

The A-Z of Housing Discrimination Case Law

Asiimwe v Lambeth

Iris Ferber KC & Martin Horne

Martin Horne: Welcome to the latest series of *Home Truths - the 42BR Housing Podcast*.

My name is Martin Horne.

Iris Ferber KC: And I'm Iris Ferber KC.

Martin Horne: This series is all about housing discrimination case law. We'll be reviewing 15 key cases and principles that have guided housing discrimination law over the last decade. We're calling it the A - Z of *Housing Discrimination Case Law*.

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

Martin Horne: We'll be covering topics from procedural law to Section 15 and Section 19 claims, reasonable adjustments claims, the public sector equality duty, and positive discrimination.

Iris Ferber KC: Today we're going to talk about the case of *Asiimwe v Lambeth*, which was a High Court appeal from just last month, June 2026.

Martin Horne: This was originally a homeless judicial review claim. The public law element was settled, and then one remaining part was transferred to the County Court, which was a claim alleging failure to make reasonable adjustments in breach of Section 21 of the Equality Act.

That claim was dismissed by Her Honour Judge Bloom in the Central London County Court in April 2025. Then the claimant appealed that judgment to the High Court but first let's look at the facts.

Iris Ferber KC: Okay, *Mr Asiimwe* was homeless and he was disabled, he had suffered a brain injury in 2018 as a result of a stroke.

He applied to *Lambeth* in October 2021 as a homeless person, and *Lambeth* provided him with temporary accommodation a couple of months later in January 2022.

That temporary accommodation was not in Lambeth, it was in North Finchley, and that was even though *Lambeth* had assessed him as needing to live either in the borough or within a 30-minute commute from St Thomas' Hospital, where he was receiving medical treatment.

So, although *Lambeth* accepted that the temporary accommodation was actually not suitable for him, in fact, they didn't make him an offer of proper suitable accommodation until a good year and a half later, more than a year and half later - September 2023.

So, he was in the unsuitable accommodation from January 2022 to September 2023.

Now, by September 2023, he had received permission to apply for judicial review that had been granted by the High Court on the basis that *Mr Asiimwe* was in the unsuitable accommodation.

So, Martin, that meant that when the offer of suitable accommodation got made and accepted in September 2023, that settled the public law claim.

But, because that public law judicial review claim had also included a ground alleging failure to make reasonable adjustments under the

Equality Act, that part was transferred to the County Court to decide as a matter of private rather than public law.

So, Martin, how was the private law claim formulated?

Martin Horne: Well, because this was a claim about the provision of accommodation to the homeless it was a public function, so Part 3 of the Equality Act applied.

The claimant relied on the first requirement as defined in Section 20 of the Equality Act, a provision, criterion, or practice of the defendant that he said, and using the words from Section 20, put him at a 'substantial disadvantage' in relation to a relevant matter in comparison with persons who are not disabled.

Breaking that down, his PCP was *Lambeth* placing a considerable portion of homeless applicants in out of borough temporary accommodation.

Lambeth did not contest that was a PCP because 70% of *Lambeth* homeless applicants do get accommodated outside the borough, and Her Honour Judge Bloom accepted that that PCP applied.

The alleged substantial disadvantage was people with disabilities are more likely to have location specific needs in respect of care, social support, and medical treatment.

That was contested, but Her Honour Judge Bloom accepted that that disadvantage applied too, but then the claimant alleged that there were four reasonable steps that *Lambeth* should have taken, which is the last part of the statutory definition.

One - *Lambeth* should place people with disability related needs in the areas in which those needs can be met.

Two - where that is not possible, take very active steps to move people with disabilities into accommodation that is suitable in terms of location within a very short timeframe.

Three - investigate whether to use the council's social housing stock under Part 6 of the Housing Act.

And four - commission additional ad hoc accommodation to meet disability related needs.

And that's where the claim was lost, wasn't it, Iris?

Iris Ferber KC: Yes, absolutely.

Her Honour Judge Bloom held that the four steps that you've just listed from the judgment, Martin, were reasonable steps but only in the sense that systematically this was already exactly what *Lambeth* did when placing disabled homeless applicants in temporary accommodation.

Now, how could the judge make a decision like that?

