



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 65

P1084/25

OPINION OF LORD RENUCCI

in the Petition of

BC, *qua* the Financial and Welfare Guardian of CC (AP)

Petitioner

against

WEST DUNBARTONSHIRE COUNCIL

incorporated under the Local Government Etc (Scotland) Act 1994, 16, Church Street,
Dumbarton, G82 1QL

Respondent

for Judicial Review of (a) The terms of the Housing Allocations Policy of West Dunbartonshire Council and its failure to comply with the Public Sector Equality Duty specified by Section 149 of the Equality Act 2010 in so far as it applies to persons with a Disability (b) A decision made on appeal to West Dunbartonshire Council dated 22 July 2025 to refuse the allocation of Medical Points to the Petitioner in determining an Application for rehousing the Petitioner and her family.

Petitioner: D Cobb; Drummond Miller LLP
Respondent: J McKinlay; Harper Macleod LLP

14 July 2026

Introduction

[1] The petition is raised by the petitioner *qua* the Welfare and Financial Guardian of her son CC. The petitioner has acted in that capacity since 2019. The petitioner is a single parent

of two adult children and resides with them at an address in Dunbartonshire, which she tenants from the respondent.

Background

[2] CC is 28 years old, he has a number of diagnosed disabilities, namely asthma, non-epileptic seizures, autism and Sensory Processing Disorder (SPD). There is also ongoing diagnostic testing in order to determine whether he should also be diagnosed with Tourette's Syndrome and Attention Deficit Hyperactivity Disorder (ADHD). The petitioner's daughter NC is in receipt of Adult Disability Payment and is believed to suffer from *inter alia* anxiety and depression, a mood disorder characterised by low mood and apathy, urinary incontinence and chronic fatigue syndrome. The petitioner also claims to suffer from a range of physical disabilities, *inter alia*, urinary incontinence, major hypertension, Type 2 diabetes, angina, cardiovascular disease, lymphoedema, osteoarthritis and fibromyalgia.

[3] The property rented from the respondent is a flatted dwellinghouse of a prefabricated design. It is a main door, ground floor four in the block property containing three bedrooms. The petitioner and her family have resided there since 2016. In 2018 the bathroom was adapted for the family's needs by the respondent, and a wet room was installed. There is evidence of dampness within the property. The petitioner reported issues of mould within the property to the respondent on 4 March 2024. The respondent's building services attended at the property on 7 March 2024 and 5 April 2024 but were unable to gain access. No further contact was made by the petitioner until 2025. On 19 September 2025 building services attended at the property to carry out an assessment for dampness. Building services were unable to carry out a full inspection due to the fact that there was a

large amount of items piled high within each room of the property making much of it inaccessible. It was not possible to move around within the property due to the lack of space caused by the petitioner's possessions, which appeared to fill the property. The respondent installed a dampness sensor in the property. There were high readings throughout the property for damp, mould and air quality due to the lack of ventilation. There were no signs of penetrative or rising damp. An upgraded fan was installed in the bathroom, and an additional fan was installed in the kitchen, these rooms being clear enough for fans to be installed.

[4] The respondent made attempts to investigate the dampness problem with a view to addressing it but has been hampered by the volume of items stored within the property. This has made a full inspection impossible. Neither the petitioner nor her family are physically capable of removing the property to enable the necessary investigation to be completed. In an attempt to assist, the respondent had offered to remove the petitioner's property and place it in storage. The petitioner did not take up this offer, and counsel for the petitioner advised that this was because there had been a breakdown of trust in the respondent on the part of the petitioner. No explanation was provided for this. Although upgraded fans were installed in the kitchen and bathroom, the attempts by the respondent to identify, address and remedy the damp problem have been prevented by the actions of the petitioner in refusing assistance to remove and store the vast quantity of items throughout the house that prevented proper access.

