Case No: F35YJ701

IN THE COUNTY COURT AT BIRMINGHAM

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Date of hearing: Tuesday 8th September 2020

Before:

HER HONOUR JUDGE STACEY

Between:

STEPHEN TYLER — **Claimant**

- and –

PAUL CARR ESTATE AGENTS — **Defendant**

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

Ms Buchanan (instructed by **Shelter Legal Team**) for the **Claimant**
Mr. McLean (instructed by **Plexus Legal LLP**) for the **Defendant**

- - - - - - - - - - - - - - - - - - - -

APPROVED JUDGMENT

- - - - - - - - - - - - - - - - - - - -

Digital Transcription by Marten Walsh Cherer Ltd
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP
Tel No: 020 7067 2900 DX: 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

JUDGE STACEY:

1. In a Claim issued against the Defendant on 13th March 2019 the Claimant, who is disabled within the meaning of the Equality Act 2010 ("the Act") seeks a declaration that he was subjected to unlawful indirect discrimination in relation to the protected characteristic of disability, together with damages, interest and costs. The case concerns the letting of private rental accommodation. The central issue was whether the Claimant was told he could not apply to view or rent three properties being marketed by the Defendant because he was on housing benefit or in receipt of "DSS benefits". If the Claimant could establish the factual premise, the issue was whether it amounted to the application of a provision, criterion or practice and if it was indirectly discriminatory pursuant to s.19(2) of the Act.
2. I had the benefit of an assessor at the hearing, Ms Nikki Sidgwick, appointed pursuant to s.114(7) of the Act. Her assistance was invaluable and I formally record my thanks to her. She agrees with my findings of fact and conclusions and this judgment. It was confirmed at the outset of the hearing that the Defendant, Paul Carr, is a sole trader trading as Paul Carr Estate Agents and no objection was taken by the Defendant to the title of the proceedings as simply Paul Carr estate agents.
3. The Defendant is an estate and lettings agent and it is common ground that he is a service provider for the purposes of section 29 of the Act and is prohibited from discriminating against a person requiring the service, including by not providing the person with such a service. There are a number of exceptions to s.29, none of which apply in this case. At the outset of the hearing the Claimant withdrew an argument that the Defendant was a person with the right to dispose of premises. It was therefore no longer necessary for the court to determine whether any discrimination that may be found to have occurred was in contravention of the disposal and management of premises provisions of Part 4, s.33 of the Act.
4. The Defendant initially disputed that the Claimant had contacted them to enquire of advertised properties, but during the course of the hearing their position was modified and it was accepted that there had been telephone contact on 7th September 2018. However what was said during that conversation remained in dispute. The Defendant accepted however that if the conversation had taken place as alleged by the Claimant, then the Defendant would have contravened s.29 and be liable to the Claimant in damages.

The evidence

5. The court had an agreed bundle of documents before it. The Claimant, Mr Stephen Tyler, his wife, Irene Tyler, his father-in-law, Mark Wimlett, his mother-in-law, Pat Wimlett and his father, Robert Lanchester each gave evidence and were cross-examined. The evidence of Liam Reynolds, (senior research officer at the housing charity, Shelter, on behalf of the Claimant) was agreed and accepted by the Defendant. Ms Fiona Barbour gave evidence remotely by video link on behalf of the Defendant.

Findings of fact

6. The findings of fact are made on the balance of probabilities and it is for the Claimant to prove his case and the disputed facts.
7. The Defendant advertises itself as the largest independent estate agent in the West Midlands and acts as the agent for owners of various properties who engage the Defendant to market and let their properties in the residential private rental market sector. The Defendant is one of two divisions of the overall business of Paul Carr as an Estate Agent. The housing rental part of the business is conducted by Paul Carr as a sole trader trading as Paul Carr Estate Agent, the Defendant in this case, whilst the property sales side is operated through Paul Carr Estate Agents Limited.