Well, it was because *Lambeth* had a policy called the 'Housing Placements Policy', which explicitly addressed the allocation of temporary accommodation to homeless applicants and explicitly prioritised those with local needs for medical treatment for accommodation within the borough.

So, to the extent that those four steps you've described in your segment, Martin, were alleged to be reasonable steps to take, they were already being undertaken by having that 'Housing Placements Policy' in place.

And what the judge said, what Her Honour Judge Bloom said, was that it was not reasonable, and actually she said what the claimant was

doing, was to hold *Lambeth* up to a standard of perfection in respect of the application of that policy.

She decided there were ad hoc failures here, and that was just dealing with *Mr Asiimwe's* particular case. It was not, she said, a failure to make reasonable adjustments generally.

Martin Horne: The claimant appealed to the High Court, and there were two grounds.

Ground one - the circuit judge wrongly interpreted the meaning of Section 20 because the defendant's failures in relation to the claimant's individual case did amount to a failure to make reasonable adjustments.

And on ground two - the court failed to apply the reverse burden of proof provision in Section 136.

Iris Ferber KC: Okay, so, Martin, what happened then?

What happened on appeal ground one?

Martin Horne: Well, for those listeners to this podcast who heard our last episode about the case of *FG v Kensington and Chelsea*, this will be very familiar.

Part 3, the provisions of public functions includes a duty to make anticipatory reasonable adjustments for disabled applicants generally.

It is not a duty to respond to the needs of a particular disabled person. It is a duty to anticipate and plan for the sorts of issues that people with disabilities generally might face and make adjustments for that, and then if a particular claimant was disadvantaged by a breach of that general duty, they can make a claim.

The claimant tried to rely on Section 21 of the Equality Act, which says “(A) discriminates against a disabled person if (A) fails to comply with that duty in relation to that person”. But the High Court explained that all that Section 21 means is that the actual claim has to be made by a particular disabled person with a particular disadvantage.

But the duty is still general, it's an anticipatory duty applicable to all disabled people. A person can only have a good claim if *Lambeth* have failed to meet the general duty to disabled people, and if that particular claimant is also disadvantaged by that failure.

Iris Ferber KC: Now, the other thing that's very important to say, and you've touched on this already, Martin, is that this case was a Part 3 case, a case about services and public functions and Schedule 2 to the Equality Act is the schedule that sets out the provisions about reasonable adjustments that are specific to services and public functions in Part 3.

The High Court made a point of highlighting, and this is really important for housing lawyers because of Part 4, the High Court made a point of highlighting that cases under other parts will lead to different outcomes.

So, for example, a reasonable adjustments claim under Part 4, that's the part headed ‘Premises’, which applies to landlords and managing agents, those types of claims are not about a general anticipatory duty to make reasonable adjustments at all, basically, the opposite.

Duty on landlords is reactive and requires a specific request from a specific tenant for an adjustment that is personal to them.

So, everything that you and I are talking about today in this podcast, about *Mr Asiimwe*, applies to Part 3 public functions cases like homelessness cases but absolutely wouldn't apply to a reasonable

adjustments claim under Part 4 if *Mr Asiimwe* was a tenant of *Lambeth*. That sort of reasonable adjustments claim would be approached entirely differently.

Martin Horne: Okay.

Now then, what happened on appeal re ground two?

Do we know of any other cases in housing law that discuss the reverse burden of proof in Section 136 of the Equality Act?

Iris Ferber KC: Well, Martin, you and I had a bit of a look at this didn't we, just to make sure that we didn't get this wrong and with a small caveat that you know, we're not perfect, you and I, and we might have missed something.

We think the only other housing case that mentions Section 136 is *Akerman-Livingston* itself, our foundational case about Equality Act provisions as they relate to housing law.

Akerman-Livingston in paragraph 19 recites Section 136 and discusses a little bit in the following paragraphs the way in general terms that Section 136 operates.

But this case, *Asiimwe*, is the only case I'm aware of that really gets into the detail of how Section 136 works in practice, particularly in relation to reasonable adjustments claims where Section 136 is tricky to apply.

So, let's roll up our sleeves and work out what the High Court said about Section 136 in *Asiimwe*.

So, I think let's start with the wording of the sections. The operative parts of Section 136 are subsections 2 and 3, and they say the following.