[5] The petitioner made an application for an award of allocation of medical priority points to the respondent on her own behalf in 2016. The application was rejected by the respondent. On 14 January 2025 the petitioner, made a further application on behalf of CC, and had also made a number of requests over a period of time for her family to be rehoused

by the respondent. The application on behalf of her son was done by submitting an application form for additional medical points. Accompanying this form was a separate Medical Needs and Disability Form making a request for medical priority on behalf of her son. An occupational therapist carried out an assessment, the occupational therapist identified no need for rehousing on medical grounds. The assessment included consideration of both mental and physical disabilities. In a decision letter dated 25 June 2025 the petitioner was advised by the respondent that both she and her son CC had been awarded nil points in respect of the application for medical priority points. The petitioner appealed that decision to the Housing Department on 15 July 2025. The appeal was rejected on 22 July 2025. The petitioner's daughter NC had previously been awarded 60 points.

[6] It is against the decision of 15 July 2025 and the terms of the Housing Allocations Policy ("the HAP") of West Dunbartonshire Council that the petitioner seeks to judicially review.

[7] In these judicial proceedings, which were raised on 21 October 2025, the petitioner seeks the following principal orders in terms of paragraph 4 of the petition:

- (1) Declarator that the Housing Allocation Policy (HAP) of the respondent, is contrary to law by failing to fully and properly set out policies and procedures for the allocation of housing to persons with a disability which are in conformity with its obligations under the Public Sector Equality Duty (PSED) set out in section 149 of the Equality Act 2010.
- (2) Declarator that the Housing Allocation Policy of the respondent is contrary to law insofar as it is:

- (i) In breach of section 15 of the Equality Act 2010, by being directly discriminatory against the petitioner by reason of his protected characteristic of disability.
 - (ii) In breach of section 19 of the Equality Act by applying provisions, criteria or practices which are discriminatory in relation to a relevant protected characteristic of the petitioner by reason of his protected characteristic of disability which the respondent applies, or would apply, to persons with whom the petitioner does not share the characteristic and puts, or would put, persons with whom the petitioner shares the characteristic at a particular disadvantage when compared with persons with whom the petitioner does not share it and it puts, or would put, the petitioner at that disadvantage.
 - (iii) In breach of section 20 of the Equality Act 2010 by failing to make reasonable adjustments to its terms to accommodate the requirements of persons with the protected characteristic of disability.
- (3) Reduction of the decision of the respondent's Housing Department of 22 July 2025 refusing the petitioner's appeal against the determination dated 25 January 2025 of her application for the award of additional medical points dated 14 January 2025.
- (4) A direction for the respondent to undertake and complete a reconsideration the petitioner's application for medical points of 25 January 2025 within 6 weeks of being so directed by the court, and to incorporate the outcome of such reconsideration into any future decisions regarding the allocation of a housing

tenancy to the petitioner in exercise of its powers under the Housing (Scotland) Act 1987.

The issues

[8] There are three issues for determination by the court. First, whether the HAP of the respondent is unlawful, as a consequence of a failure on the part of the respondent to discharge their duty in terms of section 149 of the Equality Act 2020. Second, whether the HAP is unlawful, insofar as it is in contravention of several parts of the Equality Act 2010, in particular sections 15, 19 and 20 in making a decision to refuse the petitioner additional medical points under its HAP. Third in the event that the respondent's HAP is in contravention of the Equality Act 2010 whether some or all of the remedies sought ought to be pronounced.

Relevant HAP provisions

[9] In terms of section 165 of the Housing (Scotland) Act 2010 the respondent is a "social landlord" and as such is subject to the Scottish Social Housing Charter. The management and allocation of housing lets is made by the respondent under its HAP.

[10] Section 3 of the HAP states:

"The Council is committed to fulfilling the three key elements of the general equality duty as defined in the Equality Act 2010:-

Eliminating discrimination, harassment and victimisation; Advancing equality of opportunity between people who share a protected characteristic and those who do not; and fostering good relations between people who share a protected characteristic and those who do not.....

It is the treatment individuals and groups receive, the level of autonomy they have, and the positive or negative outcomes for them that are our focus. Therefore, we will:

Remove or minimise disadvantages experienced by people due to their protected characteristics; Meet the needs of people from protected groups where these are different from the needs of other people...”

[11] Section 20 of the Housing Scotland Act 1987 establishes the statutory framework for social housing allocations. It requires local authorities and registered social landlords to give a reasonable preference to specific categories of people who are in urgent housing need when selecting tenants for their properties. The three specified groups of persons are homeless persons and persons threatened with homelessness and have unmet needs, persons who are living under unsatisfactory housing conditions and have unmet needs and tenants of houses which the social landlord considers to be underoccupied.

