

The A-Z Of Housing Discrimination Case Law

Thiam v Richmond Housing Partnership

Iris Ferber KC & Karolina Zielinska

Iris Ferber KC: Welcome to the latest series of *Home Truths - the 42BR Housing Podcast*. My name is Iris Ferber KC.

Karolina Zielinska: And I'm Karolina Zielinska.

Iris Ferber KC: And this series is all about housing discrimination case law. We will review 15 key cases and principles that have guided housing discrimination law over the last decade. We're calling it the *A to Z of Housing Discrimination Case Law*.

Karolina Zielinska: Because we're starting with the case of *Akerman-Livingstone v Aster Communities* and we're ending with *Z v Hackney London Borough Council*.

Iris Ferber KC: And we're going to be covering topics from procedural law to Section 15 and Section 19 claims, reasonable adjustments claims, public sector equality duty and positive discrimination.

Karolina Zielinska: Today we will talk about the case of *Thiam v Richmond Housing Partnership*, which was an appeal decision in the High Court made in April 2025.

Iris Ferber KC: Now, *Thiam v Richmond* was about a Section 15 defence to a possession claim, and it made some very, very important points about how Section 15 operates in practice, but before we get onto those principles, Karolina, let's look at the facts.

Karolina Zielinska: *Ms Thiam* was an assured tenant of a four-bedroom house with a garden, and her landlord was *Richmond Housing*. Now, *Ms Thiam* was a vulnerable woman, she suffered from schizophrenic tendencies in the form of delusions, which were connected with hoarding tendencies.

In a nutshell, she had the delusion that she was a businesswoman and that the items she hoarded in her house and garden were second hand clothing stock required for her business.

As the judge put it, the house and garden were grossly unsightly, they were packed with black rubbish bags full of stuff, which was smelly and infested with vermin, and dangerous, as well as being a fire risk. There were also very serious rent arrears and antisocial behaviour by her son, those matters were proved and not appealed.

As is very common with hoarding cases, *Ms Thiam* wasn't engaging with the landlord, doctors or social services.

Richmond Housing therefore sought possession against her, partly due to the effects of her hoarding and her refusal to give access, partly on the other grounds such as rent arrears.

When *Richmond* made the possession claim, it was decided that *Ms Thiam* lacked capacity to conduct the litigation, and so the official solicitor was appointed as her litigation friend, to conduct the litigation on her behalf.

Now, the official solicitor didn't challenge the facts of her illness or her hoarding behaviour, or even the condition of the property, it was accepted, including by her son, that the property was full of junk, as he put it.

Rather the claim for possession was defended on the basis that seeking possession because of the condition of the property

amounted to unlawful discrimination under Section 15 of the Equality Act 2010.

Iris Ferber KC: Okay so those are the facts, that's how we get to trial, and the trial was heard in the Central London County Court by His Honour Jan Luba KC, one of his last cases before he retired in late 2023, and then the final day of trial in early 2024, and His Honour Judge Luba made the possession order.

He gave, what the High Court called, 'an admirably, concise and focused judgment', and we know that the High Court must've loved his judgment because they quote from it extensively in the High Court Appeal.

Karolina Zielinska: Always a compliment.

Iris Ferber KC: Always a compliment.

So, Judge Luba granted possession, and he explained that *Richmond's* reliance on the poor condition of the property when seeking possession was justified under Section 15. Justified meaning, it was a proportionate means of achieving a legitimate aim, and he set out how he approached that question, that proportionality question, in a lot of detail, we're going to go into that, Karolina, but first let's look at what Section 15 requires to be proved in a case between a landlord and a tenant.

So, number one, the tenant has to be disabled for Section 15 to be engaged.

Number two, the tenant has to be subject to some form of unfavourable treatment by the landlord, which is related to their use of the property that they rent from the landlord.