Subsection 2, *"If there are facts from which the court could decide, in the absence of any other explanation that a person (A) contravened a provision of the Equality Act, then the court must hold that that contravention occurred."* Okay, so that's the primary burden of proof.

Then subsection 3, the reverse burden of proof. Subsection 3 says, *"But subsection (2) does not apply if (A) can show that (A) did not contravene the provision."*

Okay, what does that mean?

In effect, that means once a claimant has done enough to show that there's a PCP, a disadvantage, and reasonable steps that appear to be necessary to take, then it is up to the defendant to disprove that.

That is why it's called the reverse burden of proof, the claimant has to do a certain amount and once they've done it, it's up to *Lambeth* in this case, the defendant, to disprove.

Now, the High Court described the effects of Section 136 on reasonable adjustments claims in a particular paragraph, paragraph 112 of the judgment.

And what the High Court said was this. I'm quoting now from 112. *"Once a potential reasonable adjustment has been identified by a claimant, the burden of proof then lies on a defendant to show the adjustment was not a reasonable one to make or to show that it had already been made."*

Right, now, how did that apply here?

This is the part that I think is tricky to get your head around, but we're going to do our best to explain it.

The key question in this case was, was the housing placements policy that was being operated by *Lambeth* being operated properly?

Was systemically *Lambeth* doing a proper job operating its policy?

And this case, *Mr Asiimwe's* case, was just one case where *Lambeth* had made a mess of the policy.

If so, because it's a general anticipatory duty to disabled people generally, there's no failure to make reasonable adjustments, that's one possibility.

Or alternatively, was this a case which showed that the policy was actually not operating properly in practice? That in general terms, even though they had a policy on paper, they were not applying it generally to disabled people properly.

In which case, there would be a failure to make reasonable adjustments, and importantly, the High Court found *Mr Asiimwe* had done enough to establish that there was a potential general failure to apply the policy.

That meant the burden of proof had shifted to *Lambeth* under Section 136 (3), and it was for *Lambeth* to positively prove that they had not failed to make a reasonable adjustment, meaning they had not failed to apply their policy generally in the way that it was supposed to be applied.

What did that mean?

That meant *Lambeth* should have explained in their evidence to the judge what had gone wrong in *Asiimwe's* case.

Their evidence should've addressed whether or not their systems were working properly in practice, in general terms, and you may be surprised to hear, Martin, that the evidence didn't address that question, or rather, and this is a strange situation perhaps for us litigators to imagine, but it can happen, what happened in this case was that the trial judge wrongly decided the evidence about this issue was irrelevant, and as a result she simply did not record in her judgment what evidence *Lambeth* had presented at all about the issue of whether the problems in *Asiimwe's* case had been specific to him or had been evidence of a general problem with the policy, and no one had thought before the appeal in the High Court to obtain a transcript of the relevant witness evidence from the trial.

So, at appeal, there was no information before the appeal judge about whether or not that evidence had been provided to the trial judge at all. That evidence was directly relevant to the question whether *Lambeth* had met the reverse burden of proof.

In other words, whether *Lambeth* had shown it took reasonable steps to adjust the PCP to avoid the disadvantage to disabled persons generally.

Now, the trial judge had got the law wrong on that, had then not set out what the evidence was, which meant the Appeal Court could do nothing more with it, and that meant ground two of the appeal, the failure to apply the reverse burden of proof correctly, that succeeded, and the effect of that, and this is kind of an interesting point about how appeals work, Martin, isn't it, the way that sometimes you can win an appeal, but only in a very small way. So, in this appeal, the second ground succeeded, but the remission back down to Her Honour Judge Bloom was on an extremely narrow basis.

It was on the basis that she either review her own notes of the evidence or the parties obtain a transcript of the evidence, and then

Her Honour Judge Bloom must decide based on evidence already given at the trial without taking on any new evidence, whether or not *Lambeth* had done enough to discharge the reverse burden of proof.

So that's the sole basis upon which the case was won on appeal and remitted to the County Court.

Martin Horne: Thank you for joining us on this bite-sized journey through housing discrimination case law, starting at A, *Akerman-Livingston*, and going through to Z, *Z v Hackney Borough Council*.

Iris Ferber KC: 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.