[12] In terms of the HAP a group identified as being eligible for “reasonable preference” are treated as persons belonging to general housing list applicants. The respondent operates a group plus points system to allocate its properties which is intended to recognise those applicants that should be given reasonable preference as well other groups identified as being in specific housing need. There are various points categories and Category 2 relates to Medical Needs and Disability.

[13] The respondent has produced guidance for the HAP including for those seeking to make an application for an award of points based on Medical Needs and Disability. The guidance indicates that persons who seek to make an application for a Medical Needs and Disability Award can apply for Medical Needs and Disability points if they have a permanent or long-lasting medical condition or disability that is made worse by their current accommodation. In addition, the guidance also states:

“You should only complete the Medical Needs and Disability Form if you think that moving home would alleviate the difficulties that you are experiencing in your current accommodation. The process is one of self-assessment. You are not required to contact your doctor.”

In addition the guidance makes it clear that “Only one award can be given per household” and that:

“If more than one person in your household has a medical condition or disability which is made worse by your current accommodation, please only complete a form for the person whom your property is having the worst affect on.”

[14] The medical awards are split into three categories, which attract either 100, 60 or 10 points, with 100 points being the maximum award. Medical Award A (urgent) - current accommodation is causing extreme aggravation to medical condition or disability; Medical Award B: (serious) - current accommodation is causing serious aggravation to medical condition or disability and Medical Award C (significant) - current accommodation is causing significant aggravation to medical condition or disability.

[15] The guidance also sets out circumstances in which Medical Needs and Disability Awards will not be considered which include anti-social behaviour problems and dampness or the poor condition of the property. In either circumstance the guidance sets out the process to be followed to have those issues resolved. In the case of anti-social neighbour problems, applicants should contact their enforcement officer, and in the case of dampness or poor conditions the applicant should contact the repairs section.

The relevant statutory provisions

[16] The petitioner challenges the respondent’s HAP on the basis that it breaches a number of statutory provisions.

Section 15

“(1) A person (A) discriminates against a 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."

Section 19

- "(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant characteristic of B's.
- (2) For the purposes of subsection (1) a provision criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if
 - (a) A applies or would apply it to persons with whom B does not share the characteristic
 - (b) it puts or would put persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it
 - (c) it puts or would put B at that disadvantage and
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim."

Section 20

- "(1) Where this Act imposes a duty to make reasonable adjustments on a person this section, section 21 and 22 and the applicable Schedule apply and for those purposes a person on whom the duty is imposed is referred to as A
- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement where a provision criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid."

Section 21

- "(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise."

Section 149 Public sector equality duty

- "(1) A public authority must, in the exercise of its functions, have due regard to the need to-
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and person who do not have it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity 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) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (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."

The petitioner's submissions

[17] The petitioner's position is that the property had experienced significant long-term issues with dampness in several locations, requiring the family to move items into dryer rooms. That domestic appliances and such noises are particularly upsetting to the petitioner's son as a result of his medical conditions. That the family had to move a substantial number of items into the dryer rooms and they have become overburdened, and none of the petitioner's family were capable of physically moving the property into storage. In addition, the level of soundproofing within the property was inadequate and sounds emitted from other properties within the block were audible particularly in relation to domestic appliances which was particularly upsetting to the petitioner's son, CC, as a result of his medical conditions. Furthermore, he was affected by other sounds in the immediate environment, and the petitioner had made several complaints to the Anti-Social Behaviour Team of the respondent since November 2019.

[18] The petitioner had sought to be rehoused into a property which properly reflects the circumstances of the family and had applied for additional medical points under the HAP. The result of the application was that the family were found entitled to receive nil additional points.

[19] In short, the petitioner's position was that the refusal to award additional points arose from the failure of the HAP to reflect properly the needs of a family with significant needs arising from their disabilities. This failure is a result of the HAP to meet the requirements of the 2010 Act and as such the HAP is both directly and indirectly discriminatory against persons with disabilities. In addition, the respondent has not properly or adequately applied the Public Sector Equality Duty ("PSED") in terms of section 149 of the Act in adopting and operating the HAP.

