SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY
AT DUMFRIES

[2026] SC DUM 108

DUM-A88-21

JUDGMENT OF SHERIFF DAVID YOUNG KC

in the cause

TREVOR SIMPSON

Pursuer

against

DUMFRIES AND GALLOWAY COUNCIL

Defender

Pursuer: Lazarowicz, adv
Defender: Thom

Airdrie, 25 September 2026

The sheriff having resumed consideration of the cause:

1. Repels the defender's second plea-in-law; and

2. Appoints the cause to a hearing on expenses and a procedural hearing to determine further procedure, both by Webex on a date to be hereafter advised, written submissions on both matters to be lodged and exchanged 72 hours before the hearing.

NOTE

Summary

[1] This was a debate on the defender's second plea-in-law, for decree of dismissal based on lack of relevancy and specification.

Introduction

[2] This action arises from the allocation of temporary housing by the defender, a local authority, to the pursuer, who was a homeless person with a disability. The allocation was made in accordance with the defender's Common Allocation Policy (CAP).

[3] The pursuer seeks declarator that the defender acted unlawfully in terms of sections 19, 20(2), and 29, Part 3 and Schedule 2 of the Equality Act 2010 (crave 2), and that as a consequence damages are due for loss, damage and injured feelings (crave 1).

Agreed matters

[4] Several matters were agreed for the purposes of debate, including the following.

[5] The defender is a service provider.

[6] At the relevant time, the pursuer suffered from disability.

[7] This disability amounted to a protected characteristic for the purposes of the Equality Act.

[8] The CAP is identified as a Provision, Criterion or Practice (PCP) for the purposes of the Equality Act.

[9] Crave 1 is dependent on success of crave 2.

[10] The defender arranged that its duties to secure accommodation for homeless persons would be carried out not by the defender itself but by Dumfries and Galloway Housing Partnership (DGHP).

Defender's principal argument

[11] At the hearing, the defender advanced the following points.

[12] Assuming the pursuer to have the protected characteristic of disability, he requires to show that the defender has applied a PCP that puts him at a disadvantage compared to those who do not share that characteristic, in terms of section 19 of the Act.

[13] The pursuer avers on record that the CAP is the PCP, and incorporates that entire document into the pleadings *brevitatis causa*.

[14] However, there is no further specification of any part or parts of the CAP which were applied to the pursuer, and which caused him disadvantage.

[15] The CAP is a lengthy document, several parts of which appear to have no relevance to the pursuer's case.

[16] The pursuer has simply averred that the CAP as a whole gave disabled applicants insufficient priority, without further specification.

[17] The pursuer further avers that, as a result, he was allocated a property that was unsuitable, which caused him substantial disadvantage.

[18] Examples of the level of specification which would actually be required for the pursuer's pleadings to survive debate are set out in the pursuer's written submissions for this debate at paragraphs 7, 8, and 9.

[19] However, for the purposes of debate, the relevant averments are those set out in the pleadings, without reference to any amplification in written submissions. The pleadings themselves do not contain the required level of specification.

[20] Section 19(d)(2) of the Act allows for the service provider to apply an otherwise discriminatory PCP if it is a proportionate means of achieving a legitimate aim. The defender is not able to advance a section 19(d)(2) defence if they are not aware which sections of the CAP are said to comprise the PCP. The lack of specification means that the

defender cannot investigate whether its actions were in fact a proportionate means of achieving a legitimate aim.

[21] Where a PCP applies, there is a duty on a service provider to make reasonable adjustments in terms of section 20 of the Act. The pursuer avers that the defender has not made reasonable adjustments. The pursuer specifies in the pleadings certain reasonable adjustments that he alleges would have been required. However, he has not specified the practices which are said to give rise to the need to make reasonable adjustments. He has merely left this as a matter of inference, which does not comprise fair notice. This failure to specify a PCP means that no duty to make reasonable adjustments arises.

[22] Section 29 of the Act relates to discrimination by a service provider towards a person requiring the service. The pursuer's pleadings only engage section 29 insofar as this flows from application of the PCP and therefore is dependent upon a finding that the PCP was sufficiently identified.

[23] The defender relied on the following cases:

[24] *Tods Murray WS* v *Arakin Limited* 2011 SCLR 37. The pursuer refers to the stated requirement that the pleadings give proper notice of the party's line of argument and the main facts on which they rely. In that case the "connective tissue" between the alleged grounds of fault and the supposed loss was missing. In that case the pleadings did not set forth clearly and specifically the facts on which the pleader aimed to succeed on his pleas, giving the other party notice. The same considerations apply here.