8. Ms Fiona Barbour is the general manager of the lettings side of the Defendant's business. It is a sizeable operation with approximately 70 employees including a head of tenancies. There are approximately 20 to 40 properties on the books at any one time and on average the business succeeds in letting approximately 30 properties per month. It has a number of offices in the West Midlands and advertises its properties extensively online.
9. Mr Tyler is aged 29 and married with now, four children. But at the time of the events we are concerned with his youngest two had not yet been born and he just had two children under the age of five. His and his wife Irene Tyler's income is made up of a number of state benefits, which, as at 7 September 2018 amounted to a total of £432.07 per week, £1,872.30 per month[1], excluding housing benefit which at the material time was £536.90 per month. Their total monthly income from benefits was therefore £2,409.20 per month. The housing benefit allowance increased to £572 per month on the birth of their third child in December 2018. They have lived in rented accommodation for several years, much of the time in the private rental sector.
10. The Claimant is disabled with a number of physical and mental impairments including emotionally unstable personality disorder. He also requires the use of a power chair as he has paralysis of the legs following a road traffic accident.
11. In terms of accommodation needs, he cannot manage a steep flight of stairs, but with the assistance of four portable ramps he can safely navigate a few steps. The ideal accommodation is either a flat with a lift, a ground floor flat, a bungalow, or a house with ground floor sleeping and washing facilities.
12. In February 2018 he and his family were homeless and moved in to Irene Tyler's parents' house at 17 Gainford Road, Birmingham B44 0NX, in very cramped conditions on a temporary basis. Mrs Tyler's mother is also a wheelchair user and there was no room for Mr Tyler to sleep in the house. He had to sleep in the car while the family lived with his in-laws. They remained there until September 2018.
13. During this time the Tylers were very active in looking for alternative accommodation. I accepted that the account of approaching 20 estate agents per day was probably an exaggeration although it might have felt like it, but there is no doubt that they were looking strenuously and determinedly and were desperate to move out. It was also the case that Mrs Tyler's mother was getting into hot water with her landlord for the number of people living in the house.
14. The general pattern was that Mr Tyler would search for suitable properties online, social media or via local newspapers and once a suitable property was sourced, the Claimant would make the telephone calls to enquire further. Mrs Tyler is a more timid and reluctant public speaker, whereas the Claimant is more confident and outgoing. On 7 September 2018 Mrs Tyler identified three properties on the Paul Carr Estate Agents' website which were in the Kingstanding and Great Barr areas of Birmingham all of which were suitable: 29 Rough Road, Kingstanding B44 0UP, 115 Cranbourne Road, Kingstanding B44 0DB, and 100 Weybourne Road, Great Barr B44 9DE. The rent for each of the three properties of £650 per calendar month was affordable for the Claimant and Mrs Tyler's combined benefit income.
15. The advert for Weybourne Road expressly said "No pets, no smokers, no DSS" but the other two were silent. The Claimant knew that the term "no DSS" referred to a landlord refusing to accept applicants for accommodation who are in receipt of housing benefit (and sometimes other means-tested state benefits), although he did not know its derivation from

[1] £147.45 per week Income related Employment and Support Allowance; £100.02 per week Child Tax Credits; £34.40 per week Child Benefit; £64.60 per week Carers Allowance; and £85.60 per week Personal Independence Payment

the old Department of Social Security. But it did not deter him from inquiring about that and the other properties which seemed very suitable for the family.

16. The Claimant telephoned the Paul Carr sales and lettings team on a number of occasions on the afternoon of 7th September 2018 and one of the calls is recorded as having lasted for three minutes 46 seconds at 16:34 during which he discussed renting a property.
17. It is not known which of the estate agent's employees spoke to Mr Tyler, but whoever it was informed him that none of the three properties would accept people on benefits and that it was company policy "not to accept DSS" which was a reference to housing benefit. The letting agent then ended the call abruptly after explaining that they were not interested because Mr Tyler and his family were on benefits. The conversation distressed the Claimant considerably because he felt written off and disrespected because they were in receipt of state benefits. In addition by this stage he and his family were becoming desperate to find their own accommodation given the precariousness of living with Mrs Tyler's mother and the onset of winter when sleeping in the car would be even more uncomfortable. He experienced feelings of humiliation and that he was considered to be of lesser value as a human being than someone in receipt of income from other sources – whether through salary, trust fund or parental support. He is an energetic and determined young man seeking to provide for his family and do the best for them who has had great difficulty in obtaining paid employment because of his various physical and mental health disabilities.
18. After the call Mr Tyler sent a follow-up message via Facebook to the letting agent to check whether, as he had been told, it was the estate agent's policy not to accept people on benefits looking for accommodation saying: "Hi do you accept housing benefits for rental please?". It is not clear what date the question was sent, but he did not receive a response and sent a follow-up with a double question mark on 12th September 2018. A day later the estate agent posted a formal answer stating:

    > "We can consider applications from applicants in receipt of Housing Benefit provided the affordability threshold, as determined by the referencing provider is met. Unfortunately, Housing Benefit is not considered part of the household's income for referencing purposes. However many other DWP payments, for example tax credits, pension, Disability Living Allowance, Personal Independence Payments, Carers Allowance can be included. The Landlord has the final say."

19. The Tylers did not approach Paul Carr Estate Agents for rental property thereafter because of the way Mr Tyler felt he had been treated. However they were able to secure alternative accommodation through Gumtree at 167 South Road at very short notice between 18th and 20th September from a man known only as "Ron" at Oliver Edwards letting agent. It was a less than ideal home with a number of problems and defects and was not suitable for someone with the wheelchair needs of the Claimant, but they needed to find alternative premises as soon as possible and it was better than sleeping in a car as autumn approached. The Tylers were required to pay a cash deposit to Ron on the spot to secure the accommodation and take more cash into the office the next day. The property was dirty with a number of broken fixtures and fittings and it was in poor decorative condition, but the location was suitable for the children's school and nursery.
20. I find that Paul Carr Estate Agents were aware of the controversy around a No DSS policy and that it disadvantages disabled people disproportionately as it has been well ventilated in the trade press. It is also apparent from the defensive and rather formal tone of the Facebook response to Mr Tyler's follow up enquiry about it, that it was very much on their radar.
21. Mr Tyler had been in touch with the homeless charity Shelter about the problems they had encountered in renting a property. He informed Shelter of his experience with Paul Carr Estate Agents and agreed that he could be put forward by them for press interviews about

the difficulties of people in receipt of State benefits obtaining properties to rent in the private rental sector.

