

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
LONDON

10 December 2021

BEFORE:

HIS HONOUR JUDGE LUBA QC

BETWEEN:

**ROSEBERY HOUSING ASSOCIATION
LIMITED**

Claimant

- v -

CARA WILLIAMS

and

ELAINE WILLIAMS

Defendants

Mr Sam Phillips (instructed by Batchelors, solicitors) for the **Claimant**
Ms Sarah Steinhardt (instructed by Hodge, Jones & Allen, solicitors) for the **First Defendant**
Mr Jonathan Manning and **Ms Vivienne Sedgley** (instructed by TV Edwards, solicitors) for
the **Second Defendant**

Hearing dates: 25, 26, 27 and 28 October 2021
Discussion between Judge and Assessor in Chambers: 3 November 2021

JUDGMENT

His Honour Judge Luba QC:

INTRODUCTION

1. This is a claim for an anti-social behaviour injunction pursuant to Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014. The claimant is a private registered provider of social housing, less formally called a 'housing

association'. I shall refer to it as 'Rosebery'. It was represented at trial by Mr Phillips of counsel.

2. The first defendant, Cara Williams, is one of Rosebery's tenants and is a disabled person. She lives alone. The second defendant, Elaine Williams, is her mother and her sole carer. Intending no disrespect by doing so, but to make it clear which Ms Williams I am referring-to in the judgment, I shall refer to them as Cara and Elaine respectively. It is alleged that each of them has engaged in anti-social behaviour.
3. The claim was defended by both defendants. Each was separately represented by solicitors and counsel, Ms Steinhardt for Cara and Mr Manning for Elaine. In addition, Cara and Elaine each advanced a counterclaim based on alleged breaches by Rosebery of the anti-discrimination provisions in the Equality Act 2010.
4. The claim and counterclaims were set down for trial over three and a half days at a hybrid¹ hearing in open court. Because of the nature of the counterclaim, I sat with an Assessor appointed pursuant to section 114(7) of the 2010 Act. Ms Lucy Moreton has long experience in the fields of disability and discrimination and sits as a fee paid member in the specialist tribunals. I pay tribute to the considerable assistance she provided to the Court, both during the trial and in a post-trial discussion. Her contribution amply justified the statutory presumption in favour of the appointment of specialist assessors in this class of case.
5. At the opening of the trial, Mr Manning indicated that Elaine was willing to give undertakings which, if acceptable to the Court, were accepted by Rosebery as sufficient for its purposes. The claim against Elaine was settled on that basis, subject to the issue of costs. The claim proceeded against Cara. At the conclusion of the evidence in that claim and Cara's counterclaim, Elaine's undertakings were offered in open court on the fourth day of the trial. The issue of costs as between Rosebery and Elaine, which had proved incapable of agreement, was stood over to await this judgment.

¹ As a reasonable adjustment for her disability, Cara gave evidence by video-link. By reason of her own temporary indisposition, the Court permitted the witness Natalie Siveter to do the same.

6. Although it might have been expected that the trial would be shortened by the claim against Elaine settling, it in fact took all the Court time allocated to it. No time remained for me to review the evidence with the Assessor, let alone to deliver judgment and deal with consequential issues. Although I was fortunate to thereafter have an early opportunity to meet with the Assessor in private for discussion, there has (for COVID 19 related reasons) been an unwelcome delay in my finalising this judgment. I regret the additional anxiety that will have been caused to all parties and their witnesses as a result of the, longer than expected, wait for judgment.
7. For the trial, the Court was provided with a two-volume Trial Bundle exceeding 1500 pages of documents. Footnote references in this judgment are to the pagination in that bundle. A further Supplementary Bundle was adduced at trial. In addition, each counsel provided full and helpful skeleton arguments. Less helpful was the provision of a Joint Bundle of Authorities and Materials containing 35 items over more than 350 pages. Although reduced at the insistence of the Court to a Core Authorities Bundle, that still had 25 items over almost 200 pages. Undaunted by the glut of material already put before the Court, counsels' closing submissions referred to yet further material not in either bundle. This must not be repeated in any future county court trial in this class of case.
8. For reasons which will become clear, it is necessary to separate this judgment into two parts – the claim and counterclaim – in order to more clearly explain the reasons for my conclusions on each. Of course, I have considered and reviewed *all* the evidence led at trial in reaching my conclusion on each of them. For obvious reasons, this judgment will not address each and every piece of evidence or dispute of fact. It is concerned only to set out my findings as to the facts on the relevant matters and to explain my reasons for the orders I shall make.

THE ESSENTIAL FACTUAL BACKGROUND

9. Parkview Way is a residential street on a new-build modern housing development constructed around 2010 in the district of the Epsom and Ewell

Borough Council ('the Council'). Rosebery owns many properties on the street and in the development. The occupiers are a mix of shared-ownership purchasers and general needs social housing tenants. The new owners and tenants all moved-in at roughly the same time.

10. Number 98 is a two bedroomed terraced house of which Rosebery is the freehold owner. It has a garden to the rear and a paved driveway to the front.
11. In 2010, Cara moved to No. 98. She purchased a 65% share in the house for over £185,000 and became a leaseholder in respect of the remaining share. The terms are set out in a *New Build Homebuy Lease of a House*² drawn by Rosebery. The agreement provides for the acquisition of further shares (by 'staircasing') with the facility for Cara to thereby acquire a 100% interest and the freehold. Until she does so, the lease provides for upward only rent reviews and contains the usual covenants. Although a part-owner under this shared ownership arrangement, Cara occupies as an assured tenant of Rosebery for the purposes of Part 1 of the Housing Act 1988.³
12. The tenant covenants at clauses 3.18(b) and 3.18(c) require Cara not to do any act or thing which "*may ... cause, or permit to be caused nuisance, annoyance or disturbance to the owners lessees or occupiers of premises in the neighbourhood or visitors to such premises*" or which "*may ... result in any form of harassment or intimidation of any other person*".⁴
13. The neighbourhood housing officer initially responsible for Rosebery's management of the properties at Parkview Way was Ms Sue Ellis. Since October 2019, it has been Mr Stephen Marsh either directly or as manager of another frontline neighbourhood officer.
14. Unhappily, relations between the new residents and neighbours in this part of Parkview Road did not go well. Police records⁵ refer to the reporting of incidents of neighbour disputes as early as 2012 but then escalating from 2017.

² P128

³ P146 clause 16.

⁴ P137

⁵ P173 at para 5

There have been complaints made to Rosebery, the Council and the Police about Cara and Elaine and complaints made to Rosebery, the Council and the Police by Cara against her neighbours.

15. In late January 2020, Rosebery wrote⁶ to Cara setting out the nature of the complaints it had received regarding her behaviour and giving her “one last opportunity” to avoid legal action by desisting from her alleged misconduct. However, it received further complaints. On 30 April 2020, Rosebery’s solicitors sent Cara a notice seeking possession⁷ (under Housing Act 1988 section 8) which gave particulars of 123 matters – running from 6 July 2018 to 17 April 2020 - said to represent breaches of her tenancy agreement by conduct amounting to nuisance or harassment of other residents by her or her mother.

THE CLAIM

The nature of the claim

16. In June 2020, Rosebery brought the present claim for an anti-social behaviour injunction against Cara and Elaine in the County Court at Kingston. The proposed injunction⁸ was drawn to protect, in particular, the following neighbours and their families from nuisance by Cara or Elaine:
 - i) Denise Bassett at No.71 (‘Denise’);
 - ii) Natalie Siveter at No.75 (‘Natalie’);
 - iii) Kylie Manser at No.77 (‘Kylie’); and
 - iv) Lianne Crudwell at No. 96 (‘Lianne’).
17. The properties with the odd-70s numbers face Cara’s home at No. 98 from across the street. Number 96 is the property adjoining her home.

⁶ P188

⁷ P194

⁸ P4 para 1

18. The claim as issued was supported by Witness Statements made by each of those four named neighbours and by Mr Marsh of Rosebery. Additionally, there was a statement from a Mr Nelson, an Environmental Health Manager at the Council. At trial, I heard the evidence of Natalie and Denise (again, I intend no disrespect in using forenames but do so to reflect the way in which those involved referred-to each other in written and oral evidence and in the contemporaneous documents) and from Mr Marsh and Mr Nelson.
19. The mass of material set out in, and attached to, these statements was such that DJ Armstrong directed⁹ that Rosebery was to file and serve a list of no more than six example allegations in relation to each of Cara and Elaine to stand as the particulars in the claim. These were subsequently presented, as he had directed, in Scott Schedule format.¹⁰
20. Accordingly, on the claim, it is for Rosebery to establish on the balance of probabilities that the matters complained-of occurred and that one or more of them amounts to anti-social behaviour. If all or any are so established, they may be treated as ‘examples’ of more general conduct engaged-in by Cara and/or Elaine. Because the claim against Elaine has settled, the focus has been on the six examples of Cara’s alleged anti-social behaviour.

