Property: Luton Community Housing v Durdana [2020] EWCA Civ 445, 26 March 2020

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The Public Sector Equality Duty ('PSED') under s. 149 Equality Act 2010 ('EqA') continues to exercise the courts. This article and the article on *McMahon v Watford BC* discuss how the courts are applying the PSED in the context of housing law.

S. 149 EqA focuses on advancing equality. It requires a body carrying out public functions to have due regard to equality of opportunity and elimination of discrimination, but does not amend the statutory powers and functions of a public authority set out in other legislation. A court will not dismiss a possession claim where a breach of the PSED is relied upon if satisfied that it is highly likely that the outcome would not have been substantially different had no breach of the PSED occurred: *Aldwyck Housing Group v Forward* [2020] 1 WLR 584 (which was decided after the first-instance decision in *Durdana*).

Durdana considers the application of s. 149 EqA in the context of possession proceedings. Luton Community Housing ('LCH') sought possession of the property let to Ms Durdana on discretionary ground 17 Schedule 2 Housing Act 1988 (false statement inducing grant of a tenancy). In 2017, LCH became aware that Ms Durdana and her husband had provided false information about their housing and financial circumstances on a housing application form.

At trial, it was common ground that Ground 17 was made out, but Ms Durdana contended that it would not be reasonable to make a possession order and, further, that LCH had breached its duties under s. 149 EqA, not having considered the impact of the possession claim on her and her daughter. The child suffers from cerebral palsy and Ms Durdana from PTSD.

The LCH officer serving the Notice of Seeking Possession was not aware of Ms Durdana's health condition and that of her daughter, but stated in evidence that if their conditions had been known, it would have been proportionate and reasonable to seek a possession order. After commencement of the possession proceedings, the LCH officer carried out an Equality Act assessment. The officer had no experience of Equality Act assessments and was unfamiliar with the PSED.

The judge found that LCH had breached the PSED. She was not satisfied that on the facts of the case the LCH's decision to seek possession would 'inevitably' be the same if the PSED been complied with, and dismissed the claim. Although it was not necessary to consider reasonableness, the judge indicated that the breach of the PSED would make it unreasonable to make a possession order.

The Court of Appeal allowed LCH's appeal. While the judge had been correct conclude that there was a breach of the PSED, she had misdirected herself in that she considered whether the outcome would have been inevitable rather than highly likely. The court concluded that in light of the shortage of public housing LCH was justified in seeking to remove tenants who had obtained their property by deception and the medical evidence did not suggest that the effect of eviction on Ms Durdana and her daughter would be 'acute or disproportionate' [para. 36]. The matter was be remitted to the judge for a consideration whether it was reasonable to make the possession order.

This case shows that while a breach of the PSED will not necessarily mean the end of a possession claim, public landlords should be very mindful of their duties under s. 149 EqA.