

SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT
DUMFRIES

[2026] SC DUM 32

DUM-A88-21

NOTE BY SHERIFF MUNGO BOVEY KC

in the cause

TREVOR SIMPSON

Pursuer

against

DUMFRIES AND GALLOWAY COUNCIL constituted under the Local Government
(Scotland) Act etc. 1994 and having its offices at Council HQ, English Street, Dumfries,
DG12DD

Defender

Act: Lazarowicz, Advocate

Alt: Thom

Dumfries 20 February 2026

The Sheriff, having resumed consideration of the pursuer's motion to allow the pleadings to be amended in terms of the minute of amendment number 11 of process and answers thereto, refuses the motion.

[1] This is an action for payment for declarator that the defender is in breach of the Equality Act 2010 ("the Act") and damages for the breach. It was warranted on 16 August 2021.

[2] By motion of 2 November 2021 the pursuer's agent moved to sist the action to allow the instruction of reports and ingathering of documents on the basis that it had been raised

to avoid the timebar. On 30 November 2021 the cause was sisted on the pursuer's unopposed motion.

[3] On 13 October 2025 I granted a further unopposed motion, recalled the sist and re-enrolled the cause for further procedure and of new assigned an Options Hearing on 4 December 2025, provided that 20 November 2025 was the last day for making adjustments to the Writ or Defences; and sanctioned the proceedings as suitable for the employment of junior counsel given the complexity of the claim under the Act.

[4] On 30 December 2025, the pursuer lodged a minute of amendment and motion that the minute of amendment be received, answered within 14 days (if so advised); and a hearing in terms of rule 18.3 of the Ordinary Cause Rules fixed. This was opposed and a hearing on the opposed motion fixed for 15 January 2026.

[5] That day a colleague allowed the pursuer's minute of amendment to be received and form number 11 of process; Appointed the defender to lodge answers thereto, if so advised, within 14 days; Allowed parties to adjust said minute of amendment and answers within 14 days thereafter and assigned 5 February 2026 as a hearing on the minute of amendment and answers, as adjusted, and discharged a diet of debate assigned for 5 February 2026.

[6] Mr Thom lodged a useful written submission for the defender which he adopted except insofar as it was directed to the issue of the discharge of the debate on 5 February.

The existing case

[7] Debate proceeded on the *Record for Options Hearing on 4.12.25*. The pursuer avers (Condescence 3) that he was born on 10 July 1984. He has the protected characteristic of a disability pursuant to section 6 of the Act. He has debilitating back and leg pain which affects his mobility. He also suffers from muscle spasms which affect him several times a

week and mean that he cannot mobilise. He has dyspraxia, depression, and Post Traumatic Stress Disorder.

[8] He further avers (Condescendence 4) that on or about 1 September 2020, he presented as homeless to the defender, engaging the defender's duties under section 28 of the Housing (Scotland) Act 1987 ("the 1987 Act"). During his initial interview, the pursuer advised of his disabilities. He provided an occupational therapy report from 2011 which referred to his disabilities and his housing needs. He requested a ground floor property. The defender provided temporary accommodation in accordance with its duties under section 29 of the 1987 Act. He was accommodated in a third-floor flat at 26 Bridge Street, Lockerbie, DG11 2HE ("the property") which was accessible only by stairs. To access the property, he required first to walk up four or five steps up to the entrance to the common stair, and then up to the third floor. He required to walk up four flights of stairs to reach the property. The pursuer found it difficult to mobilise up and down the stairs. As a result, the pursuer was not able to leave his home on certain days. The pursuer was allocated the property in accordance with the defender's Common Allocation Policy ("the allocation policy") and section 21 of the 1987 Act. The allocation policy is produced and held to be incorporated. The defender's officers told him at their meeting with him that he would have to accept it or he would be "back on the streets". He was told that the defender had no other accommodation to offer him, and that he would not be given any other accommodation. When he met the defender's officers at the property, the pursuer made it clear to them that it would cause him great inconvenience and pain to access the property because of the stairs he would have to climb. He was told he had to make a choice at that time. He only accepted the property because he felt he had no alternative, as otherwise he would have had no accommodation at all.