Anti-social Behaviour Injunctions under the 2014 Act

21. Under section 1 of the 2014 Act, the court may grant an injunction against a person only if two conditions are met: (i) it is satisfied on the balance of probabilities that the person has engaged in or threatens to engage in anti-social behaviour; and (ii) it is just and convenient to grant the injunction for the purpose of preventing that person from engaging in anti-social behaviour.
22. The list of those who may apply for an injunction under the 2014 Act is found in section 5(1) and includes a social housing provider. There is no dispute that Rosebery falls into this category.

⁹ P21 para 5

¹⁰ P47

23. 'Anti-social behaviour' is defined in section 2. Where the application is made by a housing provider, such as Rosebery, it means: (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person; (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises; or (c) conduct capable of causing housing-related nuisance or annoyance to any person. 'Housing-related' nuisance means a nuisance which directly or indirectly relates to the housing management functions of the housing provider.

The six allegations

(1) 24 September 2018¹¹

24. This alleges verbal abuse by Cara directed separately towards each of Natalie and Lianne. Further, that Cara: (a) (falsely) accused Lianne of committing a hate crime; and (b) (without justification) threatened to report Lianne, who was a nurse, to the Nursing Council.
25. In support of the first part of this first allegation, I heard and read the evidence of Natalie. In fact, Natalie's witness statement made no mention of this specific incident of alleged verbal abuse of her by Cara at all. There is no record of any complaint she made to Rosebery about it at the time. There is no completed complaint form or any 'diary sheet' from Natalie or any other neighbour referring to the incident. There is no copy Email from Natalie or record of any telephone call from her complaining of the matter. The incident was not raised with Cara by Rosebery at the time, or subsequently. The matter does not appear in the schedule of 123 allegations set out in the notice seeking possession. There is a hearsay reference in Lianne's statement to Natalie saying to Lianne that Cara had been verbally abusive to her (Natalie) on that date.¹² But Lianne was not called to confirm it.
26. As to the second part of the allegation, verbal abuse of Lianne and the making of false allegations against Lianne on 24 September 2018, Rosebery did not call

¹¹ P47

¹² P289 para 8

Lianne to give evidence in support of her June 2020 Witness Statement.¹³ A Hearsay Notice served on 6 October 2021 indicates that Rosebery were in contact with her and could have summoned her had she declined to attend voluntarily. Her witness statement asserts that on this date she was subject of shouted abuse directed at her from Cara, Elaine and additionally from Cara's father. "They" allegedly threatened to report her to the Nursing Council as a "criminal being done for hate crime."¹⁴

27. Lianne did frequently complain to Rosebery about Cara's conduct by Email and by the completion of diary sheets. I was not taken to any such document relating to the alleged incidents on this date. Again, the matters do not appear in the schedule of 123 allegations set out in the notice seeking possession. Nor was the matter raised by Rosebery with Cara at the time.
28. In response to this first of the six allegations, I heard and read the evidence of Cara. She gives a careful and detailed account of the events of the day and the immediate background to them at [43] to [48] of her statement.¹⁵ I accept her account. Not least because it is corroborated. First, she sent an Email to Rosebery and the Police on that same day complaining that she had been the recipient of verbal abuse from Natalie (who had called her "disgusting") and from Lianne (who had called her a "Sicko"). Second, in her evidence at trial Natalie herself confirmed that she may well have said Cara was "disgusting". Third, both the Email sent by Cara and the reproduction of the content of a text¹⁶ in Lianne's statement, confirmed that Cara had indeed complained about Lianne to the Nursing Council and to the Hospital employing her. The reasons why she had done so were given in detail in both her written and oral evidence. In short, they were, firstly because she did not believe it was right for a nurse to be shouting at and being derogatory towards a disabled person and secondly because she had seen Lianne going in and out of other people's houses in her hospital 'scrubs' during the pandemic (giving rise to a risk of her taking infection back to the hospital)

¹³ P287

¹⁴ P289 para 8

¹⁵ P632

¹⁶ P288 para 6

29. I have no hesitation in finding that this first allegation is not made out at all. There is simply not the evidence to support the alleged verbal abuse of Natalie or Lianne. The only aspect proven (i.e. the complaint to Lianne’s regulatory body and employer) did not amount to anti-social behaviour given the circumstances and reasons for its being done. To the contrary, the evidence available strongly suggests that the true ‘victim’ of abuse on 24 September 2018 was Cara and that the perpetrators of any such abuse as did occur were Natalie and Lianne.

(2) “July 2019”

30. This second allegation¹⁷ is of the use of derogatory language by Cara (in the presence of her mother) directed at Natalie and Lianne. Natalie’s statement sets out the crude and abusive language she says was directed to her on this occasion which I need not repeat in this judgment. She describes it not only as abusive and threatening but as an “attack” on her.¹⁸ Although her statement makes no mention of having reported this incident to anyone, she told the Court that she thought she had reported it. She was hopelessly vague as to how and when she reported it, if she had reported it. It does not appear in the schedule of 123 allegations set out in the notice seeking possession.

31. I am far from satisfied that Natalie was the recipient of the foul and abusive language alleged on this date. The language described has much more in common with language not only attributed to Natalie and other neighbours by Cara but also as heard by the Court being used by Natalie in the course of a video recording from a date in March 2021. Indeed, on 15 July 2020 (a year later than this second allegation) a complaint¹⁹ by Cara reproduced in graphic detail a torrent of loud, foul and abusive language used by Natalie. She accepted that she had used this foul language and, indeed, that she had sent an email to Mr Marsh only a few days prior to that incident in which she wrote that “right now I would love to rip Cara’s head off”.

¹⁷ P48 item 2

¹⁸ P339 para 9

¹⁹ P585

32. Yet more pertinently, a year prior to the complaint representing the second of the six allegations, Natalie had been arrested for a public order offence of yelling foul and derogatory abuse at Cara. She confirmed that incident at this trial.
33. Again, Lianne was alleged to be a victim of and witness to this second allegation of misconduct by Cara, but she was not called. If the incident did take place as alleged and the foul language was directed to or heard by her, it is surprising that she has not recorded it in any report or complaint to Rosebery or anyone else. It is not mentioned at all in her witness statement.
34. Unsurprisingly, Cara was in difficulty in addressing her evidence to an allegation identified only by a month and not recorded in any contemporaneous record. Nor has it previously been raised with her by the Police or Rosebery. Having considered all the material I have been taken to at trial, and having considered Cara's own evidence in that context, I am not satisfied that she did use the language alleged.
35. The evidence falls a long way short of establishing this second alleged incident of anti-social behaviour. It is simply not made out. In the circumstances, it is surprising that it was selected as an 'example' of anything.

(3) 17 July 2019²⁰

36. On this date it is alleged that Cara took multiple photographs of Denise while "laughing and trying to provoke a reaction" from her.
37. I heard and read the evidence of Denise in support of this allegation which in her witness statement was also described by her as an incidence of Cara "antagonising and harassing me".²¹ This was said to have occurred with Cara stopping her car "outside my home as I was coming home" but beyond that added no further context.
38. In her evidence at trial she could not actually recall whether Cara had been 'laughing' as she had earlier alleged. She accepted that her response to what she

²⁰ P49

²¹ P335 para 10

perceived to be the photographing/filming of her by Cara was to take out her own mobile phone and record Cara photographing her. She did that because she had been told by Rosebery to make a video record of any anti-social behaviour by Cara. This incident does appear in the schedule of 123 allegations set out in the notice seeking possession and in a diary sheet kept by Denise.

39. Cara's written²² and oral evidence set the incident in its context. She was returning to her home in her car when she noticed that the rubbish bins from Lianne's house had been placed right up against Elaine's car. This had happened before. Cara thought it deliberately done by Lianne because she knew that, by reason of Cara's disability, neither she nor her mother would be able to touch the bins and thus move the car. She therefore took photographs - from the car she was in - of the bins next to her mother's car in order to evidence a complaint to Rosebery about Lianne. She then noticed Denise pointing at her and laughing and she took a photograph of that too. Her account was corroborated by two photographs. Both were taken from inside her own car. One showed the bins abutting her mother's car.²³ The other showed Denise filming her.²⁴
40. The allegation that Cara was 'laughing' at Denise is simply not made out. Denise cannot recall it. In any event, having seen Cara give evidence over several hours it appeared to me that, whether by reason of her disability or otherwise, she adopts a facial expression – particularly when nervous or distressed – that may be wrongly construed as smiling or laughing.
41. More importantly, the fact of the matter was that Cara was inside her own car throughout this 'incident'. It is simply fanciful to suggest that it was an occasion of conduct by Cara amounting to her antagonising or harassing Denise. Moreover, Denise has CCTV capturing movement outside her house. As Cara said in her evidence, this is in the possession of the police and if it shows her laughing at Denise from inside her car, it has simply not been adduced.
42. This is, to my mind, an example of unwelcome or annoying conduct operating the other way around. Her neighbour's reaction to seeing Cara take a photograph

²² P635 para 50

²³ P719

²⁴ P720

(for good reason) was to whip out her own mobile phone to record that fact in the legitimate belief that this is exactly what Rosebery had encouraged residents to do in order to ‘gather evidence’.