Then that unfavourable treatment has to be done because of something that arises in consequence of the tenant's disability. And if all of that can be proved, then the burden shifts to the landlord to prove that the unfavourable treatment was justified, and as I said just before that means two things, firstly that the landlord had a legitimate aim in doing the thing that they're accused of doing, and secondly that doing that thing was a proportionate means of achieving that legitimate aim.

Karolina Zielinska: So, if we map that legal test onto the facts of this case, in essence it wasn't disputed that *Ms Thiam* had a disability or that the seeking of possession was something that would have been unfavourable to her and that the possession was sought because of something that arose in consequence of her disability, here her hoarding of items that effectively were junk.

All of those matters were accepted by the landlord, and in turn *Ms Thiam* accepted it was a legitimate aim of the landlord to ensure that the premises it owned were maintained in a good condition, that tenants pay their rent, we mentioned before that she also had arrears and this was part of the reason possession was sought, and equally *Ms Thiam* accepted it was a legitimate aim of the landlord to ensure compliance with their tenant's tenancy agreements.

Iris Ferber KC: So, if we've ticked all of those off, Karolina, that only leaves one thing doesn't it, which is the proportionality part of the justification element of Section 15, which was the battle ground in this case and that's very common in Section 15 claims actually, for proportionality to be the one thing that's disputed.

As I said before, Judge Luba found in the County Court that the seeking of possession was proportionate, there's a lot of detail in Judge Lubas judgment about why that was, but maybe let's just quote from a couple of paragraphs that really illustrate the point, and I'm just

picking these two paragraphs because they really do exemplify a much more detailed set of reasons.

Firstly, the judge said this, *"The history speaks to an inadequate response from mental health services, from multi-agency task force and its meetings, from Children's Services and from adult social services, all of them have failed because the defendant herself has failed to engage with them."*

So that's part of the finding, an important part of the proportionality finding.

And then later in the judgment the judge said this *"The further response of these two professionals on being recalled again today simply demonstrated how dealing with the statutory agencies was like working with a blancmange, whether from the perspective of the court, or the claimant, or anyone else."*

I think that gives you a flavour of the two aspects that the judge found important, firstly there was a mess of trying to help *Ms Thiam* but secondly *Ms Thiam* herself was just not engaging with any of that, in any event.

Karolina Zielinska: I was about to ask you exactly what was likely meant by working with the blancmange there, Iris because personally I never have, but I think you've answered my question pre-emptively there.

Iris Ferber KC: Well, that's my guess about what it means.

Karolina Zielinska: So, the official solicitor then looked at this decision, decided to appeal it to the High Court on behalf of *Ms Thiam* and the High Court essentially adopted the reasoning of His Honour Judge Luba, as we mentioned before they were quite positive about

his judgment, a lot of the appeal judgment does consist of long quotes from Luba's County Court judgment.

Ultimately there were three grounds of appeal, ground one was that *Richmond Housing's* decision to issue possession proceedings was unlawful, because it was based on a belief that there was no link between the tenants conduct in any disability.

Ground two was that *Richmond Housing* had failed to put in place specialist intervention to assist the tenant.

And ground three was that *Richmond Housing* had failed to make an application to the Court of Protection.

So, the first ground was really about whether it's necessary for a landlord to accept that there is a disability and it is connected to the reason for possession before they are able to say, taking possession proceedings is justified as a matter of equality law.

The other two grounds are about things that the landlord could have done before they sought possession against the tenant.

Iris Ferber KC: That's right, and if we take these three grounds in two lots, firstly ground one and then grounds two and three together because they engage the same sorts of issues.

So, in terms of general principles, ground one, I think, is particularly important because the High Court explained, just as Judge Luba had explained in the County Court, that justification is an objective test, it does not depend on the landlord's knowledge, or acceptance of disability at all, it depends instead on whether the court decides that the actions taken by the landlord were proportionate to the aims that it has pleaded.

So, the key question, and this is something that the High Court appeal judge said. The key questions are:

- What was done?
- What was not done?
- What could have been done?
- What should have been done?

And it's the court that decides the answers to those questions.