[9] Article 5 of condescence and the answer appear to show that the pursuer was offered the tenancy of a ground floor flat on 29 January 2021 though the pursuer says it was not suitable for him as it could only be reached by walking up a number of stairs.

[10] At Condescence 8 the pursuer avers that the treatment which the pursuer received from the defender and its employees constitutes indirect discrimination in the provision of a service on the grounds of disability, contrary to sections 19 and 29 of the Act, for which the defender is liable under sections 109 and 110 of the Act. From on or about 2 September 2020, the defender and its employees applied to the pursuer a provision, criterion or practice ("PCP"), namely the defender's allocation policy.

The minute of amendment

[11] The minute of amendment makes two principal changes to the pursuer's case:

[12] It deletes the PCP of the defender's allocation policy and substitutes "a practice of securing accommodation for homeless persons such as the pursuer, which was not suitable for those persons' requirements."

[13] No further specification of this practice or when it was applied is provided. It is of, at least, doubtful relevancy: As Lewis LJ observed in *R v London Borough of Tower Hamlets* [2025] EWCA Civ 1049 "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. It may have only been applied to one person but there will always be something more than that application to justify the use of the term "practice". Here there is nothing.

[14] For our purposes at this stage, the issue is prejudice to the defender. It seems to me that the proposed averment would open the defender to having to investigate how it was dealing with homeless applications from disabled people in 2020 or to discovery in that

regard. Either way, it would be a very different prospect from the current case which is simply a reliance on their allocation policy albeit also unspecified as to any particular provision.

[15] The second change is to introduce a new ground of claim in a new Condescence 10 of discriminating against the pursuer in terms of section 15 of the Act: By requiring him to live in the property the defender treated him unfavourably in consequence of his disability, to his detriment.

[16] Section 15 of the Act provides that:

- “(1) A person (A) discriminates against a disabled 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.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

[17] The defender lodged answers to the minute of amendment including:

“Not known and not admitted that the defender’s staff told the pursuer that if he did not accept the offer of the property at 26 Bridge Street, Lockerbie, he would not be given any other accommodation and that he had no alternative but to live in the accommodation which he was offered. Explained and averred that the officer who conducted the interview with the defender died in September 2022.”

[18] Although the defender had addressed the factual position averred by the pursuer at the outset, the issue raised by the new averments is rather different. In that regard, the fact that the officer who delivered the decision on the allocation died during the sist is relevant. This is particularly so because the proposed new ground of action introduces for the first time the motive of the decision maker. Mr Thom relied upon Simler J’s decision in the EAT case *Pnaiser v NHS England* [2015] UKEAT 0137_15_0412 (4 December 2015) [2016] IRLR 170 at paragraph 31:

“A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The ‘something’ that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it ... more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.”

[19] However, the EAT continued:

“This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator ...

Moreover, the statutory language of section 15(2) makes clear ... that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the ‘something’ leading to the unfavourable treatment is a consequence of the disability”

[20] Here again the proposed amendment is problematic; the narration of fact is

unchanged and it seems that the natural reading of the pursuer’s averments is not that the defender allocated the unsuitable property to any extent because of his disability but despite it.

[21] It seems to me that the introduction of this case of doubtful relevance at this stage would predictably require a lengthy process of amendment and debate and enquiry on the part of the defender in respect of which a key witness is unavailable.

[22] Overall, I consider that it would be prejudicial to the defender to have to meet these amendments at this stage.

[23] In measuring the disadvantage to the pursuer of refusing to allow them, I assume in his favour that they are essential to his case progressing.

[24] The pursuer's case is that he was allocated the property on a third floor on about 1 September 2020, offered accommodation on a first floor without level access on 29 January 2021 and signed a permanent tenancy agreement on 7 May 2021. During his time in the property, by reason of his disability he found it difficult to mobilise up and down the stairs and as a result, was not able to leave his home "on certain days."

[25] Having regard to the limited and undetailed harm averred, I consider that the balance between the parties favours the defender on this matter and will not allow the pursuer's case to be amended as proposed. I was not asked to deal with expenses and will not do so in the absence of a motion from either party.