43. In short, this third allegation gets nowhere near establishing any anti-social conduct on Cara’s part.

(4) 28 July 2019

44. This is an allegation²⁵ that Cara made derogatory comments (quoted in the Scott Schedule) about Kylie’s disabled son and her care (or otherwise) of him. Not least, telling her to “be careful”.
45. Although there is an incident attributed to 28 July 2019 in the schedule of incidents attached to the notice seeking possession it is not this incident. There does not appear to be any record or report or any contemporaneous complaint about this alleged incident.
46. The assertion that it occurred is contained in Kylie’s witness statement.²⁶ Again, Rosebery did not call Kylie to give evidence in support of her statement. The uncorroborated allegation could not be tested. It is made in terms of very precise language being used and that language is said to have been recalled verbatim when Kylie made her statement, almost a year after the event, in May 2020. The Hearsay Notice gave no explanation, by Kylie’s own words, as to why she would not come to Court to give evidence - despite Rosebery clearly having been in touch with her.
47. Much useful judicial guidance²⁷ has been given about the dangers of reliance on untested hearsay evidence in this class of case.
48. Cara’s written evidence in response,²⁸ explains that she has no recall of this incident and that her video recordings taken inside her home on this date suggest that she was inside her home all day and did not go out at all. She conceded that

²⁵ P50

²⁶ P402 para 11

²⁷ Not least from Brooke LJ in *Moat Housing* [2006] QB 606 at [135] – [136] and [140]

²⁸ P 636 para 51

she had, on an earlier occasion, told Kylie that she should be careful about her disabled son following an incident in which he nearly ran into the road. But she denied making any derogatory comments about the son or his disability.

49. I accept Cara's account. It was not undermined in examination of her at trial. There is simply no direct evidence on which reliance can be placed to the contrary. There is no good reason to give any weight to the hearsay on which Rosebery relies. The allegation is for Rosebery to prove, not the other way around, and it is simply not made out.

(5) 30 August 2019

50. This is an allegation²⁹ that while inside her own home, Cara stood at her window and began shouting at Kylie's son and banging on the window.
51. In Kylie's witness statement it is said that the banging was "hard" and was done because Cara was "trying to scare my son".³⁰ As to the shouting, there is no suggestion that what was being shouted could be or was heard or what language was used.
52. Again, Kylie was not available to be examined about this statement. There is no explanation in her own words as to why she could not or would not attend court to give her evidence. There is no contemporaneous record or note of this complaint. No Email or diary sheet, and nothing in Rosebery's file notes about it.
53. If this allegation is what it appears to be, an incident of a resident deliberately seeking to frighten a young disabled child of nursery school age, it is astonishing that it was not raised by Rosebery or the Police with Cara at the time. It emerges for the first time more than six months after the event in the list appended to the notice seeking possession where it is described as: "That morning you shouted

²⁹ P50

³⁰ P403 para 12

at a resident and *their children*".³¹ My own emphasis added. There is no reference to any banging of a window.

54. Cara's account was that this was not only an untrue allegation but likely to be untrue for the reasons she set out in her statement.³² She was not moved from that account in examination.
55. Again, the evidence before the Court gets nowhere near establishing that this alleged anti-social behaviour on Cara's part took place as alleged or at all.

(6) January 2020³³

56. This sixth allegation is that, throughout January 2020, Cara played music from her home at such a volume that it could be heard outside and, indeed, attracted a statutory nuisance abatement notice from the Council.
57. This allegation is supported by the evidence of Mr Nelson, the Environmental Health Manager.³⁴ He found loud heavy bass beat music to be coming from the property at No. 98 and he caused the statutory notice to be served.
58. At trial, he confirmed that there had been noise nuisance created *both* by Cara and by her immediate neighbour Lianne. He accepted that in February 2020, Cara had Emailed³⁵ him with copies of messages³⁶ she had sent to Lianne through the Spring and early Summer of the previous year complaining about her (Lianne's) loud music.
59. After serving the notice, he wrote to Cara in late February 2020 that he was pleased that she had "considered the position and agreed to turn down both the volume and the bass and checked to see if this was effective".³⁷ There has been no breach of the notice and he had no report of any further noise nuisance from Cara's home.

³¹ P203 para 47

³² P636 para 52

³³ P51

³⁴ P430 para 11

³⁵ P739

³⁶ P729

³⁷ P734

60. He confirmed that Rosebery had installed a noise monitoring application and that parts of the recordings from it had been shared with him in April 2020. They had demonstrated excessive noise from Cara's neighbour which he then addressed. A sample was played to the Court which clearly demonstrated excess noise coming through the walls into Cara's home.
61. Cara's account³⁸ was that she had complained to Rosebery about the noise from next door. Rosebery responded by providing the noise monitoring 'app' which Cara then used to send recordings of excess noise to Rosebery. Over 200 recordings were provided. The noise continued. In response to that continuing noise nuisance, Cara bought a soundbar to amplify the sounds made by devices in her own home so that she could hear them over the noise from next door. That caused the nuisance then emanating from her home. This account was set out in detail in a letter³⁹ to Rosebery's complaints officer, complaining about the failure to act on Lianne's noise nuisance, written two months before the present claim was lodged.
62. Since the nuisance from Lianne's house stopped, there has been no noise nuisance from Cara's home. Lianne has since moved out. There is no evidence before the Court of any complaint from the new neighbour.
63. Accordingly, I find that this sixth allegation is made out. There was anti-social behaviour in the form of noise nuisance for which Cara was responsible in the weeks of January 2020. Indeed, that is admitted by Cara.

Conclusions on the claim

64. It is right to record that before reaching any final conclusions on the six allegations, I stood back and reflected upon whether there was an extent to which the accounts of one or more witnesses for Rosebery could be taken to corroborate the accounts of others, such as to plug evidential 'gaps' by way of

³⁸ P637 para 53

³⁹ P1863

direct evidence and satisfy the Court that, beyond the noise nuisance, Cara had behaved in the anti-social manner alleged in the other five allegations.

65. I regret that I could not have confidence in the accounts of either of the residents called by Rosebery. Each had, to some extent at least, either exaggerated their evidence or embellished it. I accept, for reasons to which I shall come, that each of them was under great stress, but nevertheless I was given the firm impression that each had lost any sense of perspective and was determined to (in my own words) ‘bring Cara down’.
66. Denise had seen an incident on 8 June 2020 during which Cara and her mother, while inside a vehicle, had been subjected to horrendous and frightening abuse by a visitor to Lianne’s home who had yanked open their car door and screamed at them. His actions would have left anyone terrified. The immediate cause of the incident appeared to have been Cara or her mother sounding their horn at his van. Any fair account of what occurred would have explained these features. Instead, Denise complained to Rosebery that Cara had been ‘blocking other road users’ on that day. Understandably, Cara had called 999 while *in situ* and had complained to the police about the incident. No-one has been prosecuted despite what the video recording, played to the Court, clearly shows.
67. Denise also misrepresented in her oral and written evidence an incident which took place on 18 August 2021, about which I shall say a good deal more later. The Court watched recordings of that incident more than once and from different camera angles. Denise’s account, to say the least, failed to paint a true picture. Her contention that Tom (Stephens) “did not get near”⁴⁰ Cara in that incident is, to put it at its lowest, manifestly inaccurate. In the course of that incident, Denise is heard saying loudly “her (Cara’s) case is going to Court on 25th October and I can’t wait”.
68. Natalie, likewise, gave a partisan and inaccurate account in the face of incontrovertible evidence. In a recording taken on 5 March 2021, she can clearly be heard screaming foul invective at Lianne but told me at Court that she thought she had behaved calmly in the face of stressful provocation. Her account of the

⁴⁰ P474 para 8

incident which took place on 18 August 2021 appeared to attribute to some action on the part of Cara (who was passive) the violent agitation of Tom which led to him having chest pains. This was as near to re-writing the incident as one could get.