[25] The *Tods Murray* case quoted Lord Macfadyen in *Royal Bank of Scotland* v *Holmes* 1999 SLT 563. Lord Macfadyen criticised the wholesale incorporation into pleadings of a lengthy document.

[26] *Morrisons Associated Companies Ltd* v *James Rome and Sons Ltd,* 1964 SC 160. This provides that lack of fair notice on record creates an injustice.

[27] *J* v *Glasgow Housing Association Limited* [2023] SAC (Civ) 26. The pursuer argues that this is a very similar case, which exemplifies a greater level of specification than the present case. In particular, the pleadings in that case narrate how specified passages of the allocation policy are said to result in discrimination. By contrast, no equivalent passages of the CAP are narrated in the present case.

Pursuer's principal argument

[28] The pursuer argues that the pleadings, which incorporate the CAP, are both relevant and sufficiently specific.

[29] The basis of the claim includes the following.

[30] The CAP divides applicants for accommodation into two categories: a "Homeless Group" (HG) and "Waiting List and Transfer Applicants" (WLTA).

[31] Applicants with a disability are treated differently depending on which category they fall into.

[32] Applicants in the WLTA category can qualify for extra points because of medical needs. By contrast, the policy for applicants in the HG category is that the defender will match an offer: "as far as [we] possibly can, to the applicant's needs and preference". No additional priority is guaranteed for an applicant with a disability.

[33] All of this information is set out in the CAP which is incorporated in the pleadings.

[34] As a result, applicants with a disability in the WLTA category are likely to receive an award of accommodation more quickly than a person who does not have a disability or

another basis for award of extra points. Although this conclusion is not stated in terms in the CAP, it is a necessary interpretation of the foregoing provisions of the CAP.

[35] The pursuer fell into the HG category, and as a result he suffered disadvantage.

[36] The pleadings have to be read as a whole. All of the relevant information on which the claim is founded is therefore contained within the pleadings.

[37] In particular, the pursuer sets out in Article 4 the disadvantage that he suffered because steps led up to his allocated property. He explains in Article 8 that the PCP applied both to people with and without the protected characteristic of disability; that he did not receive sufficient priority as a homeless person to have a realistic opportunity of being allocated suitable accommodation; and that as a result he was disadvantaged compared to others who did not experience such difficulties. The pursuer sets out in Article 9 the reasonable adjustments that could have been made.

[38] The pleadings read as a whole therefore give the defender sufficient specification of the detriment to enable it to assess whether it wishes to argue that this was a proportionate means of achieving a legitimate aim.

[39] The pleadings also give the defender sufficient information about the alleged failure to make reasonable adjustments.

Decision on principal argument

[40] Read as a whole, the pleadings do provide sufficient relevant specification to give the defender fair notice of the case against them.

[41] The pursuer has incorporated the entire CAP *brevitatis causa*, rather than quoting extracts verbatim, or incorporating relevant sections. Incorporation of a substantial document without further specification can be considered poor drafting technique. This

is in line with Lord Macfadyen's comments in *Royal Bank of Scotland* v *Holmes*, where he observes that this practice is in general unsatisfactory and may well be held not to give the specification required.

[42] Therefore, the ultimate question at this debate is not whether the pleadings in the present case are inelegant, but whether they do lack specification to such an extent as to merit dismissal.

[43] The first question is whether the relevant information is actually contained in the pleadings. The wholesale incorporation of the CAP means that the pleadings do contain the relevant aspects of the PCP. This includes the information on which the alleged discriminatory conduct is based. However, that alone is not enough to meet the challenge to specification.

[44] The next issue is whether the relevant information is sufficiently identified in the pleadings for the defender to have notice of the case against them. For this purpose, the pleadings must be read as a whole, rather than simply focussing on the single article that incorporates the entire CAP.

[45] The pursuer points out that the document is well known to the defender, because it embodies the policy designed and implemented by the defender. This is not disputed. However, again, the defender's familiarity with the policy document is not sufficient for the pursuer to succeed at debate. This is only one aspect of the considerations that may affect whether the pursuer has provided fair notice.

[46] The real question is whether the relevant sections of the CAP relied upon are evident from the pleadings, even if not individually quoted or referenced, thus meeting the requirements set out in *Tods Murray WS* v *Arakin Limited* and *Morrisons Associated Companies Ltd* v *James Rome and Sons Ltd*.