22. With the assistance of Ms. Arnall of the Shelter legal department a formal complaint was made to the estate agent on 12th October 2018. The response on 1st November appears to acknowledge that the policy complained of by the Claimant had been in operation on 7th September when he made the telephone call because the letter says:

> "I am pleased to advise you that we have reviewed our procedure for handling potential applicant enquiries with regard to housing benefit."

23. I find that if the review had pre-dated Mr. Tyler's contact with Paul Carr Estate Agents, as was their evidence before the court, the letter would surely have said so. Instead I find that the 1st November letter concedes the accuracy of what Mr. Tyler had been complaining about since it suggests that the Defendant had acted on his complaint and changed their policy.
24. The correspondence between the parties continued and the Defendant sought to rely on a credit reference agency called Home Let as the source of their understanding of the correct approach to housing benefit in relation to affordability and sources of income to be taken into account. However it is not necessary to set out the evidence or the facts since the Defendant withdrew their defence of justification during the course of the hearing.
25. Mr. McLean valiantly and articulately sought to argue that the Claimant's evidence was not credible but in the face of the documentary evidence and Mr Tyler's inherently plausible account, his submission could not succeed. I rejected some minor details in Mr Tyler's evidence: for example that he was unaware of the meaning of the term "no DSS" and that he had not had any prior contact with Paul Carr Estate Agents, but they were very minor points that did not detract from the overall credibility of his account. His account had also been corroborated by Mrs Tyler and both her parents and Mr Tyler's father. Mr McLean and his witness Ms Barbour had no explanation for the wording of the letter of 1st November 2018. Nor could he explain the Defendant's initial evidence denying that they had been contacted by Mr Tyler on 7 September 2018, which was only withdrawn during the hearing and in the face of the evidence of Mr Tyler's telephone records.
26. The agreed evidence of Liam Reynolds, senior research officer at Shelter set out that Shelter is the U.K.'s largest housing and homelessness charity which carries out training, research, policy scrutiny, and campaigning work including related to the supply and standards of private sector rented accommodation in the UK. He explained the use of the term "no DSS" was widely used in the private sector lettings industry. Agents' and landlords' publicity material regularly use it as shorthand to indicate that applicants in receipt of housing benefit will not be considered for the tenancy.
27. In an internal survey of Shelter advisers undertaken in 2018, DSS blanket bans preventing people accessing the private rented sector were the top issue reported by their services with a high impact upon their service users, restricting their access to a suitable home and so contributing to their staying in poor housing or facing homelessness. In Shelter's experience, 'No DSS' policies lock a significant number of private renters out of homes which they could otherwise afford and would be suitable for them, simply because they are on housing benefit and without consideration of their specific situation.
28. Mr Reynolds had gathered a wide range of research from various sources which showed that this problem is both longstanding and common. Some of the findings of previous surveys on and investigation into this issue are set out in appendix 1 to this judgment.
29. There are 4.5 million households in the private rented sector in England, of whom at least 1 million claim Housing Benefit. A refusal to consider prospective tenants in receipt of Housing Benefit applies to all persons, irrespective of any protected characteristic they may have or that they share with others.

30. Mr Reynolds and Shelter have also compiled statistical information in relation to the impact of a "No DSS policy" (i.e. a refusal by a letting agent or landlord to consider tenants in receipt of Housing Benefit) in relation to disabled people by using the statistical evidence of those in receipt of Disability Living Allowance (DLA) and Severe Disablement Allowance (SDA) (the 2 main disability benefits prior to the introduction of Personal Independence Payments (PIP)), to ascertain the baseline data of the number of disabled people affected similarly to Mr Tyler and in receipt of disability-based benefits.
31. Against that baseline, two pools for comparison are put forward by Mr Reynolds derived from the "Understanding Society" survey, a UK Household Longitudinal Study based at the Institute for Social and Economic Research at the University of Essex. It was chosen because it is the largest available official survey which collects detailed information relating to the claiming of benefits. Although statistics relating to disability and Housing Benefit are available from the Department for Work and Pensions, they cannot be cross-referenced and therefore do not provide a useful framework for analysis.
32. The data from the "Understanding Society" survey collected between the period January 2017 and January 2019 (referred to as wave 9) covers the time of the alleged discrimination and provided a sample size of 29,750. He then identified the relevant variables, namely housing tenure, DLA/SDA receipt, and Housing Benefit receipt, (using the survey data dictionary), an index of the information and variable names that are available in the data. Next he extracted the figures relating to these variables and applied the appropriate weighting scheme to the data to ensure that the responses of participants were representative of the population more widely. The purpose was to sample the population so that they accurately reflect the demographics of that population. If it is found that a particular group has fewer or more responses than expected in the sample, the weighting scheme is applied to give more or less weight to their response.
33. From this process, Mr Reynolds was able to identify the below figures.