69. In those circumstances, I could not accept the evidence of Natalie and Denise as corroborating their respective accounts of events or the accounts of others.
70. In short, therefore, the direct evidence I heard and read cannot sustain the claim (save in respect of the temporary noise nuisance). Mr Phillips did his best to draw something out of the hearsay evidence of the various witnesses whom he had not called – the former residents Kylie and Lianne and the police officer PC Arthur. I am not satisfied that I can place any sufficient weight on any of that material to fill the evidential chasm for Rosebery in making good all but one of its allegations.
71. Accordingly, the single allegation of conduct amounting to anti-social behaviour that has been established in the claim is the sixth and final allegation against Cara amounting to a short period of noise nuisance now almost two years ago. In respect of all other allegations, they have fallen well short of being made out.
72. Mr Phillips submitted that in deciding what matters had been made out, so as to ground the claim for an injunction, the Court should take into account the mass of other material collated in the trial bundle and proceed to grant broad injunctive relief ranging well beyond noise nuisance – the only proven allegation on the evidence.
73. I reject that submission. The directions of DJ Armstrong clearly limited the Particulars of Claim to six allegations which might, if proven, be said to be mere examples or illustrations of a class of activity or behaviour on Cara's part. No application was made before or during trial to amend the pleaded case to substitute any one of the six allegations for another or to replace more than one. The consequence of the failure of all allegations other than noise nuisance is that the only conduct of which there is an 'example' is a single period of noise nuisance during an occupancy of over a decade.

74. Given the circumstances in which that short period of noise nuisance arose, essentially as a response to the unrestrained (by the authorities) nuisance of another resident, it is at the lower, if not lowest, rung of noise nuisance allegations likely to be established on any application for an anti-social behaviour injunction.
75. I must now ask and answer the statutory question, raised by the second precondition to the making of an anti-social behaviour injunction, namely whether it is just and convenient to grant the injunction sought. I have no hesitation in finding that this condition is not met.
76. First, the noise nuisance established is historic. Second, there is no suggestion of any repetition since early 2020. Third, the measures already taken to address and remedy the noise nuisance have ‘worked’. Fourth, the person whose actions provoked the nuisance has moved away. Fifth, there is no complaint from their replacement. Sixth, sufficient safeguard against a re-start of noise nuisance is provided by the powers of the Council’s environmental health department to enforce its earlier order or impose a new one. Seventh, I am satisfied by Cara’s assurance that there will be no repeat of this conduct.

Endnote on the Claim

77. Any reader of this judgment down to this point would find it extraordinary that this claim has been pressed to trial in this way by a responsible social landlord. The claim has been a forensic disaster for Rosebery and for the residents in whose interests it thought it was proceeding.
78. When constrained, by earlier judicial order, to advancing its case on only six sample allegations one might have expected it to select ‘typical’ instances from the mass of material on which it thought it was able to draw. The six samples would have each been the subject of clear, direct, corroborated evidence from witnesses who could be called. Each example would have had a clear ‘audit trail’ cross-referenced to a contemporaneous note or record or copy of the ‘victim’s complaint’ followed by material showing that it was put to Cara at the time without any proper explanation in response. To the fore, one might have

thought, would be matters in respect of which police officers, housing staff or Council officials could give direct evidence.

79. In the event, five out of the six allegations selected as examples had, in the event, no sustainable evidential ‘legs’. Both the residents who attended to give evidence and those who did not will be astonished to read how Rosebery have pressed this case. They, I have no doubt, would all say that their real grievances against Cara and Elaine have nothing substantively to do with the six ‘examples’ brought before the Court by Rosebery and everything to do with something else entirely. They are entitled to be troubled by the fact that what this trial has really been about emerges only by turning attention to Cara’s counterclaim.

THE COUNTERCLAIM

The Disability

80. Cara has the condition Obsessive Compulsive Disorder (OCD). It manifests itself in Cara undertaking repetitive rituals and behaviours. The manifestation of those rituals and behaviours includes her obsessive filming of her surroundings.
81. The history of her condition is set out in the report⁴¹ of a Professor David Veale a consultant psychiatrist who runs a national service for those with severe OCD and who has treated Cara in the past.
82. His report indicates that her condition seems to have developed in 2009 and to have been triggered by a stressful situation in her then employment. After cognitive behaviour therapy from January to September 2010 she was initially able to return to work. She relapsed in March 2011 and was referred by the Community Mental Health Team for specialist care. She was admitted to the Priory Hospital as an in-patient in September 2011. Although there was some recovery, she was admitted again in 2012-13, this time to the Springfield Hospital. Later, a further and significant period of in-patient treatment (nine

⁴¹ P1384

months) at the Priory Hospital enabled her to make good progress but ended with her discharge in February 2016. She has not been able to keep her OCD in check since then.

83. Prof. Veale describes Cara’s mental disorder of OCD as “significantly handicapping her to a degree that has a long-term substantial effect on her day to day life”. He considers that she has been “severely disabled, unable to work and at times housebound”.⁴² His view is that, unhappily for her recovery and even if for understandable reasons, Cara’s mother Elaine “accommodates” her OCD and is to an extent “part of her OCD”.
84. However, his report is optimistic that Cara’s condition is treatable and that if Cara is referred by the local medical and health care agencies for specialist treatment at services like his, she could and should receive the care and treatment she needs to address her condition. It will be NHS funded and all that is needed is an appropriate referral from the local mental health service provider. He urges those involved, including the Court, to refer her case to the local Clinical Commissioning Group so that she can get the treatment she needs.
85. Another report⁴³ from Professor Salkovskis – a chartered psychologist and Director of a Centre of Psychological Help – based on interviews with Cara and access to her medical notes - confirms the diagnosis of OCD “at the most severe level” and rejects the proposition that she meets the diagnostic criteria for, alternatively or additionally, personality disorder. He finds that she does meet the criteria for severe Major Depression and has “severe mental health problems” which “result in very substantial disability in almost all areas of her life”.⁴⁴
86. Rosebery have long known that Cara has the OCD condition and now accept that she is a disabled person as defined by Equality Act 2010 section 6. They are right to do so. The impact of the condition on Cara herself is graphically set out in her witness statements and was not challenged.

⁴² P1388 at 3.2

⁴³ P1392

⁴⁴ P1387

Manifestation of Disability

87. The reports of the two professors set out, in detail, the behaviours and rituals that Cara's form of OCD involves (I need not set out here the full – and often highly personal - particulars).
88. They include extensive and obsessive filming of her surroundings both within, and when she ventures out from, her home. Prof Veale observes that she believes that her compulsion of filming is the “only thing that keeps her safe...She does not feel safe with her neighbours and this just increases her videoing.” The result is a mass of stored images and videos held on a multiplicity of hard drive devices within her home because a further manifestation of her OCD is that she will not delete anything. But Prof Veale does not believe that she has “any intention of filming others maliciously or for perverse reasons”.⁴⁵
89. Prof Salkovskis opines that incidents of video recording and obsessive ‘checking’ are “the direct consequences of Cara’s OCD”.⁴⁶ Prof Veale notes that this includes videoing “all around her property” and “all around her fence” in addition to videoing movements to and from her or her mother’s car. Prof Salkovskis records that “she videos everything she does from the moment she wakes up”.⁴⁷
90. Obsessive filming is not the only public manifestation of her disorder. Driving up and down her street for long periods and then simply sitting in her or her mother’s car on the street for long periods “functions as a way of calming her”.⁴⁸
91. Since 2017, Cara has had the assistance of Craig Shirley from the OCD Treatment Centre who has visited her frequently. He has been trying to help her address the issues relating to videoing and the use of vehicles. He reports that Cara recording “her environment is for no other reason than to reduce her

⁴⁵ P1389 at 3.5

⁴⁶ P1400 at 5

⁴⁷ P1396

⁴⁸ P1388

anxiety in relation to her OCD. Cara does not want to record but due to her condition feels an overwhelming urge to do so”.⁴⁹

The consequences

92. Like Cara herself, the experts acknowledge that her behaviour appears “mad” and “anti-social” to others who, understandably, do not know of, or have insight into, her conditions. To them such behaviour may appear to constitute a nuisance. In relation to the obsessive videoing, Prof Veale “would not be surprised if this had led to conflict with her neighbours”. The same might be said about the incessant driving up and down the road, sitting in cars for long periods, and the like.
93. One can well appreciate the impacts that the public manifestations of her condition will have had on Cara’s neighbours, particularly in the absence of adequate clinical treatment of her condition over recent years. Inevitably, neighbours and members of their families will have felt intrusion and lack of privacy as a result of the constant filming (let alone that all the recordings are being stored indefinitely). Additionally, the ‘odd’ relationship between Cara and the vehicles she uses have led to difficulties about obstructing the street and parking issues.
94. Police records of ‘incidents’ involving Cara and her neighbours began reaching the police in 2012 and became more frequent from 2017. Rather surprisingly, Mr Marsh’s evidence was that Rosebery only began to receive complaints in April 2018.⁵⁰ In respect of complaints about Cara, they focus on the taking of photographs and videoing and on the impact of her behaviours in respect of her driving and parking.
95. Not all Cara’s neighbours were able to respond sympathetically or with tolerance. Cara herself became the object of abuse and other anti-social behaviour from neighbours responding to her behaviours. The complaints built up with Rosebery from her neighbours and from her. Several neighbours lost self-control, including Lianne who, among other responses, abused Mr Shirley,

⁴⁹ P225

⁵⁰ P119 at 9

the therapist, and was, as a result, one of several neighbours issued with a community resolution order. The Police had reports from Cara of her being called a “fucking weirdo” by Lianne and a “paedo” by Natalie.