The key point is that it is an objective test for the court whatever the state of mind of the landlord might be and I think for us as housing lawyers, that's perhaps easier to accept than for us as employment lawyers. With employment law often the employer is entitled to reach their own decision and a judge isn't allowed to go behind it, unless it's essentially irrational.

But with housing law we are very used, aren't we, to reasonableness test in a possession claim, it is just like the reasonableness test in making a possession order. With the reasonableness test it's the judge hearing the possession claim, who decides whether or not it's reasonable to order possession. None of us as housing lawyers would say 'it's for the landlord to decide if it's reasonable and the judge only acts as a sort of reviewing body', no, the judge themselves decides whether it's reasonable to order possession and just in the same way, the judge hearing a possession claim, where a Section 15 defence is raised, gets to decide whether the landlord acted proportionately in seeking possession against the disabled tenant.

Karolina Zielinska: Yes, I think there would be quite a lot of outrage if that decision was shifted to landlords on an individual basis.

As I mentioned before grounds two and three of the appeal were about things that the tenant's counsel said should have been done before possession proceedings were brought, specialist intervention and a Court of Protection application.

The High Court judge said some useful things for landlords who are navigating these types of defences, in particular it's always possible to argue that the landlord should have done something more to assist the tenant, there is always going to be something more that they could have done, so context is going to be key here.

Here, the landlord was not a local authority with an adult social services department or with statutory duties towards vulnerable adults. This was a landlord whose relationship with the tenant was defined by contract, by the terms of the tenant's tenancy agreement, there was only so much control that a landlord could exert over a tenant in these circumstances.

So here, really all that *Richmond Housing* could do was try and persuade *Ms Thiam* to engage with medical help and with social services, but they couldn't require her to, and it wouldn't be proportionate in this case, for this landlord to hire and pay for extra support for her, which all the evidence suggested she would refuse anyway, and equally it wouldn't have been proportionate for the landlord here to have made an application to the Court of Protection before seeking possession. That application would have cost a lot of money in legal fees, and its outcome would've been very uncertain. It would entirely depend on whether the Court of Protection considered *Ms Thiam* to lack capacity, to make decisions about the condition of her home, and that was not as the High Court judge put it, 'a foregone conclusion'. It would also depend on what order the Court of Protection was ultimately willing to make, and that was considered again by the High Court judge, to be well beyond anything that could

reasonably considered as a requirement of a proportionate approach on the facts of the case.

Iris Ferber KC: Okay, I get that, so as we've been saying it's an objective test for a judge to decide is possession proportionate?

Or should the landlord have done something else first?

And it doesn't matter whether or not the landlord appreciated that the problems related to disability but, what about this question then, of something else that could have been done?

I know that in this case those two elements in ground two and ground three, the additional support and the Court of Protection were not considered to be a requirement for the landlord to do and that was upheld on the appeal, but actually, the question could something else have been done, is actually a classic ingredient, isn't it, Karolina, of proportionality assessments in Equality Act cases?

Is the thing that is being done, so here seeking possession, seeking to evict a vulnerable adult from her home, is that something actually necessary to do? Or could that aim, those aims that we've talked about already of requiring compliance with tenancy agreements, requiring payment of rent and maintaining the condition of the property, could those aims have been achieved with less harm to that disabled person?

So that still seems, doesn't it, like the correct test?

Karolina Zielinska: Yes.

Iris Ferber KC: That's what Section 15 says, is this case an authority for a general principle that a landlord never needs to explain why they haven't applied to the Court of Protection, or why they haven't arranged extra intervention for a tenant?

Karolina Zielinska: I wouldn't say its authority for that principle. Ultimately this is authority for the principle that the question of proportionality is very fact sensitive, or as the High Court put it, 'the proportionality must take account of context'.

There are hypothetically other cases where the same actions could be proportionate and a judge could find that not doing them did render a possession claim discriminatory, it will all depend on the context.

Iris Ferber KC: Give me an example maybe of where additional paid intervention might be needed, might be necessary, before seeking possession.