Private Tenants

34. Of the 29,750 households surveyed in the Understanding Society survey, 3,592 (12%) rent in the private rented sector.
35. Of these 3,592 households, 168 (4.7%) claim DLA or SDA. Of these 168 households:
    - 93 (55.4%) do not claim Housing Benefit, and therefore would not be excluded by a No DSS ban; and
    - 75 (44.6%) do claim Housing Benefit, and therefore would be excluded by a No DSS ban.
36. Of the 3,592 households renting privately, 3,424 (95.3%) do not claim DLA or SDA. Of these 3,424 households:
    - 2,906 (84.9%) do not claim Housing Benefit, and therefore would not be excluded by a No DSS ban; and
    - 518 (15.1%) do claim Housing Benefit, and therefore would be excluded by a No DSS ban.
37. These figures represented in tabular form are as follows:

PRS Household Population				
		Housing Benefit		
		Mentioned	Not mentioned	**Total**
No DLA or SDA	Count	518	2906	**3424**
	%	15.1%	84.9%	**95.3%**
DLA or SDA	Count	75	93	**168**
	%	44.6%	55.4%	**4.7%**

Total	**Count**	**593**	**2999**	**3592**
Source: Shelter analysis of wave 9 of Understanding Society. Numbers relate to sample sizes/ how many answered in this way				

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

All Occupiers of Housing

39. A similar picture emerges when we look at the second pool, namely occupiers of housing more generally.
40. Of the 29,750 households surveyed, 1,551(5.2%) claim DLA or SDA. Of these 1,551 households:
    - 1,034 (66.7%) do not claim Housing Benefit and therefore would not be excluded by a No DSS ban; and
    - 517 (33.3%) do claim Housing Benefit and therefore would be excluded by a No DSS ban.
41. Of the 29,750 households surveyed, 28,199 (94.8%) do not claim DLA or SDA. Of these 28,199 households:
    - 26,308 (93.3%) do not claim Housing Benefit and therefore would not be excluded by a No DSS ban; and
    - 1,891 (6.7%) do claim Housing Benefit and therefore would be excluded by a No DSS ban.
42. These figures represented in tabular form are as follows:

General Household Population				
		Housing Benefit		
		Mentioned	Not mentioned	Total
No DLA or SDA	Count	1891	26308	**28199**
	%	6.7%	93.3%	**94.8%**
DLA or SDA	Count	517	1034	**1551**
	%	33.3%	66.7%	**5.2%**
Total	**Count**	**2408**	**27342**	**29750**
Source: Shelter analysis of wave 9 of Understanding Society. Numbers relate to sample sizes/ how many answered in this way				

43. Mr Reynolds' evidence was that when compared to all occupiers of housing it is clear that a No DSS policy or practice puts persons who are disabled at a particular disadvantage. 33.3% of households who claim DLA or SDA claim Housing Benefit compared to 6.7% of households who do not claim DLA or SDA. This means that, in terms of housing occupiers generally, disabled households are almost five times more likely to rely on Housing Benefit, and thus be excluded by a No DSS ban, than non-disabled households.
44. As noted above, the Defendant did not seek to justify (under s.19(2)(d)) any indirect discrimination that might be found to have occurred and it is not necessary to set out Mr Reynolds' evidence in this regard. In case it is of interest in similar cases however, his evidence is set out in Appendix 2 to this judgment.

Law and conclusions

45. By the end of the hearing there was much common ground between the parties as to the applicable law. As stated above the Claimant has the protected characteristic of disability pursuant to s6 of the Act and the Defendant is a provider of services which is a relevant context to which the Act applies. The form of discrimination relied on by the claimant is indirect discrimination as defined by s.19 of the Act as follows:

> "(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"

46. It was accepted by Mr McLean that if the court were to find that Mr Tyler's account of the telephone conversation on 7 September 2018 was accurate, he would have proved the existence of a provision, criterion or practice (PCP) that would apply both to other disabled people and those who do not share that characteristic. In other words it was a policy that applied to all. Since I accepted Mr Tyler's evidence, it follows that he has proved that the Defendant applied a PCP of rejecting applications because the applicant was in receipt of housing benefit. It was also common ground that the policy not to consider prospective tenants who were in receipt of benefits put Mr Tyler and his family at a disadvantage.

47. Indirect discrimination occurs when a PCP puts one group at a disadvantage when compared with others. A number of principles were helpfully explained in *Essop v Home Office (UK Border Agency)* [2017] UKSC 27. There is no requirement for there to be an explanation of the reasons why a particular PCP puts the group at that disadvantage. The reason need not be unlawful in itself, or under the control of the provider of services. Nor is there a need for a causal link between the less favourable treatment and the protected characteristic but there must instead be a causal link between the PCP and the particular disadvantage suffered by the group and the individual. There is no requirement that the PCP in question put every member of the group sharing the protected characteristic at a disadvantage. The issue is whether the proportion of the group which can comply with the PCP is smaller than the proportion of other groups. The disadvantage is often established on the basis of statistical evidence
48. In cases such as this where the protected characteristic of disability is relied on, s.6(3)(b) of the Act states that:

> "(3) In relation to the protected characteristic of disability –
> …
> (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability."

49. The "same disability" does not mean the same physical or mental health condition, but refers to the disadvantages faced by people with different disabilities or the categories of impact that might result from various different impairments or conditions. In *Paulley v Firstgroup plc* [2017] UKSC 4 for example, the issue was access to buses for wheelchair

users. It was the fact of requiring a wheelchair which was relevant, not the medical condition giving rise to the need to use a wheelchair. As noted by Lord Neuberger the case was "concerned with disadvantages faced by wheelchair users rather than people with other kinds of disability."