96. Ordinarily, such matters might be addressed by all parties seeking to agree to modify their behaviour and desist or stop. The difficulty for Cara is that she was not and is not in ‘control’ of her behaviours and cannot sensibly agree to stop them. The medical evidence before the Court is strongly to that effect. A single attempt by Rosebery was made to achieve a mediation between Cara and Natalie but it failed for reasons associated with Cara’s disability.
97. A multi-agency meeting was held on 3 October 2018 at Rosebery’s request.⁵¹ Mr Marsh and another housing officer – the neighbourhood team leader – Ms Scruton attended for Rosebery. Recently received complaints were reviewed. The discussion on “action” to be taken includes Ms Scruton contributing “Can we have an injunction on Cara in regards to filming, Cara should not be filming” and Mr Marsh asking “Will we state to Cara that she cannot film” to which the police officer present responds “yes”.
98. Mr Nelson from the council was also present. After the meeting he reviewed the complaints being made in both directions. He decided to issue three community warning notices to other residents and one to Cara. Later, he issued such notices to Elaine. His department continued, particularly in 2019, to receive reports from residents about “continued and intrusive filming and taking photographs of persons and property and dangerous behaviour with vehicles”. The council itself initially considered seeking an injunction but its legal advice was reported as being that it would “likely not succeed unless it was confirmed that the positive requirement to engage with the mental health services was achievable and the services [made] available to Cara”⁵². Following a change in management staff, the Council did not pursue it as an option.
99. Sadly, matters continued to escalate not least in respect of filming. The police told Cara that if they were to pursue allegations that she was making about anti-

⁵¹ P255

⁵² P260

social behaviour by her neighbours they would require full video evidence not just of the conduct or abuse complained of but also of the scene for a period before and after. Other residents understood that they had been instructed to film Cara when they considered her to be engaged in anti-social behaviour. The incidence of residents filming each other simply spiralled. The police view by the end of 2019 was that the “underlying issue”⁵³ was filming by Cara (and, by then, Elaine).

100. It is not necessary in this already lengthy judgment to trawl through the huge number of incidents reported to Rosebery and others about Cara’s actions or by Cara about the actions of others. At their heart are the manifestations of her OCD – the filming and the driving/parking. That much is clear from the events from early January 2020 to the launch of these proceedings.
101. On 14 January 2020, there was a further multi-agency meeting. This time attended by the Clinical Team Lead from the local Community Mental Health Service and a Consultant Counselling Psychologist. However, it does not appear that either of them were familiar with Cara (in the sense of having treated or examined her), or specialists in OCD, or had had access to Cara’s medical records. Their contribution to the meeting was to report on a visit to Cara made by two unidentified but “experienced” members of staff who assessed that Cara’s condition was not such as to give rise to “immediate risks” and that there were “no acute mental health concerns”.⁵⁴ She was considered to have capacity to make her own decisions about her care and treatment.
102. It is tolerably clear from the language of that summary that the mental health professionals who had visited Cara had done so primarily in order to decide whether she was so lacking in capacity, and at such immediate risk, as to require compulsory intervention.

⁵³ P259

⁵⁴ P217

103. In contrast, the Police report to the January 2020 meeting was to the effect that “the ongoing disputes with neighbours will end in Cara committing suicide or that she would be a victim of a homicide”.⁵⁵
104. Rosebery’s contribution to the meeting was limited because it was represented not by Mr Marsh or a more senior officer but by a Ms Shona Kelly who had been so poorly briefed that she advised the meeting that Cara had been offered a house move by Rosebery which she had declined.⁵⁶ That was wholly incorrect. No such offer had been made, let alone declined.
105. For its part the Council confirmed the Police account that multiple complaints were still coming in from both Cara and other residents. It was at that stage still considering an injunction but “due to nature of mental health problems and OCD are unsure on how they can proceed”.⁵⁷
106. It would appear that in the same month, January 2020, Rosebery resolved that *it* would consider the option of legal proceedings against Cara (and Elaine). In a process that began on 11 January and concluded on 20 January, Mr Marsh and the Head of Housing at Rosebery completed an “Equality & Human Rights Impact Assessment”.⁵⁸ It summarises Cara’s anti-social behaviour as including the issues of both filming and parking anti-socially and (at that date) loud music noise. It also refers generally to harassment and verbal abuse. While noting that Cara “may have a disability of OCD” and that Rosebery do “not know, and are unable to say, whether the anti-social behaviour and nuisance that Cara Williams causes is attributable to any disability” it records a decision to take legal action against Cara based not only on concerns about other residents but “a risk to her own health and safety”. The report considers that no less drastic action than legal action can be taken to “tackle the behaviour”.
107. Mr Marsh wrote to Cara on 29 January 2020⁵⁹ that “we are ready to take legal action against you” and offering her “one last opportunity” to desist from “the

⁵⁵ P217

⁵⁶ P224

⁵⁷ P224

⁵⁸ P277

⁵⁹ P1085

acts of antisocial behaviour and nuisance towards the local residents as described above”. The description ‘above’ recounted that reports of anti-social behaviour “have very much surrounded you repeatedly committing acts of nuisance and intimidation to your neighbours by video recording them on a daily basis.” It relates “reports about you harassing and committing acts of nuisance towards your neighbours by continually videoing them” and a list of alleged recent escalations included (among others) “You continuing to record your neighbours” and “Driving up and down the road video recording your neighbours”. The warning noted that Cara’s OCD “may or may not be linked to the behaviour complained of.”

108. On 10 February 2020, Cara responded⁶⁰ in writing and in detail to the assertions made in Mr Marsh’s final warning letter. She took issue (for reasons she gave) with what she considered numerous factually incorrect assertions in his letter. As to the main alleged anti-social behaviour, she wrote that “I am not recording my neighbours, if this was the problem, I think the police would have questioned me. I have OCD and do need to record my surrounding areas, but at no point do I *target* my OCD recording on specific people ...*The only time I have recorded my neighbours directly is for evidence which both you and the police have asked me to do.*” [Emphasis added by me]. As to videoing neighbours from her car, she responded “Again this has been explained. I do not know why you think I would want videos of my neighbours.”
109. For its part, the Council too – having decided not to go down the injunction route – had considered other possible legal action against Cara. As already noted above, it addressed her noise nuisance with an abatement notice. But as to Cara’s other behaviour, Mr Nelson’s evidence was that he had decided not to proceed with issuing a Community Protection Notice to Cara because “mindful of [Cara’s] reported fragile mental health it was a concern that she would very quickly breach the notice resulting in possible criminal proceedings. None of these outcomes would serve to ease tensions in Parkview Way”.⁶¹

⁶⁰ P1193

⁶¹ P430 at 12

110. Rosebery instructed solicitors to pursue the legal action it had resolved to take (only against Cara – with Elaine - and not against any other resident). The solicitors wrote to her on 30 April 2020 indicating that their instructions were to seek an anti-social behaviour injunction and to take first steps towards repossession of her home by serving a notice seeking possession. The notice attached a schedule of 123 specific allegations covering the period 6 July 2018 to 17 April 2020. It was the first time that Cara had been given the details of the particular incidents alleged against her. Save for the complaints relating to noise nuisance in and around January 2020, the schedule is dominated by reports about filming and by driving and parking issues.
111. Cara herself instructed solicitors. They wrote a series of letters⁶² through May and June 2020 to Rosebery’s solicitors giving full details of Cara’s health condition, her treatment, her in-patient history and indicating that a full response would be provided to all the scheduled allegations. No substantive replies were received. On 23 June 2020, those solicitors wrote that Cara had instructed them in a proposed claim against Rosebery for discrimination.⁶³ The letter set out in detail measures that might be taken by Rosebery to address the way forward other than by its own proposed legal action(s). That received no reply. In August 2020, the solicitors sent Cara’s highly detailed response to each of the 123 allegations to Rosebery.
112. On 22 June 2020, Rosebery filed the present injunction claim.⁶⁴ It was accompanied by a draft order in wide terms addressing nuisance, annoyance, harassment and intimidation and seeking the addition of a power of arrest to the injunction terms.⁶⁵ For the reasons already given above, that claim has failed.
113. It took over 12 months to come on for trial. That did not prove to be a period in which complaints in either direction abated. But much did happen.

