Claim No L03CL676

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 23 June 2026

Before :

RECORDER GARD

- -

Between :

LONDON & QUADRANT HOUSING TRUST

Claimant

– and –

MS MICHELLE JEAN CHARLES

Defendant

- -

Tiernan Fitzgibbon (instructed by London & Quadrant Housing Trust) for the **Claimant**
Jasraj Sanghera (instructed by Gillian Radford & Co) for the **Defendant**

Trial dates: 30-31 March 2026

- -

APPROVED JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10:00 on 23 June 2026 by circulation to the parties or their representatives by email.

Recorder Gard:

Background

1. This judgment relates to a claim for possession of Flat 23, Steve Biko Court, St Johns Terrace, London W10 4SB (the "Property") brought by the Claimant against the Defendant.

2. The Claimant is the freehold owner of the Property and a social landlord.

3. The Defendant has been the Claimant's tenant at the Property since signing an assured tenancy agreement commencing 22 January 2001 (the "Tenancy Agreement").

4. In a letter dated 7 August 2024, the Claimant served the Defendant with a Notice to Quit and demanded possession of the Property by 15 September 2024. It is argued by the Claimant that the Defendant lost security of tenure and the assured tenancy became a contractual periodic tenancy.

5. Without prejudice to the Notice to Quit, the Claimant simultaneously served a Notice Seeking Possession in reliance on grounds 12 and 13 of Schedule 2 to the Housing Act 1988, as amended ("HA 1988").

6. The Claimant issued the claim for possession of the Property on 9 October 2024.

7. This judgment follows a 2-day trial which took place on 30 and 31 March 2026 and which concluded without sufficient time to deliver *ex tempore* judgment.

8. In preparing this judgment, I have had the benefit of a trial bundle running to 640 pages, an authorities bundle of 168 pages and skeleton arguments from both sides. References in this judgment to pages in the trial bundle are denoted with "[<u>B/#</u>]."

9. I also heard oral evidence at trial from the following witnesses:

<u>For the Claimant</u>

(i) Mr Thomas Maloney – Area Lettings & Rehousing Manager for the Claimant
(ii) Ms Christine Steele – In-House Solicitor for the Claimant

<u>For the Defendant</u>

(i) Ms Michelle Jean Charles – the Defendant
(ii) Dr Judith Freedman, MD, FRCPsych – consultant psychiatrist, who provided an expert report dated 23 April 2025 (the "Psychiatric Report") and gave evidence via videolink on day 1
(iii) Ms Samantha Alleyne – the Defendant's friend
(iv) Ms Lorraine Bruce – the Defendant's former downstairs neighbour at Steve Biko Court for more than 20 years
(v) Ms Lorna Jean Charles – the Defendant's aunt
(vi) Ms Khadija Hart – the Defendant's cupping therapist and friend
(vii) Ms Charmaine Wright – the Defendant's cousin

10. These witnesses were taken out of their usual order, so as to accommodate the Defendant's expert witness via videolink on day 1 and to allow the Claimant the opportunity to procure the attendance of Mr Paul Vandi, Area Housing Manager for the Claimant, on day 2, although he was ultimately unable to attend. This required Mr Fitzgibbon to cross-examine defence witnesses on day 1 who he was likely only expecting to cross-examine on day 2, which he did with commendable composure and efficiency.

11. With respect to the evidence of Mr Vandi, the Claimant had not given notice in accordance with section 2 of the Civil Evidence Act 1995 of an intention to rely on the witness statement of Mr Vandi as hearsay evidence and the court was told he had not responded to messages from the Claimant. I noted that this did not make his witness statement inadmissible, but may impact the weight I would give his evidence.

12. I was also told by Defendant's counsel at the outset of the trial that neither Ms Danielle Henry nor Cally Jo Nassralla, neighbours of the Defendant who had given witness statements, would be in attendance, although the Defendant ultimately did not rely on their evidence to any material degree.

13. Counsel for both parties supplemented their skeleton arguments with comprehensive closing submissions and I have been assisted by the clarity of presentation from both counsel.