50. In the statutory Equality Act 2010 Guidance: "Guidance on matters to be taken into account in determining questions relating to the definition of a disability", at section F3, disability as a shared protected characteristic, the Guidance refers expressly to s.6(3) and illustrates with a number of examples that the focus is on the impairments resulting from the diagnosis rather than the diagnosis itself. I accepted the approach adopted by Mr Reynolds that for the purposes of this case, the group of persons who share the protected characteristic of disability are disabled people who receive a disability-based benefit. This is because the relevant effect of Mr Tyler's disability in this case is its implications for him financially and difficulty obtaining employment requiring him to fall back on the state for support. It was therefore logical and appropriate to select receipt of DLA and SDA as the main disability benefits.
51. I further accept (and again it was not disputed) that the Claimant was put at a disadvantage by the PCP and, through Mr Reynolds' evidence, it has been established that disabled people in receipt of disability benefits more generally are also put at that particular disadvantage of not being considered for private rental properties. The statistics are stark and worth repeating: in the private rented sector 44.6% of disabled persons claim Housing Benefit compared to 15.1% of non-disabled persons and in respect of all occupiers of housing, 33.3% of disabled people claim Housing Benefit compared to 6.7% of non-disabled people. Disabled people are between three and five times more likely to claim Housing Benefit than non-disabled people and, correspondingly between three and five times more likely to be excluded by a No DSS policy than non-disabled people.
52. Mr McLean was wise not to seek to justify the policy in light of the evidence adduced by the Claimant.
53. In summary therefore, in applying a "No DSS" rule to the three properties Mr Tyler was interested in renting, the Defendant, Paul Carr Estate Agents, applied a PCP to all prospective tenants which puts disabled people in receipt of disability benefits at a particular disadvantage when compared with those who are not disabled and in receipt of disability benefits. It also put Mr Tyler at that disadvantage and Paul Carr Estate Agents did not seek to justify the disproportionate impact and group disadvantage to disabled people and have unlawfully discriminated against Mr Tyler.
54. It follows that Mr Tyler has established that there has been a contravention of the Act and his claim succeeds.

Remedies

55. The remedies available to a successful claimant are set out in s.119 of the Act which confers on the county court the power to grant any remedy which could be granted by the High Court in proceedings in tort or on a claim for judicial review. S.119(4) provides that an award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis).

> "(5) Subsection (6) applies if the county court or sheriff—
>
> (a) finds that a contravention of a provision referred to in section 114(1) is established by virtue of section 19, but
>
> (b) is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the claimant or pursuer.
>
> (6) The county court or sheriff must not make an award of damages unless it first considers whether to make any other disposal."

56. In this case both a declaration and compensation were sought.
57. I am satisfied that Mr Tyler is entitled to a declaration. Accordingly I declare that Paul Carr Estate Agents has subjected Mr Tyler to unlawful indirect disability discrimination by imposing the provision, criterion or practice that prospective renters in receipt of housing benefit could not apply for the three properties he asked about and also for informing him that it was company policy "not to accept DSS" referring to those, such as himself, in receipt of Housing Benefit.
58. Mr. McClean conceded that the provisions of section 119(5)(b) were satisfied in that he accepted that there was intentionality of discriminating against the Claimant. He was correct to do so. Intention in the context of s.119(5) does not require motive or intention to apply a discriminatory requirement with the intention of treating a claimant unfavourably on disability grounds, but requires knowledge of the consequences or "some knowledge that that the specific requirement is or may be discriminatory" (*Lane v London Metropolitan University* [2005] All ER (D) 220 (Jan) EAT), or see *JH Walker v Hussain* [1996] IRLR 11 EAT where Mummery J (as he then was) held that intention was satisfied where an employer knew that certain consequences would follow for his acts and he wanted those consequences to follow.
59. It is well known in the housing rental sector that the impact of a "No DSS" rule impacts disproportionately to the disadvantage of disabled people, thanks partly to the campaigning work of Shelter. It features frequently in the specialist and trade press and more widely. Mr Tyler has appeared on national day time TV on the subject. It therefore follows that the imposition of such a policy come with the knowledge and therefore intention that those consequences will follow.
60. It was agreed by the parties that the injury to Mr Tyler's feelings fell in the bottom *Vento* band which spans £900 and £9,000. I place the injury to Mr Tyler's feelings towards the top of the lower band. This was a serious matter that considerably damaged the Claimant's feelings at a time when his wife was six months pregnant and they were desperate to find accommodation. To be told, when he eventually got through, that simply by being in receipt of housing benefit he could not apply for three properties, all of which he could comfortably afford, would be and was, extremely distressing. He had identified the properties as being geographically perfectly located for his children's schooling and his health needs and the extended family support that was available in the area. Depriving him of even being considered for any of them felt personal, humiliating and lost him the opportunity to live in any of those properties. Such a policy also significantly increased the stress and time taken to obtain accommodation.
61. It was also accepted that one of the symptoms of Mr Tyler's emotionally unstable personality disorder is an inability to move on from perceived and actual slights, which is a common feature of the condition. It meant that the treatment on that occasion, accompanied as it was by rudeness from the staff member, was particularly distressing to someone with that mental health condition.
62. The injury to feelings has been aggravated by the manner in which the proceedings have been conducted by the Defendant. They sought to assert that the claim was fabricated and that the telephone conversation did not take place, that the whole thing was a setup, the Tylers were not homeless and had already found somewhere else to live at 167 South Road. It was effectively suggested that the Tylers had effectively lied and invented the claim as some sort of campaigning strategy. The nature of the cross-examination will have further added to the injury to the Claimant's feelings.
63. Bearing all that in mind, I assess the damages at the full amount claimed by the Claimant of £6,000, inclusive of the aggravating features. Interest will need to be calculated which the parties can agree.