⁶² P211, 218, 248 and 250.

⁶³ P595

⁶⁴ P1

⁶⁵ P3. It is right to record that Mr Phillips disclaimed any intention to seek a power of arrest attached to the much more limited and refined draft injunction orders put before the court in the course of the trial.

114. Not least, Cara’s solicitors set about making the necessary referrals of Cara to the relevant statutory and medical services agencies to have her needs assessed and services delivered. They commissioned and supplied the medical evidence I have already mentioned.
115. For its part, Rosebery carried out two further Equality Act assessments. The first was undertaken by another Rosebery officer relatively new to the situation. She concluded in January 2021 that it should continue to press the legal proceedings because “affected residents are experiencing on-going problems with [Cara and Elaine] still filming them and their families when they see them in Parkview Way”.⁶⁶ On 17 September 2021, Mr Marsh and the Director of Housing jointly signed-off another Assessment referring to on-going complaints (“mainly filming”).⁶⁷ It recognised that Cara “is diagnosed with OCD. However, her actions and behaviours are causing a serious detrimental effect on her neighbours. We feel that there is no other action available to us at this time that we haven’t already tried.”
116. For its part, the Council had changed tack. A new anti-social behaviour officer set up a statutory Community Trigger Process which, for the first time, centered around Cara and her complaints about the anti-social behaviour, and in particular, foul and loud abuse and threats of violence, that she had received from several of her neighbours. The step-change in the approach this produced (at least in the Council’s approach) is well illustrated in the minutes of the Community Trigger ASB Review Meetings held on 24 February 2021⁶⁸, 26 April 2021⁶⁹ and, most significantly, on 19 May 2021 and attended for Rosebery by its Director of Housing. The May meeting opened with the reading of a graphic narrative treating Cara as the victim and detailing how she feels about what has been happening to her. It runs on to a whole series of actions that the Council and others could and would take in response, including involving the local Clinical Commissioning Group. What is presumably the “independent ASB Advice” tendered by an observer from Stoke council is noted as including

⁶⁶ P467

⁶⁷ P470

⁶⁸ P683

⁶⁹ P687

“Cara’s OCD is currently exacerbated as she is feeling extremely anxious about the behaviour of her neighbours and the legal action to be taken by Rosebery. This is a vicious circle as it appears her rituals will not improve if her anxiety remains so high. It is clear that Cara would like to stop but this isn’t something she can just decide to do. This case will require specialist multi-agency working and community management for the wider community. The CCG are a responsible authority when it comes to the community trigger and they may be able to assist with getting the relevant help (health wise) that Cara requires.”

117. No doubt in response to the new direction of travel set by the community trigger process and all the material disclosed in the course of the litigation, the position for Rosebery at trial was more nuanced than seeking an order to stop Cara filming. In his oral evidence, Mr Marsh was clear that what he wanted was for Cara to be ordered to desist from what he described as ‘targeted’ filming of her neighbours and their families. Faithful to this more limited approach, Mr Philipps advanced the case as one in which the real issue was the need to stop or restrain *intentional* or *deliberate* filming by Cara i.e. not filming triggered by her OCD rituals and behaviours.
118. In my judgment, nothing could better have illustrated the impracticability of that approach than an incident which occurred on 20 August 2021. The following account represents my findings as to what happened, having seen several video images and recordings and having read and heard the evidence of those involved.
119. Cara and her mother are sitting passively and separately on each side of her paved front driveway on what appears to be a clear, warm day. Cara is holding a dog or puppy. She is awaiting a food delivery order. Part of her rituals require her to record the entry of the delivery courier into the area surrounding her home. She knows the direction in which he will come down the road. When alerted by her mobile phone app that he will be shortly arriving, she gets up, saying to her mother that she’s going to see “the takeaway” arriving. She moves slowly to the end of the drive to the point it adjoins the pavement. Her mobile phone camera is held static at an odd angle and appears to be recording the roadway pointed in the direction from which the courier is expected to arrive.

There is no film of her neighbours and their driveways on Cara's side of the road (such view is obstructed by a high fence between her neighbours' property and her own). The camera does not pan round to the opposite side of the road or focus in or out or change direction.

120. As it happens, Mr and Mrs Stephens are standing on the pavement some distance away in the direction Cara is filming and they are talking with Denise and others. On that day, their son Alfie, had been issued a Community Protection Notice as a result of his swearing at Cara.
121. They notice Cara and can see that she is filming with the phone camera pointing in their direction. They begin to move down the pavement towards Cara and start raising their voices and shouting. As they approach, Mr Stephens arrives plainly distraught, indeed 'besides himself'. He lunges at Cara as if to grab for her mobile phone. He is extremely agitated. In addition to shouting and directing abusive language (indeed, a torrent of expletives) at Cara about her filming of him and the others, he shouts that she is laughing and smirking at him. He is flailing his arms but, fortunately, his wife is able to restrain him. The others gather, including Denise, making it clear that they believe Cara was deliberately filming them and that they have had enough of it. Mr Stephens is eventually pulled clear. A different neighbour comes into view from across the road. He has come out to see what the commotion is about. He is calm and collected and Cara asks if he will intervene. That becomes unnecessary as the others move away and, in the course of her departure Denise says (as recounted above) that she "cannot wait" for the date of this trial.
122. Throughout this fracas, Elaine does not appear to rise from her seat and her reaction is limited to counselling Cara not to react. Cara is breathing heavily throughout but says nothing in response to the challenge from the group save to ask her mother to call the police and her neighbour who has arrived from across the street, to assist.
123. It was put to Cara that this was an incidence of her deliberately targeting her filming at or towards her neighbours rather than anything to do with her OCD behaviours in recording the arrival of a food delivery. Cara was clearly

distressed by the suggestion and rejected it. I accepted *her* account given fully in her most recent witness statement⁷⁰ and confirmed in the witness box. It rings true with the video recordings watched (more than once) in Court.

124. In my judgment, this incident is a paradigm illustrating the non-workability of the sort of injunction order Rosebery were seeking at trial. No doubt, had that injunction been in place, all the neighbours in the group would have blamed Cara for ‘deliberately’ filming and complained to Rosebery that she was in breach of the injunction. They would have been supported by others, not least Natalie who blamed Cara for nearly causing Mr Stephens to have a health relapse in the course of the incident.
125. In fact, if there was a ‘victim’ in this incident it was Cara. It was she who complained about it to Rosebery without any prompt response. What the incident vividly illustrates is that an injunction of the limited nature now sought by Rosebery would do nothing to calm tensions on the street and instead was more likely to exacerbate them and continue the present vicious cycle.

The legal basis of the Counterclaim

126. The broad assertion in the Amended Defence and Counterclaim⁷¹ is that “in its dealings with [Cara] and by bringing and continuing with proceedings against her, [Rosebery] has acted unlawfully and had unlawfully discriminated against the [Cara].”⁷² Rosebery joins issue by a Defence to Counterclaims.⁷³
127. Although a plethora of provisions of the Equality Act 2010 are pleaded as relevant, I only need here mention sections 15, 26, 35, 136, and 149.
128. The first of those is concerned with disability-related discrimination. It provides:

Discrimination arising from disability

⁷⁰ P630 at 38

⁷¹ P39

⁷² P39 at 34

⁷³ P76

(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.

129. Here, A is Rosebery and B is Cara. In my judgment, this is not a case in which Rosebery can rely on subsection (2). It has known, when pressing this claim, that Cara had a disability. That has been formally admitted since no later than its Defence to Counterclaim in March 2021. But I am amply satisfied on the evidence that, since at least the time of the first allegations referenced by Mr Marsh, Rosebery either knew, or should reasonably have been expected to have known, of that disability.

130. The second statutory provision, section 26 addresses harassment. It provides:

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

131. Again, A is Rosebery and B is Cara. The pleaded claim is that Rosebery staff have subjected Cara to harassment and the organisation is vicariously responsible for their actions.

132. Section 35 renders discrimination unlawful when a housing provider subjects an occupier to a detriment or harasses them. It provides:

(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); or

(c) by subjecting B to any other detriment

(2) A person who manages premises must not, in relation to their management, harass—

(a) a person who occupies them...

133. There can be no doubt that to subject a tenant to legal proceedings by an injunction claim is a 'detriment'. All the more so where the grant of, and breach of, such an injunction may give rise (as here) to a mandatory ground for possession or (as originally sought) an arrest pursuant to a power of arrest. Likewise, service of a notice of seeking possession may be considered a detriment or, in an appropriate case, an instance of harassment.