Karolina Zielinska: Well, most obviously the example given in the judgment itself was that a local authority landlord might find themselves in different circumstances, in a different context, in these sorts of cases.

Iris Ferber KC: And why is that?

Karolina Zielinska: Well, they'd be in a different position to *Richmond Housing*, not least because they would have an adult social services department, that is not an external third party whom they would need to pay and get in, they have those services available to them.

Iris Ferber KC: The blancmange problem in other words.

Karolina Zielinska: Yes.

Iris Ferber KC: So, a local authority landlord can say to adult social services department, you need to do this, and it would have to be done because it's all part of the same organisation.

Karolina Zielinska: Yes, but equally, it would have to be done because not only are they the tenant's landlord in this hypothetical example,

but also, they owe additional statutory obligations to the tenant as a vulnerable adult anyway, and so I suppose the problem can be approached under different statutory provisions that way.

Iris Ferber KC: And the criticisms made of the tenant's appeal here, which partly at least were that *Richmond Housing* were basically being told they had to go off and get third parties to do certain things, which *Richmond Housing* couldn't force those third parties to do, that element of the criticism of the tenant's approach in the *Thiam* case wouldn't necessarily apply to a local authority landlord.

But, I mean, I guess it's also right to say, isn't it, that if in another case with a local authority landlord, where much more perhaps could have been controlled and done by the landlord, if despite all of that, the tenant, like *Ms Thiam*, is absolutely unwilling to engage at all, with any medical assistance or any social services assistance, it perhaps would be exactly the same outcome, because ultimately whatever else might be possible to do, it has to at least have a good chance of resulting in a different outcome for that tenant.

So, it is in that sense also extremely fact sensitive, isn't it?

Karolina Zielinska: Yes, I suppose that unwillingness to participate or refusal of help is itself part of the context.

Iris Ferber KC: It must be, mustn't it, because the question is what's necessary in order to avoid the outcome, and if actually nothing would've avoided the outcome, then it can't be necessary to do something else.

And what about the Court of Protection point, because you and I can both see situations in which local authorities or indeed private landlords can be held not to have done enough to assist with interventions to assist the tenant, but what about a case where, can

we imagine a set of facts where it might be disproportionate to seek possession without making a claim or making an application to a different court, the Court of Protection.

What sort of facts might be needed? I mean, maybe a situation where a tenant obviously lacks capacity, so that the capacity issue isn't really speculative.

Karolina Zielinska: I think ultimately, Iris, it seems to me that those would be more extreme cases anyway, where it might be obvious that that sort of application is necessary, and it might be something that was being contemplated in any event by those around the tenant or engaging with the tenant.

Iris Ferber KC: Yes, I mean one of the points made in the *Thiam* case was that apparently her counsel referred in the appeal to a reported Court of Protection case about steps taken in a hoarding case, but the way that case is described in the *Thiam* appeal judgment, this was a case where somebody was removed forcibly from their home and subject to a Deprivation of Liberty Order, so that their home could be emptied of the hoarded material.

Personally, I find it very difficult to imagine any judge in the County Court saying that steps like that needed to be taken as a matter of necessity rather than seeking a possession order, that another court making a Deprivation of Liberty Order is the better option than a possession order.

I mean ultimately although it's fact sensitive, although it's context sensitive, my feeling is, it would be, can I say impossible, or near impossible, to argue that making an application to the Court of Protection really in any circumstances is a necessary alternative to seeking possession.

What do you think?

Karolina Zielinska: I think that sounds quite right, 'nearly impossible' is the lawyer's way of saying impossible.

Iris Ferber KC: I think so, no lawyer ever says it's totally impossible, do they?

Well, thank you Karolina, and thank you everyone for joining us on this bitesize journey through housing discrimination case law, starting with A, *Akerman-Livingstone* and going right through to Z, *Z v Hackney Borough Council*.

Karolina Zielinska: We do hope you're enjoying this podcast series, for more episodes you can find us on Spotify, Apple Podcasts and the 42BR Chambers website.

Thank you for listening.