14. This judgment has been drafted with careful consideration of all of the evidence available to me. I will not summarise the evidence except where relevant to explain the rationale of my decisions set out below.

Preliminary Matter

15. Before addressing the law and applying it to the facts as I have found them in this case, a preliminary issue was raised by the Claimant at the start of trial which should be noted here.

16. Much in this case turns on whether the Defendant is disabled and whether she has ceased to occupy the Property as a result of any disability. While the Claimant did not concede at trial that the Defendant is a person with disabilities within the meaning of section 6 of the Equality Act 2010, the Claimant has, as set out in a letter to the Defendant on 19 June 2025 [B/638-639], concluded that the Defendant has a medical requirement to move homes. The medical approval letter confirms that the Claimant will make the Defendant a direct offer of suitable accommodation and specifies parameters for that accommodation, based on the recommendations of Claimant's independent medical advisor. These parameters include that the Defendant has a medical requirement for a 1 bedroom flat, not above the 1st floor.

17. The Claimant's case in these possession proceedings is that the Defendant is not disabled and that she is not unable, as a result of any disability, to occupy the 3rd floor (no lift) studio where she is a tenant currently.

18. There is a needle which the Claimant may theoretically thread that distinguishes the conclusions it has reached as to medical need under its rehousing policy from the

arguments it makes in law to advance this possession claim, but the tension within the Claimant's position is an obvious one.

19. At the start of the trial, Claimant's counsel advanced an oral application to adjourn and for the possession proceedings to be stayed so as to allow the Claimant an opportunity to make the Defendant an offer of suitable accommodation in line with its 19 June 2025 letter.

20. That application was opposed by the Defendant on the basis that it was made at the start of trial without any prior approach to the Defendant and was inconsistent with the overriding objective. It was argued for the Defendant that she was trial ready and the Claimant was seeking a stay in order for it to make an offer which was its gift to give and had been for the prior 11 months.

21. I asked the Claimant whether it could give an undertaking as to when an offer of suitable accommodation would be made. I was told that no such undertaking could be given and I refused the application to adjourn and stay the proceedings for largely the reasons argued by the Defendant.

The Law

<u>*Tenancy condition*</u>

22. The Tenancy Agreement created an assured periodic tenancy as defined in HA 1988.

23. Section 5(1) of HA 1988 provides that service by a landlord of a notice to quit in respect of an assured tenancy is of no effect, and an assured tenancy can only be terminated by the landlord obtaining an order for possession.

24. A tenant may lose the protections of an assured tenancy under HA 1988 if the tenant fails to satisfy the tenancy condition contained in section 1(1)(b) of the Act, which provides the tenancy remains assured if and so long as:

"*the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling-house as his only or principal home*".

25. Whether a tenant occupies a property as their only or principal home is a question of fact to be determined on a balance of probabilities.

26. In *Amoah v Barking and Dagenham LBC* [2001] 1 WLUK 486, Etherton J (as he then was) distilled the following principles for considering this question, drawing heavily upon the approach of Asquith LJ in *Brown v Brash* [1948] 2 KB 247:

(i) The court considers whether the landlord seeking possession has put forward evidence which gives rise to the prima facie inference that possession or occupation has ceased (at 15.6-10):

"*A. Absence by the tenant may be sufficiently prolonged or unintermittent to compel the inference, prima facie, of a cesser of possession or occupation. The question is one of fact and degree.*"

(ii) If such an inference is made, the burden shifts to the tenant to rebut it (at 15.10-16.4):

"*B. Assuming an absence sufficiently prolonged to have this effect:*

1. *The onus is on the tenant to repel the presumption that his possession has ceased.*

2. *In order to repel it he must at all events establish a de facto intention on his part to return after his absence.*

3. *While there is no set limit to the length of absence, the tenant must be able to demonstrate a 'practical possibility' or 'a real possibility' of the fulfilment of his intention to return within a reasonable time.*