134. Section 149 is lengthy (and not reproduced here in full) but casts a public sector equality duty on public bodies, or private bodies carrying out public functions, such as Rosebery. It relevantly includes the following:

(4) The steps 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.

135. Given the circumstances and history of this case, a grasp by Rosebery of these and the other dimensions of the public sector equality duty may have transformed the way in which the difficulties on Parkview Way were addressed.

Mr Marsh, the lead officer for Rosebery in this case, fully acknowledged that he did not know of the terms of section 149 and was not familiar with the public sector equality duty. How precisely he had come to make an *informed* (by the terms of the 2010 Act) contribution to the two Equality Act assessments which bear his name is far from clear.

136. Although on the facts of this case, nothing in respect of the disposal of the counterclaim ultimately turns (as will be seen) on the operation of the burden of proof, it is right to record the special reverse burden provisions in section 136 which state that:

(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.

137. In any event, in the instant case, and with particular reference to sections 15 and 35, if Cara established facts such as to show that she had been subject to a detriment for something arising in consequence of her disability, it would fall to Rosebery to show that the treatment was a proportionate means of achieving a legitimate aim.

Conclusions on the Counterclaim

138. Before moving on to the considerations raised by the counterclaim, and my conclusions upon them, I again pay tribute to the contribution made by my Assessor. Her assistance on these aspects of the case has been invaluable.
139. First, one starts with the protected characteristic. Here, it is disability. Seen through the prism of the definition offered by section 6 of the 2010 Act, Cara manifestly has a mental impairment, and that impairment has had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.
140. Next, has Rosebery treated Cara unfavourably “because of something arising in consequence of” her disability? In this case, the unchallenged medical evidence,

which I accept, was that obsessive videoing and photographing (in short, filming) and (what might simply be described as) obsessive car-use-related issues were public manifestations of Cara's disability. Mr Phillips' careful submissions were to the effect that Rosebery was not taking legal action exclusively or mainly by reason of those manifestations of Cara's disability but rather because of other alleged non-OCD related anti-social behaviour such as verbal abuse, noise and *targeted* filming of others.

141. I cannot accept that submission because the facts do not support it. As the evidence above recounts, it was Rosebery that first canvassed an injunction as an attempt to stop the filming. It was the filming (and more recently the counter-filming on all sides of alleged instances of anti-social behaviour) that was the real gravamen of the breakdown of relationships between some residents and Cara. It is the filming that is at the heart and centre of the schedule of allegations and the complaints made to Rosebery. It is (as described above) the "underlying issue". It is the reason why open offers by Cara to give undertakings in respect of any other conduct by her have not satisfied Rosebery. Indeed, as recently as 8 February 2021, a Rosebery officer wrote to Denise that "...we are waiting for a court hearing date. This is because obtaining a court order is the only way that Cara and Elaine will stop using their mobile phones to film residents".⁷⁴
142. Applying the guidance offered in cases from Employment and other contexts, and asking the "reason why"⁷⁵ Rosebery brings these proceedings, and whether filming forms more than a "trivial part"⁷⁶ of that reason, I have no hesitation in finding that it is the "something" or a major part of the "something" that gave rise to the injunction claim.
143. The next matter is whether that "something" (the filming) is in consequence of the disability. Mr Phillips sought to tease out of the medical evidence some form of restricted or more limited filming "of the ground" or of her "immediate" surroundings as being consequent upon Cara's OCD and not broader or wider filming. I could not accept that as a fair reading of the expert medical reports

⁷⁴ P514.

⁷⁵ *P v Governing body of a Primary School* [2013] ELR 497 at [52]

⁷⁶ *S v Edinburgh University* [2018] IRLR 1090 at [62]

and other medical materials before me. Moreover, the unanimous view of those professionally concerned with Cara's condition was that her OCD behaviours - such as her filming - were likely to be exacerbated by stress. It is the stress occasioned by the reaction of her neighbours to her behaviours and rituals that have exacerbated her condition and, with it, her propensity to film her surroundings.

144. I next need to determine whether Rosebery launched and pressed the injunction claim in pursuit of legitimate aims. I did not understand Ms Steinhardt to contend the contrary. Plainly, Rosebery, by its officers, believed that it needed to enforce the covenants in its lease with Cara and to control nuisance and other anti-social behaviour on this new housing development. Such aims have been franked as legitimate by our highest courts.⁷⁷
145. That left Rosebery to show that its actions in pursuit of the legitimate aims were 'proportionate'. The respective submissions of the parties as to what, if any, lesser measures could have been pursued by Rosebery are, in this respect, largely overtaken by my finding that it is not 'just and convenient' to grant any form of injunction in respect of the limited anti-social behaviour I found proven on the claim. It cannot be proportionate to press for a remedy which it is not just and convenient for a Court to grant.
146. But in any event, Rosebery failed to come anywhere near establishing that its response to what developed in Parkview Way as a consequence of Cara's disability was 'proportionate'.
147. Even at its simplest level, the issue was mis-managed. Rosebery has a policy for handling anti-social behaviour complaints. It contains specific arrangements for recording, transmitting and acting upon complaints. If any attention was paid to it at all by the Rosebery staff, as complaints began to come in, it was simply not operated as intended. Not least, it is a critical feature of any such policy, and indeed good common sense, that when allegations are received, they are logged, subject to preliminary scrutiny and then, as they arise, are put to the alleged

⁷⁷ Not least by Lady Hale in *Aster v Akerman Livingstone* [2015] AC 1399 at [20] and [21]

perpetrator. In a leading case related to management of anti-social behaviour by social housing providers and decided some 15 years ago Brooke LJ stressed:⁷⁸

“the importance of a landlord giving a tenant contemporary notice of any complaints that are made against his/her behaviour, so that the tenant is not faced in court with serious complaints made ... about matters that took place, if at all, many months previously.”

148. This present case demonstrates exactly why that guidance should be heeded. Rosebery only passed on the details (rather than the generalities) of the complaints which had been made about Cara from 2018 to the spring of 2020 in a deluge of 123 allegations served in late April 2020. That is almost exactly what should *not* have been done.
149. It chimes with the failure to include the central character, Cara, at all in any of the multi-agency meetings convened to discuss what to do about the spiralling issues developing at Parkview Way, until (much more recently) *the Council* put the community trigger process in train. That is likewise itself consistent with Rosebery’s failure to address the detail or seriousness of the complaints coming in from Cara about the way the neighbours were treating her. When her reporting to Rosebery of anti-social behaviour directed towards her became a veritable torrent, the response was to attempt to keep it in check rather than to respond to, and address, what was causing it. Indeed, it is extraordinary that firmer action was not taken against others and that action was specifically held back against Lianne and Kylie so that it would not disadvantage them in moving away (moves linked not to Cara’s behaviour but to other inter-personal relations of the development).
150. Part of the early response of Rosebery (although not the only agency to do so) was the encouragement to both Cara and the other residents to take film and video evidence of each other’s alleged anti-social behaviour. In the context, this was to throw flames on the fire. Instead of de-escalation – a strategy needed from the outset but never fully grasped – this made matters worse. Indeed, Rosebery eventually had to restrain Denise whose own filming in this respect

⁷⁸ *Moat Housing Group- South Ltd. v Harris & Anor* [2005] EWCA Civ 287

was getting out of hand. The “neutral” option of remote CCTV filming of the whole street at all times – so as to avoid the need for video or private CCTV filming – was allowed to run into the sand in the face of perceived technical difficulties and issues raised by other agencies.

151. If ever there was a case in which the social housing provider needed to acknowledge, become familiar with and then discharge the public sector equality duty with vigour it was this one. From a very early stage it should have been obvious to Rosebery that Cara’s condition, particularly if untreated and worsening, would need to be accommodated with reason and understanding by her neighbours and that it would itself need specialist expertise to address a situation with which its own staff had little or no experience. It seems that there was the convening of a residents’ meeting to try and get a suitable ‘message’ across. But that should have been only the start of the provision of information, support and the encouragement of neighbour tolerance and restraint. Much more could and should have been done. To an extent, it was a question of getting neighbours to accept the inevitability of this disability-related intrusion into their lives and their privacy. It was a delicate and difficult task for which Rosebery was not equipped and for which it failed to equip itself.
152. Mediation was canvassed more than once but, as with all other proposed interventions, needed to be fashioned with reasonable adjustments to accommodate the fact that Cara was largely housebound and if required to attend a meeting at home (remotely) or at a different venue would insist on filming it all which was likely to make arrangements difficult. Just as the Court had to make adjustments to ensure her effective participation in the trial, more could and should have been done to secure her participation in mediation, other forms of ADR and indeed with other perceived opportunities to get her some help.
153. Rosebery could and should have done much more to ensure that the staff dealing with the situation at Parkview Way were familiar with the condition of OCD. It commissioned no specialist advice of its own. It did not involve any of the major charities or advice organisations concerned with the condition. It appeared to rely for ‘medical advice’ on the short summary report of a ‘risk assessment’

visit made by others (see above). Even in the face of the material provided by Cara's solicitors just before and after the proceedings were launched, it appears not to have taken its own medical advice. Very fairly, in closing, Mr Phillips acknowledged that Rosebery "obviously could have done more".