[47] The pursuer sets out in Article 4 the process by which he made his disability known to the defender, that he was allocated a house under the CAP, the nature of the house that was allocated to him, and why that property was unsuitable.

[48] In Article 8 he avers that the CAP applied both to people with and without disability, putting those with a disability at a disadvantage. As a person with a disability, the pursuer did not have sufficient priority to have a realistic opportunity of securing suitable accommodation when applying as a homeless person.

[49] The pursuer does not specify on record the relevant sections of the CAP. Nevertheless, Article 8 necessarily leads to the conclusion that the relevant section of the CAP for the allocation of accommodation to the pursuer is section 4, which relates to homeless persons.

[50] Article 8 then distinguishes this part of the CAP from the separate policy that applies to non-homeless applicants. Again, the specific section is not expressly stated. However, section 5 of the CAP is the section that deals with WLTA. Accordingly, the averments in Article 8 again clearly point towards section 5 of the CAP as the second relevant section of the CAP document.

[51] Thereafter, there is reference in the pleadings to the defender not giving the pursuer sufficient priority. This again points towards particular subsections of the CAP. Section 4 of the CAP indicates that the provider will attempt to match the offer for a homeless person so far as possible with the applicant's needs. By contrast, in section 5, it indicates the award of points for medical needs for WLTA. The distinction between awarding points for needs, as opposed to attempting to match needs as far as possible, indicates the difference in approach averred in Article 8.

[52] This is supported by the pursuer's averment in Article 8 that the PCP was not proportionate when weighing its aims against the seriousness of the detriment to the pursuer.

[53] Article 8 avers that the pursuer was at a disadvantage. He did not have a realistic opportunity of being allocated a property suited to his needs. As already mentioned, he was allocated a property with stepped access. As a result, he avers that he suffered inconvenience and stress due to the access difficulties resulting from having to use the steps, all as set out in Articles 4 and 10.

[54] Moving on to Article 9, the pursuer sets out alleged failures by the defender to make reasonable adjustments. This specifies that there was a failure to give a higher priority to homeless people with a disability. This again points to those parts of section 4 and 5 of the CAP referred to above. It indicates that there was a failure within the CAP to prioritise homeless people who were disabled.

[55] Article 9 further avers that accommodation could have been leased from the private market, or alternatively that hotel accommodation could have been used. These averments of potential reasonable adjustments also point to the nature of the alleged discrimination.

[56] As stated, the pursuer's pleadings have undoubted shortcomings in drafting. The level of specification that was apparent in *J* v *Glasgow Housing Association Limited* is clearly not present in this case. However, in all the circumstances, and considering the pleadings as a whole, there is not such a lack of specification as to justify summary decree of dismissal.

Defender's secondary argument

[57] The defender made a discrete argument on relevancy. The pursuer avers in Article 8 that the arrangement for homeless accommodation to be provided by DGHP, rather than by

the defender itself, resulted in the PCP placing the pursuer at a particular disadvantage. This averment is not supported by the craves and is therefore irrelevant.

Pursuer's secondary argument

[58] In respect of the defender's secondary argument, the pursuer counters that the averment is required to allow the pursuer to lead evidence about the mechanism of housing allocation, and hence the failure of the defender to give the pursuer sufficient priority in accommodation.

Decision on defender's secondary argument

[59] The passage complained of does not fail the test of relevancy. It comprises two sentences. The first sentence narrates that the defender has arranged for the allocation of housing to be carried out by DGHP. That is a factual statement of the method by which the defender carries out its duty to provide housing. It is relevant to an understanding and description of the mechanism by which housing was allocated to the pursuer, and as such is relevant.

[60] The second sentence states: "As a result, the PCP put him at a particular disadvantage." The defender infers that this second sentence refers only to the first sentence, immediately before it.

[61] However, the two sentences complained of appear in the middle of Article 8. They are preceded by a wider description of the defender's allocation policy. The second sentence is therefore capable of referring to all of the description of the allocation policy set out in Article 8, and not just to the content of the immediately preceding sentence. Accordingly, each of the sentences, looked at individually, meets the test of relevancy.

Expenses

[62] The question of expenses was reserved at the debate. I will fix a hearing on expenses, which can be by Webex, and at the same time a procedural hearing to determine further procedure. Written submissions on each of these matters to be lodged 72 hours before the hearing. However, if parties are agreed on both expenses and further procedure, including the arrangements for proof and a pre-proof hearing, this can be intimated to the clerk and the diet discharged.