have a window or other means of ventilation, in my view the extractor fan in the bathroom is an integral and essential part of its design. In the absence of other means of ventilation allowing moisture in the air to disperse, it is inevitable that condensation will build up, which may cause damp and potential damage or mould growth and the presence of spores, which can be hazardous to health. The extractor fan in the bathroom therefore enables it to function properly as a bathroom in a hygienic way. In my judgement, therefore, the extractor fan in the bathroom can be regarded as a “material or significant element” in the overall construction of the Property and as part of the structure of the Property.

121. I therefore consider that the extractor fan in the bathroom falls within the Claimant’s repairing obligations although, on the assumption that the kitchen has a functioning window, the extractor in the kitchen does not.

122. Mr Strelitz submitted that the problem with waste water from the washing machine backing up into sink was caused by the Defendant’s usage and fell outside the Claimant’s repairing covenants, because the pipework itself was not in disrepair. However, as Mr Nicol submitted in response, the Claimant’s covenants require it to keep the waste pipes in repair and proper working order. A blocked pipe is not in proper working order. Furthermore, I note that, unlike the covenant requiring the Claimant to repair the structure and exterior of the Property, this covenant does not except repairs that are necessary because of damage caused

by the Defendant, her household or visitors. Potentially, unblocking a drainpipe could fall within the implied covenant to use the Property in a good tenantlike manner⁴ (which extends to making minor running repairs and maintenance), but that would depend on the cause and nature of the blockage and the steps required to unblock it. The completion report I have referred to does not clearly show the cause or nature of the blockage or the steps required to unblock it, but I note that the photographs show that the sink trap was dismantled, exposing the outlet pipe that goes through the wall. This was not therefore a straightforward matter of using a plunger or a suitable corrosive fluid, of the kind readily available in supermarkets and hardware stores. In the absence of any other evidence, I am satisfied that this item did fall within the Claimant's repairing covenants.

123. Mr Strelitz submitted that a number of the items of disrepair identified by Mr Cockram were attributable to deliberate damage or misuse by the Defendant or her household, including loose ironmongery, broken faceplates to electrical sockets and damaged internal doors. These items are not included in the Counterclaim. However, Mr Strelitz submitted that the Defendant could not claim loss of amenity as a result of the matters in the Counterclaim when she had "*trashed the place*." I am not attracted to that submission. Whilst some of the photographs are consistent with deliberate or negligent damage to items by the Defendant or her household, the photographs do not show that she had "trashed the place" in such a way as to deprive her of any meaningful amenity in relation to the items of disrepair in the Counterclaim. Her statement of wishes contains specific examples of the impact on her enjoyment of the Property, such as her fear to use the bath because it was not fixed to the wall, the inconvenience of the sink falling out of the worktop when she was washing up, the damage to her clothing and the smell caused by the damp and the water backing up from the washing machine.

124. I therefore find that the Claimant failed to carry out repairs within a reasonable period of time after being notified of the items of disrepair and is liable to compensate the Defendant for the resulting loss of enjoyment of the Property. Some of the items of disrepair, such as the loose bricks are relatively inconsequential in terms of their impact on her enjoyment but others, such as the damp and mould, are more consequential. Taken as a whole, I am satisfied that they did cause a degree of loss of amenity and enjoyment which sounds in damages. I have referred above to the lack of detail in the Defendant's statement

⁴ There does not appear to be an express covenant to this effect in the tenancy agreement.

of wishes about when specific items of disrepair happened and precisely what she reported to the Claimant and when she did so. In those circumstances, I consider that I should base the period of such loss of enjoyment on the documents which show that she first reported disrepair in January 2023. As set out above, some repairs were carried out in January, June and November 2024.

125. It is not necessary for me to be more precise about the time taken to carry out individual repairs because, whilst Mr Nicol's skeleton argument referred to the well-known case of Wallace v Manchester CC (1998), which suggests that damages are assessed by reference to a notional reduction in rent, or that the rent is used as a cross-check if a global award is made, he submitted in his closing submissions that, if I find that the relevant period started in January 2023, this is a modest claim and an appropriate award of damages would be less than £2,000 plus the 10% uplift required under Simmons v Castle. The Particulars of Claim state that the rent at the date of issue was £377.56 per month. In my judgment, the sum of £1,900 (before the uplift) is reasonable in relation to the disrepair I have found, amounting to less than £100 per month until the last of the repairs was carried out in November 2024. The statement of wishes does not contain any details of the clothing the Defendant says she has lost as a result of damp or how she has valued it at £50. Given that lack of evidence and the small sum claimed, I therefore do not award special damages in that sum but treat any damage to clothing as being incorporated within the damages based on loss of amenity.

Conclusions

126. For the reasons set out above, I dismiss the claim for possession. I find that the Claimant has discriminated against the Defendant contrary to sections 15 and 35 of the EA 2010 and award damages for injured feelings in the sum of £8,800. I award £1,900 damages for disrepair plus the Simmons v Castle uplift of 10%, together with interest on those damages as set out in the order which I have approved.

HHJ DUDDRIDGE

20 May 2025