154. There was no doubt that Cara recognised that remaining on the street - in view of the abuse she was receiving and the failure of Rosebery and other agencies to address it - was causing her harm and that she would do well to relocate. She canvassed with Rosebery (it not having explored this obvious step) whether she could move. Either by buying the remaining interest in her home, selling it and then buying elsewhere or by subletting and using the income to meet housing costs elsewhere. Far from seizing on these options, Rosebery squandered them. As indicated above, at least one member of staff falsely believed that she had been offered a move. When the option was canvassed once again by Cara's solicitors, just as the proceedings were being launched, it received no response. Over a year later, Cara's evidence at trial was that the financial resources she had previously had, which may have enabled her to arrange a move, had been expended in legal fees to defend these proceedings.
155. What has been even more extraordinary is the pursuit by Rosebery of the claim right down to trial. That is in the face of compelling medical advice, commissioned for Cara but shared with Rosebery, that an injunction was more likely to give rise to further anxiety, and inflame the situation on the ground, rather than to bring any relief. Instead of diverting attention to the real, effective, remedy of ensuring that Cara received the help, support and treatment she needed, it pressed on with the claim in a manner consistent with its solicitors' early indication that it did not want to engage in the resolution of the dispute 'by correspondence' but rather by litigation.
156. In sum, Rosebery fell well short of demonstrating that this litigation against Cara was the *proportionate* pursuit of a legitimate aim. The claim of unlawful disability discrimination therefore succeeds.

157. Cara’s pleaded case had also set out assertions of breach of duty in respect of failure to make reasonable adjustments⁷⁹ and breach of the public sector equality duty.⁸⁰ The former was not pressed at trial and the latter does not found a remedy in private law.
158. That left a modest claim for ‘harassment’ contrary to section 26, said to have arisen by way of “derogatory remarks from [Rosebery] staff”⁸¹ amounting to ‘unwanted conduct’. Without any proposed amendment, Ms Steinhardt, in both her skeleton argument and written submissions, sought to enlarge the harassment claim to embrace a wide range of other matters as “unwanted conduct”, some involving ‘inaction’ rather than action. These ranged from applying for and pressing the claim for the injunction to failures to comply with procedures and processes relating to complaint handling.
159. In my judgment, the unwanted conduct said to amount to harassment must be properly pleaded and particularised. The only particular here given related to alleged abuse by staff which was not pressed at trial, no doubt because, against the background as a whole, it - or any distress it caused - was *de minimis* following the tendering of an apology for an instance of it⁸². I dismiss that aspect of the counterclaim.

REMEDY

160. Rosebery has failed to obtain any remedy in its claim. Cara has succeeded in her counterclaim. I must address the question of remedy for that.
161. The first remedy sought is a *declaration*. Subject to further argument, I see no need for that. My finding of disability discrimination and the reasons for it are amply set out above.

⁷⁹ P40 at 20(c)

⁸⁰ P40 at 20d.

⁸¹ P40 at 20(e)

⁸² P751

162. The next is *damages*. An award under the Equality Act 2010 may include compensation for injured feelings (whether or not it includes compensation on any other basis).⁸³
163. Ms Steinhardt did not pursue a case for any form of damages other than for injury to feelings. There are essentially two stages. First, to identify the extent of the injury to feelings in the particular case. Second, to quantify it in monetary terms.
164. Cara’s extensive written evidence, her compelling oral evidence, the medical expert evidence and the contemporaneous documentation all speak to the very considerable toll the discrimination has taken on her mental health and general wellbeing. She understandably asserts that her feelings have been very severely injured by Rosebery.
165. Her social landlord failed to see her as the victim, rather than the perpetrator. It failed to protect her from the anti-social conduct of others. It was bad enough that she had the misfortune of a life blighted by the crushing rituals and behaviours caused by her OCD. On top of that, she had the burden of defending herself when presented with a deluge of over 100 allegations not previously raised with her, a final warning, a notice seeking possession, and this claim for an injunction hanging over her for some eighteen months.
166. A reasonable snapshot, unsolicited for the purposes of this litigation, is contained in the impact statement Cara gave to the community trigger meeting in May 2021.⁸⁴ At an earlier meeting she had felt able to present a statement herself but by this stage an ASB officer was speaking on her behalf as she “is not able to cope anymore and can no longer fight”. Her comments included: “Her OCD just does not stop, she can’t switch it off and she is exhausted.” She observes that she is the one with “a court case against her. She feels the situation is completely unjust and that no one is helping ...”. She and her mother were “asking for support but believe it is slow or non-existent. They have both stated they cannot cope anymore”.

⁸³ Section 119(4).

⁸⁴ P692

167. No award of damages could or should be made in respect of the underlying OCD and its consequences. Rosebery is only liable for *its* discrimination in subjecting her to *its* unfavourable treatment and for the injury to feelings that *that* has caused.
168. In my judgment, those damages should be significant. The present proceedings should never have been brought. The red flags had been raised by the Council's earlier decision not to go down this route. Once issued, and in light of the response made to them, they ought to have been stayed or abandoned at an early stage. Pressing on with them, even after undertakings acceptable on everything other than the filming had been openly offered, is inexplicable.
169. And all this has been hanging over Cara for months and months as a result, at a time when others continued to subject her to unjustified and serious abuse simply not effectively addressed by Rosebery. As she told me at the conclusion of her evidence, it would have been a "dream" to have been able to move away from the neighbours who behaved aggressively and intolerantly towards her in response to the manifestations of her condition. She feels that Rosebery's pursuit of these proceedings 'criminalises' her and her condition and that, after this litigation is over, she will have to 'start her life again'.
170. Useful guidance on quantifying injury to feelings in monetary terms is given by the *Joint Presidential Guidance* updating the three '*Vento*⁸⁵ bands' in light of the subsequent authorities, inflation,⁸⁶ and the 10% *Simmons* uplift.⁸⁷ Counsel took me to the parameters of the bands and to summary reports of awards in other cases assessing damages by reference to them.
171. Fixing the correct sum is not a straightforward or scientific exercise. As stated in *Vento* itself at:

“[50] It is self-evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent.

⁸⁵ *Vento v Chief Constable of West Yorkshire Police* [2002] EWCA Civ 1871, [2003] ICR 318

⁸⁶ *Da' Bell v National Society for Prevention of Cruelty to Children* [2010] IRLR 19

⁸⁷ As to which see *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879, [2018] ICR 433.

Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms.

Translating hurt feelings into hard currency is bound to be an artificial exercise.”

[Emphasis added]

172. Mr Phillips’ argument for an award in the lowest band (if any award) was, with respect to him, wholly unrealistic. This was significantly more than a ‘least serious’ case such as an isolated or one-off incident. Having considered the totality of the material before me, the comparator authorities to which I was taken and the bands themselves, I am satisfied that this case justifies an award reflecting a degree of seriousness just within the lower reaches of the top band. That band is described in *Vento* as appropriate for “the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race.”. That the characteristic here is disability, and that the discriminatory conduct has extended over a considerable period with very significant adverse impact on the disabled person, to my mind that brings this case into at least the lowest reaches of the top band.
173. The Court was addressed by counsel on the footing that the top band triggered at £27,400. If that is agreed to be correct, I would award £27,500. But I note that the fourth addendum to the *Joint Presidential Guidance*,⁸⁸ from which the figures put before me were taken, only applies “in respect of claims [and, presumably, counterclaims] presented on or after 6 April 2021”. It did not seem proportionate to reconvene the trial in order to finally determine any modest dispute as to which set of figures apply. If the parties are agreed that an earlier set of figures apply, my Order will be for a sum of £100 more than the lowest level of the agreed top bracket.

RESULT

⁸⁸ <https://www.judiciary.uk/wp-content/uploads/2013/08/Vento-bands-presidential-guidance-April-2021-addendum-1.pdf> 26 March 2021

174. The claim is dismissed. The counterclaim succeeds. There will, subject only to the caveat mentioned in the last paragraph, be judgment on the counterclaim for £27,500.
175. I trust that counsel will be able to settle an agreed Minute of Order. If not, I shall hear brief submissions at a short hearing when this judgment is handed down. I hope it will be possible, at the same time, to endorse an agreement as to the issue of costs in relation to the settled claim against Elaine.

HHJ Luba QC

10 December 2021