



11 March 2015

## PRESS SUMMARY

**Akerman-Livingstone (Appellant) v Aster Communities Limited (formerly Flourish Homes Limited) (Respondent) [2015] UKSC 15**  
*On appeal from [2014] EWCA Civ 1081*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Hughes

### BACKGROUND TO THE APPEALS

The issue in this appeal is the proper approach of the courts when a defendant to a claim for possession of his home raises a defence of unlawful discrimination by the landlord, contrary to the Equality Act 2010 ('the EA'); in particular, whether such defences may be dealt with in the same way as defences alleging a breach of the rights to respect for the home protected by Article 8 of the European Convention on Human Rights.

The appellant is a 47 year old man. He has chronic and severe mental ill health amounting to a disability for the purposes of the EA. He became homeless in 2010 and under the Housing Act 1996 the local housing authority was under a duty to secure accommodation for him. That duty would cease if he refused an offer of suitable accommodation elsewhere. The appellant was placed in a flat in a building in Glastonbury leased by the respondent housing association and numerous attempts were made to find an acceptable home for his permanent occupation over the next nine months. He refused them all so in April 2011 the local authority notified him that the duty to house him had been discharged. The respondent served notice on him to quit the flat and issued a claim for possession.

The appellant's defence was that a possession order would (i) amount to disability discrimination and (ii) breach his Article 8 rights, and it was supported by medical evidence of his vulnerability and need for intensive therapy. During the course of the proceedings the local authority came under a duty to house him again after the appellant made a fresh homelessness application in December 2011. The duty ended after he was offered, but refused, an offer of a property in the same road as the flat, in which he was still living. The respondent applied to reinstate the proceedings and a preliminary hearing took place in June 2013 in the Bristol County Court to decide whether or not the appellant could raise his defence. The judge took the same approach to both grounds and held summarily that neither defence was arguable. The appellant's appeals from this decision were dismissed in the courts below.

In May 2014 the freeholder of the building in which the appellant has his flat served notice to quit on the respondent. The respondent is therefore now in breach of its legal obligation to give vacant possession of the flat so that the building can be sold.

### JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lady Hale, Lord Neuberger and Lord Wilson give substantive judgments stating the applicable principles and holding that the judge misdirected himself in adopting the same approach to the defence of disability discrimination as to the alleged

breach of Article 8. However, for the reasons given by Lord Wilson, supervening events mean that the matter should not be remitted to the court below, as an order for possession is now inevitable.

## **REASONS FOR THE JUDGMENT**

A complaint of disability discrimination under s 15 EA in response to an eviction raises two key questions: (i) whether the eviction is ‘because of something arising in consequence of’ the complainant’s disability; and (ii) whether the landlord can show that the eviction is a proportionate means of achieving a legitimate aim [18].

A court considering whether an eviction is proportionate when a defence under Article 8 is raised can assume that an order would meet the legitimate aims of vindicating a local authority’s property rights and of enabling the authority to comply with its statutory duties in the allocation and management of the housing stock available to it. In virtually every case there will be a strong case for finding that the possession order would be a proportionate means of achieving those aims. Thus as a general rule the defence should be considered summarily and only be allowed to proceed if it crosses the high threshold of being seriously arguable [20-22, 52].

The substantive right to equal treatment protected by the EA is different from and extra to the Article 8 right: it applies to private as well as public landlords; it prohibits discriminatory treatment, for example, by evicting a black person where a white person would not be evicted; and it grants additional rights to disabled people to reasonable adjustments to meet their particular needs. It cannot be taken for granted that the aim of vindicating the landlord’s property rights will almost invariably make an eviction proportionate: the protection afforded by s 35(1)(b) EA is plainly stronger than that given by Article 8 [31, 55-58]. The burden will be on the landlord to show that there were no less drastic means available and that the effect on the occupier was outweighed by the advantages [34]. Summary disposal may still be appropriate, but not in cases where a claim is genuinely disputed on grounds that appear to be substantial, where disclosure or expert evidence might be required [36, 60].

In the appellant’s case, the judge misdirected himself and adopted the wrong approach. He should have undertaken the proportionality assessment himself in relation to each defence, and he wrongly regarded this exercise as the same for the discrimination defence as for the Article 8 defence [38].

There was no point however in allowing the appeal and remitting it to the county court. The notice to quit that has since been served by the freeholder of the building means that the respondent is in breach of its legal obligations and leaves the freeholder unable to proceed with the proposed sale [71]. The appellant’s disability has also caused him to refuse undeniably suitable accommodation in the same street and there is no evidence that he has embarked on the therapy that is said to be necessary to allow him to accept the need for change [74]. These supervening events mean that a possession order would be inevitable. It would be unjust to the respondent and the freeholders and no kindness to the appellant to prolong matters further [41, 75-76].

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.shtml>