4. *The tenant must also show that his inward intention is accompanied by some formal, outward and visible sign of his intention to return, which sign must be sufficiently substantial and permanent that in all the circumstances it is adequate to rebut the presumption that the tenant, by being physically absent from the premises for a prolonged period, has ceased to be in possession of it."*

27. The High Court's approach in *Amoah* was endorsed by the Court of Appeal in *Islington LBC v Boyle* [2011] EWCA Civ 1450, where Etherton LJ highlighted that the assessment of a tenant's intention looks beyond their subjective intent to the objective facts (at [65]):

"*…it is not sufficient for the tenant to prove that at the material time it was his or her subjective intention and belief that the dwelling remained the principal home. The objective facts must bear out the reality of that belief and intention both in the sense that the intention and belief are or were genuinely held and also that the intention and belief themselves reflect reality. The reason for the absence, the length and other circumstances of the absence and (where relevant) the anticipated future duration of the absence, as well as statements and conduct of the tenant, will all be relevant to that objective assessment.*"

<u>*Notice to quit*</u>

28. In order to be valid, a notice to quit must comply with the formal requirements of section 5 of the Protection from Eviction Act 1977.

<u>*Notice of seeking possession*</u>

29. A landlord seeking possession of a property which is subject to an assured tenancy may only end the tenancy by obtaining an order for possession from the court.

30. The landlord must serve the tenant with notice of seeking possession under section 8 of HA 1988, as amended. The notice must set out prescribed information further to the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 SI No 620.

31. In order to obtain an order for possession, the landlord must prove that one or more grounds of statutory possession are made out. The landlord may seek to rely on mandatory or discretionary grounds. Where discretionary grounds are relied upon, the landlord has the burden of proving both that the grounds relied upon are made out and that it is reasonable for the court to make a possession order.

32. The grounds for possession relied upon by the Claimant in this claim are discretionary Grounds 12 and 13 from Schedule 2 to the LTA 1988:

"*Ground 12*

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 13

The condition of the dwelling-house or any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house and, in the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant…"

33. Per Lord Greene MR in *Cumming v Danson* [1942] 2 All ER 653, when deciding whether or not it is reasonable to grant possession (at 655):

"*The duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in a broad, commonsense way…*"

Disability discrimination

34. Under section 6(1) of the Equality Act 2010 (the "EA 2010"), a person has a disability if they: (i) have a physical or mental impairment; and (ii) that impairment has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities. Schedule 1 of the EA 2010 sets supplementary provisions relating to the application of this definition.

35. Under section 15 of the EA 2010, a disabled person is discriminated against if they are treated unfavourably because of something arising in consequence of their disability and if such treatment is not shown to be a proportionate means of achieving a legitimate aim.

36. The party asserting disability discrimination, in this case the Defendant asserting it as a defence, bears the burden of proving unfavourable treatment arising out of a consequence of disability with reference to section 15(1)(a) of the EA 2010. If proven, then the burden shifts under section 15(1)(b) read together with section 136, in this case to the claimant, to prove that such treatment is a proportionate means of achieving a legitimate aim.

37. Section 35 of the EA 2010 prohibits disability discrimination by way of eviction.

38. In *Akerman-Livingstone v Aster Communities Ltd* [2015] UKSA 15, the Supreme Court considered the application of the proportionality test in the context of disability discrimination being raised as a defence to eviction. Per Baroness Hale DPSCJ (at [34]):

> "*Once facts are established that could give rise to a discrimination claim, the burden shifts to the landlord to prove otherwise….If it is a claim of disability discrimination under section 15, then the landlord would have to show that there was no less drastic means of solving the problem and that the effect on the occupier was outweighed by the advantages.*"

<u>*Public sector equality duty*</u>

39. Section 149(1) of the EA 2010 provides:

> "*(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 persons who do not share it.*"

40. The application of the public sector equality duty ("PSED") in the context of possession proceedings was considered in *L&Q v Patrick* [2019] EWHC 1263. Turner J summarized the factors most relevant to possession cases as follows (at [42]):