APPENDIX 1

1.1. Between 2003 and 2005 Shelter collated a database of some 13,000 private rented sector (PRS) advertisements in England. Of these, one third barred Housing Benefit claimants. Even where no such prohibition appeared on the face of the advert, when contacted only one in six of the landlords said they would accept such a claimant. Shelter's report concluded that as little as one tenth of the mainstream market was available to tenants on Housing Benefit (the original report was "The Path to Success" Report, Shelter, 2006 [LR1-1] but the findings were summarised in "'No DSS': A review of evidence on landlord and letting agent attitudes to tenants receiving Housing Benefit", Shelter Scotland, 2017, pg15 [LR2-27]).

1.2. A survey of 450 Housing Benefit claimants undertaken in 2009 revealed that 60% had found it difficult to find landlords willing to let to people on benefits (the original report was "For whose benefit?", Shelter, 2009 [LR3-63] but the findings were summarised in "'No DSS': A review of evidence on landlord and letting agent attitudes to tenants receiving Housing Benefit", Shelter Scotland, 2017, pg15 [LR2-27]).

1.3. An analysis of data taken from an unpublished survey of 1,000 landlords in 2013 concluded that 78% of landlords were not willing to let to tenants in receipt of Local Housing Allowance (these findings were reported in "'No DSS': A review of evidence on landlord and letting agent attitudes to tenants receiving Housing Benefit", Shelter Scotland, 2017, p.12 [LR2-27]).

1.4. In 2014, a representative of the National Landlords Association told the Work and Pensions Select Committee that 52% of their members surveyed said they would not look at taking on tenants in receipt of benefits (Can private landlords refuse to let to Housing Benefit claimants?, House of Commons Library, 2018, p.19 [LR4-92]).

1.5. In a survey of 200 landlords and letting agents in England in 2015, well over half of the respondents indicated that they would not consider letting to tenants in receipt of Housing Benefit, even if they were in work (the original report was "How Do Landlords Address Poverty? A Poverty-Focused Review of the Strategies of Local Authorities, Landlords and Letting Agents in England", Joseph Rowntree Foundation, 2015 [LR5-114] but the findings were summarised in "'No DSS': A review of evidence on landlord and letting agent attitudes to tenants receiving Housing Benefit", Shelter Scotland, 2017, p.12 [LR2-27]).

1.6. A survey of almost 1,000 landlords in England and Scotland which was conducted in late 2015/early 2016 found that 52% were not willing to let to people claiming Housing Benefit,

Local Housing Allowance[2], or Universal Credit (the original report was "Home - No Less Will Do: Homeless People's Access to the Private Rented Sector, Crisis, July 2016 [LR6-174] but the findings were summarised in "'No DSS': A review of evidence on landlord and letting agent attitudes to tenants receiving Housing Benefit", Shelter Scotland, 2017, p10 [LR2-27]).

1.7. A 2016 survey for Crisis found that 55% of landlords were unwilling to let to tenants in receipt of Housing Benefit (the original report was "Home. No less will do: Homeless peoples' access into the private rented sector", Crisis, February 2016 [LR7-227] but the findings were summarised in "Can private landlords refuse to let to Housing Benefit claimants?", House of Commons Library, March 2018, p.19 [LR4-92])

1.8. A survey of UK landlords published by the website Spareroom in 2014 found that 57% of the 1,558 respondents stated 'no housing benefit tenants' in their adverts. (Spareroom survey, January 2014 [LR8-266])

1.9. A 2017 YouGov survey of 3978 private renters in England found that almost a third of renters receiving Housing Benefit (30%) said that they had not been able to rent a home due to DSS Discrimination in the last five years [LR9-267].

1.10. The latest survey of landlords commissioned by MHCLG shows that 52% of landlords were unwilling to let to tenants claiming Housing Benefit or Local Housing Allowance and 47% were unwilling to let to people claiming Universal Credit (English Private Landlord Survey, MHCLG, 2018, [LR10-273], figure 3.1 [LR11-334] and table 3.1 [LR11-337]). The same survey found that nearly one in five (19%) of those landlords who were unwilling to let to people claiming benefits said that 'nothing would encourage letting to these tenants'. (English Private Landlord Survey, MHCLG, 2018 [LR11-336] figure 3.3 [LR11-339]).