[20] The petitioner submitted that the HAP made no express reference to the respondent applying the PSED in relation to matters relating *inter alia* the allocation by it of housing to disabled groups. In particular, the respondent had failed to properly and adequately apply the PSED in formulating the HAP when viewed against the test specified in (*R (on the Application of Bracking) v SSWP* [2013] EWCA (Civ) 1345). In doing so it was submitted that the respondent had failed to create outcomes which eliminate the forms of unlawful discrimination experienced by the petitioner as a person with the protected characteristic of disability and as a member of a group living in the area of the respondent sharing that protected characteristic.

[21] The petitioner contended that a particular failing of the HAP was that it did not reflect properly the needs of a family with different medical needs living as a household in one house, as there was no mechanism to aggregate the points of family members living together in one household and this had a disproportionate effect, in so far as it resulted in the family living in wholly unsuitable conditions. As such, because of the policy that there is only one award per household, which goes to the person of the highest needs, there was no means by which any individual points could be aggregated within a single household. The core problem arising in the petitioner's case arose from the noise level and the dampness.

[22] In relation to the issue of discrimination, it was submitted that as a result of both the terms and application of the HAP by the respondent, there has been a failure in that the HAP does not prevent the type of unlawful discrimination experienced by the petitioner as a person who has protected characteristics of disability or persons sharing that characteristic. Furthermore, the HAP did not set out any reasonable adjustments it has incorporated to

reduce or cut out unlawful discrimination of people with such characteristics, as envisaged by section 20 of the 2010 Act.

[23] Ultimately, counsel for the petitioner invited the court to find that the current situation and outcome as experienced by the petitioner has resulted in the petitioner and her family being treated unfairly by the respondent as a consequence of their disabilities in contravention of section 15 of the 2010 Act. In arriving at that outcome, any legitimate aim that the respondent may have in allocating housing in its capacity as a public authority has not been implemented by proportionate means.

The respondent's submissions

[24] The respondent's position was that the HAP was fair, proportionate and complied with all statutory provisions and in particular its duties in terms of the Public Sector Equality Duty (PSED) and was not therefore in contravention of sections 15, 19 and 20 of the 2010 Act. The fact that the HAP did not provide the petitioner with the outcome they desired did not make the HAP unlawful.

[25] The respondent contended that the petitioner had misunderstood the duty incumbent on the respondent in terms of the PSED. The duty was not a duty to receive a result but only a duty to have due regard to the need to achieve the goals identified in section 149(1). The respondent argued that the PSED is concerned with process and not result and referred to *Hotak v Southwark London Borough Council* [2016] AC 811, para [74] in support of that submission.

[26] The respondent further submitted that the extent of the PSED and the necessary due regard in any case will depend upon the particular circumstances of the case. In considering whether the respondent has fulfilled that duty what is expected "is a realistic and

proportionate approach to evidence of compliance with the PSED, not micromanagement or a detailed forensic analysis by the court” *R (on the application of SG) v Secretary of State for the Home Department* [2016] EWHC 2639 (Admin) paragraphs 329 and 330. As such, it was submitted that the PSED had been discharged by the respondent.

[27] With respect to section 19 of the Equality Act 2010 the HAP is not indirectly discriminatory in terms of section 19. To succeed in a claim of indirect discrimination four conditions must be met and the burden of establishing the elements of the test rests with the petitioner. The petitioner had failed to show any particular disadvantage to disabled people in the application of the HAP. In the event that the petitioner was put to a particular disadvantage by the HAP, the respondent has shown that any disadvantage is a legitimate means of achieving a legitimate aim.

[28] In relation to section 20 of the 2010 Act the respondent argued that the petitioner has not been put at a substantial disadvantage as a result of the application of the HAP in comparison with persons who are not disabled and therefore the respondent is not in breach of duty to make reasonable adjustments. It is for the petitioner to establish a *prima facie* case that he is at substantial disadvantages compared to others who are not disabled by virtue of the HAP. No evidence has been produced in support of that and therefore the duty to make reasonable adjustments does not arise.