> "***Application of the PSED***
> *(i) When a public sector landlord is contemplating taking or enforcing possession proceedings in circumstances in which a disabled person is liable to be affected by such decision, it is subject to the PSED.*
> ***Nature and scope of the PSED***
> *(ii) The PSED is not a duty to achieve a result but a duty to have due regard to the need to achieve the results identified in section 149. Thus when considering what is due regard, the public sector landlord must weigh the factors relevant to promoting the objects of the section against any material countervailing factors…*
> ***Making inquires***
> *(iii) The public sector landlord is not required in every case to take active steps to inquire into whether the person subject to its decision is disabled and, if so, is disabled in a way relevant to the decision. Where, however, some feature or features of the information available to the decision maker raises a real possibility that this might be the case then a duty to make further enquiry arises.*
> ***The importance of substance over form***
> *(iv) The PSED must be exercised in substance, with rigour and with an open mind and should not be reduced to no more than a "tick-box" exercise.*
> ***Continuing nature of the duty***
> *(v) The PSED is a continuing one and is thus not discharged once and for all at any particular stage of the decision making process. Thus the requirement to fulfil the PSED does not elapse even after a possession order (whether on mandatory or discretionary grounds) is granted and before it has been*

enforced. However, the PSED consequences of enforcing an order ought already to have been adequately considered by the decision maker before the order is sought and, in most cases, in the absence of any material change in circumstances (which circumstances may include the decision maker's state of knowledge of the disability), the continuing nature of the duty will not mandate further explicit reconsideration.

The timing of formal consideration of the PSED

(vi) Generally, the public sector landlord must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before seeking and enforcing possession and not merely as a 'rear-guard Action' following a concluded decision. However, cases will arise in which the landlord initially neither knew nor ought reasonably to have known of any relevant disability. The duty to 'have due regard' will then only take on any substance when the disability becomes or ought to have become apparent…

Recording the discharge of the duty

(vii) An important evidential element in the demonstration of the discharge of the PSED is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements. Although there is no duty to make express written reference to the regard paid to the relevant duty, recording the existence of the duty and the considerations taken into account in discharging it serves to reduce the scope for later argument. Nevertheless, cases may arise in which a conscientious decision maker focussing on the impact of disability may comply with the PSED even where he is unaware of its existence as a separate duty or of the terms of section 149.

The court must not simply substitute its own views for that of the landlord

(viii) The court must be satisfied that the public sector landlord has carried out a sufficiently rigorous consideration of the PSED but, once thus satisfied, is not entitled to substitute its own views of the relative weight to be afforded to the various competing factors informing its decision. It is not the court's function to review the substantive merits of the result of the relevant balancing act. The concept of 'due regard' requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. In short, the decision maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognise the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors."

Discussion

<u>*Right to possession under the Notice to Quit*</u>

41. It is common ground that there was a fire at the Property on or around 30 October 2021 and that the Defendant was put in alternative accommodation while repair works were undertaken at the Property.

42. In the Additional Particulars of Claim dated 7 October 2024, the Claimant avers that the Defendant has not occupied the Property as her only or principal home "*since 11th November 2021*", saying:

"*The Defendant was temporarily decanted from the Premises for three weeks as a result of repair works being required after a fire inside the flat. The Defendant has since refused to move back…*" [B/11 ¶3]

43. It is therefore implied in the Additional Particulars of Claim that the Property was suitable to be re-occupied by the Defendant just three weeks after the fire and that it was a breach of the tenancy condition when she failed to move back in on 11 November 2021.