1.11. In an unpublished survey of 3,995 private renters undertaken by YouGov for Shelter in August-September 2019, 54% of private renters claiming Housing Benefit agreed with the statement that he or she '*…wanted to rent a home but was not able to because the advert for the property said no DSS/ housing benefits tenants*' and 50% agreed that he or she had *'…wanted to rent a home, but was not able to because I was told that there was a No DSS/ housing benefit policy by the landlord/ letting agent'* [LR13-344].

1.12. A recent unpublished survey of 1,009 private landlords carried out by YouGov on behalf of Shelter in December 2019 to January 2020 [LR14-350] found that 41% of landlords operated an outright bar on letting to Housing Benefit claimants, and a further 22% preferred not to let to them. These results are very consistent with previous waves of the same survey. This survey also found that 29% of landlords who prefer not to let to people claiming Housing

[2] Contrary to what this suggests, Local Housing Allowance is not a distinct benefit: it is simply a mechanism for calculating how much Housing Benefit a PRS tenant may be entitled to.

Benefit and who also use an agent said that advice from their agent was a reason for their policy.

APPENDIX 2

Extract of Mr Reynolds' evidence on Justification

2. I understand that indirect discrimination may be lawful if it can be objectively justified as a proportionate means of achieving a legitimate aim. I understand also that the burden is on the Defendant to prove that the discrimination is justified.

3. I have been shown a copy of the Defendant's Defence which states at paragraph 21:

> *Further or alternatively, if it is adjudged that there was such a provision, criterion or practice then it is asserted that such a PCP would be a legitimate means of achieving a proportionate aim [sic]. The proportionate aim in this case is the commercial objective of having an effective referencing process that serves the interests of landlords. It is asserted that the referencing checks are appropriately rigorous and it is justifiable that housing benefit is not included in calculations and that guarantor checks have their own rigorous requirements. Any conduct of the Defendant is accordingly justified.*

4. The Defendant does not explain what the referencing process is, what checks are included, and why these are justified. However, I am aware that on 01.11.18 the Defendant's General Manager (Residential Lettings), a Ms Fiona Barbour, wrote to the Claimant's solicitor, Rose Arnall of Shelter, stating:

> *...I am pleased to advise you that we have reviewed our procedure for handling potential applicant enquires [sic] with regard to Housing Benefit. Enquirers are now advised the following which we hope will bring clarity to the matter.*
>
> *We can consider applications from applicants in receipt of Housing Benefit provided the affordability threshold, as determined by the referencing provider, is met. Unfortunately, Housing Benefit is not considered as part of the household's income for referencing purposes. However, many other DWP payments, for example, tax credits, pension, Disability Living Allowance, Personal Independence Payment, Carers Allowance can be included. The Landlord has the final decision on any application.* [LR18-469]

5. I understand that on 02.11.18, Ms Arnall replied to Ms Barbour of the Defendant asking for any evidence that 'Housing Benefit is not considered as part of the household's income for referencing purposes' [LR19-471]. Ms Barbour replied on 26.11.18 stating that she had 'heard back from the referencing agency' and that:

> *We have been advised that Housing Benefit is not considered as part of a household's income for referencing purposes as*
>
> *1. it is a payment which can be legally withdrawn at any time and*

> *2. It is awarded at a rate by reference to an individual's income rather than being part of that individual's income*
>
> *I attach a copy of the relevant page from the referencing agency's Referencing Service Guidelines document.*

6. I exhibit a copy of this email and the enclosed document at [LR20-472]. This document appears to be an excerpt from referencing company HomeLet's 'Referencing Service Guidelines and Service Level Agreement'. It gives some examples of '*other types of income*' which '*in some circumstances'* can be taken '*into consideration'*. Housing Benefit is not included in the examples, but the document goes on to state that:

> *This list isn't exhaustive and other benefits/income may be considered. If the benefit/payment can be legally withdrawn at any time then, unfortunately we won't be able to take it into account.*

7. I understand from "Shelter Legal" (Shelter's online publicly accessible "guide to law for housing professionals" written by our in-house professional legal writers, the relevant page of which I exhibit at [LR22-475]) that the circumstances in which Housing Benefit can be suspended or ended are limited under regs 11-14 Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 SI 2001/1002 so that a council will continue to award housing benefit unless or until a claimant either
   7.1. ceases to be entitled (for example, s/he inherits a large amount of capital) or
   7.2. fails to respond to a check on her/his circumstances. In this case, the local authority first suspends the claimant's award, warning the claimant in writing that unless s/he responds, her/his housing benefit will stop altogether
   7.3. becomes entitled to universal credit

8. If the council suspends payments, I understand that they must write to the applicant to notify them of this decision and explain their reasons. They may ask for additional information or evidence. If the applicant provides the information requested within 1 month, then their payments should restart within 14 days and be backdated to the date they were suspended. If the applicant does not provide the evidence or information required to support their claim within 1 month, then the council can end their Housing Benefit payments.