[29] With regard to section 15 of the 2010 Act the petitioner has not been directly discriminated against. The award of nil points does not mean that the petitioner was treated unfavourably because of the petitioner’s disability. He has not received fewer points than would have been available to him had he not been disabled. He has not received unfavourable treatment in terms of the HAP because of something arising from his

disability. Even if he had been treated unfavourably, any such treatment is a proportionate means of achieving a legitimate aim.

[30] The court should refuse the petition.

Analysis and decision.

[31] At the heart of this petition is a complaint that the respondent has failed to award the petitioner sufficient medical points, which it is argued would significantly improve the petitioner's request for a change of accommodation. The main reason that is advanced for the property being unsuitable for the family's needs, standing their medical conditions, is the fact that the property has experienced long-term issues with dampness in several locations within the property. It is submitted that this dampness has had a profound effect upon the petitioner's family and property. The guidance issued by the respondent on how to complete the Medical Needs and Disability Priority Form at section 6 sets out circumstances in which Medical Needs and Disability Awards will not be considered. These include anti-social neighbour problems in which applicants are advised to contact the ASB officer and dampness or poor conditions of the property which should be reported to the repairs section of respondent. On a factual basis the petitioner's principal, though not exclusive reason that the property is unsuitable is because of the dampness. Notwithstanding that claim the petitioner has undermined attempts by the respondent to fully identify and rectify the problem. However, the central issue here is not the condition of the property the central issue here is the lawfulness or otherwise of the respondent's HAP.

Section 149 of the 2010 Act

[32] The petitioner argues that the respondents HAP fails to comply with the PSED as specified by section 149 of the 2010 Act, insofar as it applies to decisions concerning the allocation of housing to persons with a disability. The petitioner's main argument in support of this appears to be the fact that the application of the HAP and the decision not to award extra points to the petitioner is eloquent of itself that the HAP has failed to reflect properly the needs of a family with significant needs arising from their difficulties.

[33] For this approach to be correct the duty on the respondent arising from the PSED specified in section 149 of the 2010 Act would require to be one aimed at achieving results. The fact that the application of the HAP arrives at a decision that does not achieve what the applicant sought does not of itself mean that it does not comply with the respondent's PSED.

[34] The requirement imposed on the respondent by section 149 of the 2010 Act is to have due regard to the need to achieve the three goals set out therein, see *Hotak v Southwark London Borough Council* [2016] AC 811 at para [74]. The court in *Hotak* went onto say at para [75], that the duty "must be exercised in 'substance, with rigour and with an open mind'". It also confirmed at the same paragraph that it is for the decision-maker, in this case the respondent, to determine how much weight to give to the duty, and all that is required by the court is that it is satisfied that there has been a rigorous consideration of the duty provided that there has been "a proper and conscientious focus on the statutory criteria". Furthermore, "the court cannot interfere simply because it would have given greater weight to the quality implications of the decision".

[35] The respondents HAP, as revised and approved by the respondent's Housing and Communities Committee in February 2022 expressly states that a key objective of the policy is to ensure that the policy does not discriminate on the grounds of race, gender,

transgender, sexual, orientation, marital status, ethnic origin, faith or religious belief, disability or age. The policy thereafter sets out the framework of rights-based legislation which must influence the allocation of housing with which the respondent must comply with. This includes the 2010 Act and at page 11 of the HAP, the respondent directly refers to the requirements of section 149 of the Act when it states that it is committed to fulfilling the three key elements of the general equality duty as defined in section 149 of the 2010 Act. In addressing the issue of allocation and to ensure the best use of stock for those that require it most, including those with medical needs and disability, the respondent uses a group points plus system to assist in the allocation of its properties. This system recognises those applicants that should be given reasonable preference and also other groups identified as being in specific housing need.

[36] A major criticism of this system by the petitioner is the fact that any Medical Needs and Disability points cannot be aggregated within a household where more than one person has medical needs or a disability.

[37] Medical points are applied per household. A single award of points is made to the person with the most severe medical condition within the household. This is not an arbitrary decision but is one designed to ensure that the allocation of housing is based on need. Were points to be awarded to individuals within a household and be able to be aggregated this could result in a household with a number of individuals eligible for medical points being able to accumulate them from a number of minor awards thereby placing them ahead in the queue of a person with more significant needs. The HAP is specifically designed to avoid such inequity and to ensure the allocation of housing based on need.

