

Property: R (aoa Fisher) v Durham County Council [2020] EWHC 1277 (Admin), 21 May 2020

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The High Court has considered the interplay between statutory nuisance, caused by noise, and disability discrimination and the Public Sector Equality Duty.

The Facts

Ms Fisher ('the Claimant') is a disabled person within the meaning of the Equality Act 2020 ('EqA'). She has a neurological disorder that causes her to make involuntary vocalisations. She screams and shouts words and sentences, often at night. She is a private tenant in a mid-terraced house in County Durham. The noise made by Ms Fisher has had a serious effect on her neighbours, and has also prevented the re-letting of one of the adjacent properties. Durham County Council ('the Council'), having previously served a Community Protection Notice under the Anti-Social Behaviour Crime and Policing Act 2014, served a Noise Abatement Notice under s. 80 of the Environmental Protection Act 1990 ('EPA') on Ms Fisher.

The Law

Under S. 79(1)(g) EPA, 'noise emitted from premises so as to be prejudicial to health or a nuisance' is capable of being a statutory nuisance. If a local authority is satisfied that noise constitutes a statutory nuisance, it is required to serve an Abatement Notice under s. 80(1) EPA or take other steps to persuade the appropriate person to abate the nuisance. Failure to comply with an Abatement Notice without reasonable excuse is a criminal offence: s. 80(4) EPA. If a local authority is of the opinion that criminal proceedings would not afford an adequate remedy, the local authority may take proceedings before the High Court to secure the abatement of the nuisance, for example by applying for an injunction (S. 81(5) EPA).

By S. 15(1) EqA a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. The Public Sector Equality Duty ('PSED') under S. 149 EqA focuses on advancing equality. S. 149 EqA requires a body carrying out public functions to have due regard to equality of opportunity and elimination of discrimination.

The Proceedings

The Claimant brought judicial review proceedings to quash the abatement notice, arguing that she had been treated unfavourably by reason of her disability contrary to SS. 15 and 29 EqA and that the Council had breached its PSED under s. 149 EqA. She also raised human rights and irrationality challenges.

The Court accepted that the service of the Abatement Notice served a legitimate aim, there being substantial evidence that Ms Fisher's vocalisations caused harm and distress to her neighbours. The Notice was also proportionate, the Council having given due weight to Ms Fisher's disability. The protection of the health and amenity of the neighbours and the interests of the relevant property owners justified what the court termed the 'modest' limitation on the Claimant's right as to how she lived in her home. The Court noted the steps the Council had taken to engage with Ms Fisher prior to serving the Notice, which included advice about sound-proofing the house, the service of a Community Protection Notice, the consideration of medical evidence, and the offer of various services. The Notice was the last resort, and the Council had shown there had been no less drastic means of solving the problem. A fair balance had been struck between competing interests, in particular as the

Council would not take criminal proceedings, but use the Abatement Notice as a first step of obtaining a civil injunction.

While not explicitly carrying out a PSED assessment, the Court held that in substance the Council had done so. The Court found that at all stages the Claimant's disability had been taken into account. In fact, the Council's actions were taken to reduce or eliminate potential 'discrimination, harassment or victimisation' (s. 149(1)(a) EqA) and to 'foster good relations' (s. 149(1)(c) EqA) between the Claimant and her neighbours. Giving effect to the PSED did not require the Council to give primacy to the Claimant's wishes at the expense of her neighbour's right to live in peace. The Council had explored every viable option and had got the balance of its duties entirely right. The human rights and irrationality challenges were dismissed.

Comments

This is a further case in which a public authority had not explicitly considered the PSED, but was nevertheless found to have complied with the substance of the duty.