9. I am aware that, in the meantime, Ms Arnall had been corresponding with HomeLet and I exhibit a copy of that correspondence at [LR23-477]. In this correspondence, HomeLet confirmed that '*all applications received are processed on a case by case basis within the guidelines of our criteria'* [LR23-480] and that

> *HomeLet won't use Housing benefit as a top up to any other income to change the 'Accept with guarantor' report to an 'Acceptable' report, but we would accept someone in receipt of housing benefit with a guarantor*. [LR23-485]

10. It is evident from this that it is not correct that Housing Benefit is not included in the Defendant's referencing agency's calculations. It is also clear that there is nothing in HomeLet's criteria which would have justified a policy of refusing to let to people in receipt of Housing Benefit or the point-blank refusal to consider Mr Tyler's application, which he says happened.

11. Whilst the burden is on the Defendant to justify any indirect discrimination, it is in any event the case that Shelter are not aware of any factors which would justify a No DSS policy, criterion, or practice.

12. One reason sometimes put forward is the fear of financial loss due to delayed or unpaid rent. However, an unpublished survey of 1009 private landlords undertaken by Shelter and You Gov from December 2019 to January 2020 [LR14-350] showed that:
    12.1. The majority of landlords surveyed are doing well financially. Eight in ten (81%) are in pre-tax profit when rent is compared to total costs and nearly half of these (39% of all landlords surveyed) say they are making 'a lot more'. Only 8% reported making a monthly loss.
    12.2. The average pre-tax profit among those making a profit was just under £650 per month.
    12.3. Landlords letting to benefit claimants were no less likely to be profitable than average.

13. Similarly, a survey of 3,995 private renters carried out by YouGov in August to September 2019 showed that 95% of tenants claiming Housing Benefit were not falling behind with rent payments [LR12-340 and LR13-344].

14. The possibility that a particular tenant may be able to access savings or other income means that it is never possible to conclude a priori that all tenants on Housing Benefit will be unable to afford a given rent. This conclusion should only be made after assessing their individual circumstances, judging their application on its own merits.

15. Another reason sometimes put forward is that renting to tenants in receipt of Housing Benefit is prohibited by a term of the landlord's mortgage or insurance. However, nearly half of landlords (48%) have no outstanding mortgages on any of the homes they let out (YouGov survey of 1,009 private landlords in England, carried out online from December 2019 to January 2020 [LR14-350]). Further, only a very small number of mortgage lenders still have these restrictive clauses. Shelter have been told by the UK mortgage broker Mortgages for Business that over 95% of mortgage lenders do not restrict tenants on Housing Benefit in their terms and only a few small lenders still have restrictive terms. According to UK Finance (a trade association for the UK banking and financial services sector), buy-to-let lenders with no restrictions against tenants receiving benefits make up a collective 89% of the market for new buy-to-let lending (Written evidence from UK Finance to the Department of Work and Pensions Select Committee "No DSS: discrimination against benefit claimants in the housing sector inquiry", May 2019 [LR24-486]).

16. As to insurance, there is no legal requirement for landlords to have insurance and so they are free to choose whether or not to purchase it, and if so, which type of cover to purchase. The YouGov survey of 1,009 private landlords undertaken between December 2019 and January 2020 shows that 36% of landlords have no form of insurance covering any of their landlord activities and only 25% of landlords hold insurance that protects them from non-payment of the rent [LR14-350].

17. Further, landlord insurance to cover letting to benefit claimants (including rent guarantee insurance) is readily available within the marketplace at an affordable rate. The British Insurance Brokers' Association (BIBA) conducted a survey of its members which showed that 58% of their brokers can arrange landlord's rent protection insurance for landlords renting to tenants claiming benefits at very little or no extra cost (Letter from BIBA to MHGLG, May 2019 [LR25-487]).

18. In any event, I understand that s142 of the Equality Act 2010 states that a term of a contract is unenforceable in so far as it constitutes, promotes, or provides for treatment that is prohibited by the Equality Act, so it is unlikely that any such term would be enforceable.

19. Finally, I would draw to the Court's attention the fact that there is widespread agreement, ranging from MPs to landlord associations, that No DSS policies are not justified. I exhibit at [LR26-499] a number of articles and briefings dated between 20 August 2018 and 27 November 2018 in which the Residential Landlords Association, the National Housing Federation, the National Landlords Association, Rightmove, and Zoopla all agreed that tenants should be assessed on a case-by-case basis and blanket bans against applicants on benefits should not be imposed. On 21 February 2019, the Work and Pensions Select Committee launched an inquiry into "No DSS: discrimination against benefit claimants in the housing sector". I exhibit at [LR27-532] the evidence submitted to that inquiry by the Residential Landlords Association, the National Housing Federation, and Zoopla, in which they again agreed that blanket bans were wrong. In addition to this, on 1 March 2019 Heather Wheeler, then Minister for Housing and Homelessness, stated that the Government was calling for "the end of housing advertisements which specify 'No DSS' tenants" [LR28-543]. On the same day, the then Minister for Family Support, Housing and Child Maintenance, Justin Tomlinson, said "Everyone should have the same opportunity when looking for a home, regardless of whether they are in receipt of benefits" [LR28-543]. On 4 March 2020, the Property Ombudsman stated that "To be excluded from a significant portion of the homes available simply because you are in receipt of Housing Benefits cannot be considered as treating consumers equally…TPO agrees that adverts which discriminate against would-be tenants in receipt of Housing Benefit should end" [LR29-546].

This Judgment has been approved by the Judge.