[38] In deciding upon this group points based system it is clear that the respondent had due regard to the terms and requirements of section 149 of the 2010 Act and in doing so I am satisfied that the HAP complies with the PSED specified in section 149 of the 2010 Act and that the PSED was exercised in substance and with rigour and an open mind, and was not just a question of “ticking boxes” as per McCombe LJ in *(R (on the Application of Bracking) v SSWP* [2013] EWCA (Civ) 1345) at paragraph 24.

Section 15 of the 2010 Act

[39] Section 15 of the 2010 Act prohibits direct discrimination by treating someone unfavourably because of something arising in consequence of their disability and it cannot be shown that the treatment is a proportionate means of achieving a legitimate aim. The court in *Williams v Swansea University* [2019] 1 WLR 93, held that section 15 of the 2010 Act raised two simple questions of fact, namely, what was the relevant treatment and was it unfavourable to the claimant. The relevant treatment in the petitioner’s case was the award of nil points. However, the fact that he was awarded nil points does not mean that he was treated unfavourably because of his disability. Had it not been for his disability he would not have been in a position to make a claim for additional points. The fact that he was assessed as being awarded nil points did not arise as a result of his disability. The issue is not whether he would have been treated more favourably by the award of points it is enough that he was not treated unfavourably by the award of no points. The HAP provides additional points for medical needs to the person in the household with the most medical needs and as such the household already has 60 additional points as a result of the medical award to NC the daughter of the petitioner. Furthermore, the points-based system of the HAP has been set up with a view to seeking to ensure that the assessment of housing

needs is applied in a fair and equitable manner. Therefore, even were the treatment of the petitioner to be deemed unfavourable it could not be said that the treatment is not a proportionate means of achieving a legitimate aim. This is particularly so in light of the fact that the household has benefited from the HAP given the additional points awarded to the petitioner's daughter.

Section 19 of the 2010 Act

[40] Section 19 of the 2010 Act sets out four conditions that require to be met in order for a claim of indirect discrimination to be established. These are set out in paragraphs 2(a), (b), (c), and (d) of section 19. The onus of establishing that the test for indirect discrimination has been met is on the person claiming indirect discrimination, in this case the petitioner. Although the first part of the test is met, section 19(2)(a), because it applies to all, including those who do not share the petitioners disability, in order to establish that there has been indirect discrimination the petitioner requires to show a causal link between the provision and the particular disadvantage suffered by them and persons with whom they share the same relevant characteristic. The fact that the petitioner was awarded nil points does not show that the HAP puts persons with a disability at any particular disadvantage. Other than the fact that the petitioner was awarded nil points no further evidence was produced to show that it did. With reference to section 19(2)(b), of the 2010 Act, that part of the HAP concerned with the award of additional points for those with medical needs and disability does not put those with such a disability at a particular disadvantage. As disabled people generally are not put at a disadvantage by the HAP it cannot be said that the petitioner is, and therefore section that part of the test at section 19(2)(c) is not met either.

[41] Even were it established that the HAP was indirectly discriminate of the petitioner the action would nonetheless fail because it can be shown that the HAP is a proportionate means of achieving a legitimate aim, namely to ensure that adapted and suitable property is let to those who need it most and with a specific aim of improving how houses are allocated to those with particular medical needs or disability. It is a matter of common sense that not all those with a disability will meet the threshold to ensure the award of maximum medical points or indeed any additional points, but likewise that does not mean that that because they do not, the conditions for indirect discrimination as set out in section 19(2) are met.

Section 20 of the 2010 Act

[42] Section 20 imposes a duty to make reasonable adjustments on a person. The duty comprises three requirements. The first requirement is a requirement where a provision, criterion or practice of, in this case the respondent, puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as is reasonable to have to take to avoid the disadvantage. In the present case for the reasons stated the petitioner has failed to establish that the HAP of the respondent puts disabled people at a substantial disadvantage in relation to the allocation of housing, with persons who are not disabled. As such the duty imposed by section 20 to make reasonable adjustments does not arise in this case.

[43] For all these reasons I uphold the respondents' third and fourth pleas-in-law and repel the petitioner's pleas-in-law and refuse the petition. I shall reserve all questions of expenses meantime.