44. The evidence which the Claimant put forward then refers to entirely different dates:

(i) In the witness statement of Ms Christine Steele, she says:

"*The Defendant has not been in occupation of the property since March 2023.*" [B/75 ¶5]

(ii) In the witness statement of Mr Paul Vandi, he says:

"*As a result of a fire in Ms Jean Charles's flat, Ms Jean Charles was decanted whilst repair works to the flat were undertaken by the Trust. [These] works were completed in August 2022 and Ms Jean Charles was asked by the Trust's Lettings Team to move back into her property. Ms Jean Charles failed to do so and has not occupied the property since.*" [B/106 ¶5]

(iii) In the witness statement of Mr Thomas Maloney, he says:

"*On the 12th July 2022, Dyane Kesto [Rehousing Manager] emailed Ms Jean Charles again to advise her that the repair works were complete and the property was ready for her reoccupation.*" [B/121 ¶33]

45. The Defendant says in her Defence that she was put in temporary accommodation from October 2021 to July 2022 [B/65 ¶6(d)]. That is consistent with the documentary evidence referred to in the witness statement of Mr Maloney (which email from Ms Kesto appears at [B/469]) and with an Equality Act Assessment form completed by Mr Vandi on 28 May 2025, which refers to repair works having been completed in July 2022 [B/112]. I have noted that Mr Vandi did not appear in court to be cross-examined, but Ms Steele did and she admitted in oral evidence that the date for completion of works to the Property in her witness statement appears to be incorrect.

46. Notwithstanding the Defence setting out a different timeline for repairs, which appears to have ultimately been correct on the Claimant's own evidence, the Claimant reiterated the timeline set out in its Additional Particulars of Claim when it filed its Reply to Defence. [B/71 ¶9]

47. It appears that the Additional Particulars of Claim and Reply to Defence are obviously wrong.

48. Having said that, the Defendant admits in her Defence that she has been "*sofa surfing with friends and family*" since July 2022 [B/65 ¶6(d)] and it is not disputed by the Defendant that she has not lived at the Property since she moved out after the fire. She confirmed this on cross-examination, when she also gave evidence that she did not keep any possessions at the Property and no longer had a key.

49. While the Defendant admits that she was not residing at the Property as at the time the Claimant brought this possession claim (or at any time through to trial), she denies ceasing to occupy the Property as her only or principal home and so denies losing security of tenure due to non-compliance with the tenancy condition of section 1(1)(b) of HA 1988.

50. Applying the principles set out in *Amoah* and *Boyle* to this claim, I find that the Defendant's admitted absence from the Property after the completion of repair works in July 2022 is sufficiently prolonged so as to compel the inference that she has ceased occupying the Property as her only or principal home within the meaning of section 1(1)(b) of HA 1988.

51. The onus is therefore on the Defendant to rebut the presumption that her occupancy of the Property as her only or principal home has ceased, and to do so by establishing a *de facto* intention to return within a reasonable time, borne out by objective facts which demonstrate the practical or real possibility of her return.

52. In considering the Defendant's intention to return, I give considerable weight to the oral evidence of the Defendant, herself, at trial. Although she struggled, at times, to control her physiological and emotional responses to questions about the fire at the Property and her return there to gather her belongings, Ms Jean Charles gave clear and straightforward answers when asked about her intentions in respect of the Property and I take those answers at face value.

53. It was put to the Defendant in cross-examination: "*You have no intention of returning [to the Property]?*" Her reply was: "*Yeah, that's correct*."

54. With specific reference to the considerations set out by Etherton LJ in mind, I also asked the Defendant if she intended to return to the Property, to which she replied no, saying that she couldn't cope with returning there. I also enquired whether it would be practical for her to return to the Property, to which she also said no, citing the physical difficulty she would have living there due to her sciatica and the Property being located on the third floor of Steve Biko Court with no lift.

55. In contrast to cases where the tenant asserts a subjective intention to return to a property and the court must consider whether that intention is borne out with reference to the objective evidence before it, this is a case where the Defendant has stated repeatedly and in clear terms that she does not intend to return to the Property.

56. In both the Defendant's pleadings and in the submissions counsel made on her behalf, it was suggested that the court should take the fact that the Defendant is sofa surfing as evidence that she has no alternative permanent accommodation and the Property therefore remains her only or principal home. I accept that the Defendant has no alternative permanent accommodation, but it does not follow that she satisfies the tenancy condition in respect of the Property by default. It is not an effective rebuttal of the inference that she has ceased to occupy the Property as her only or principal home, as it is not the Defendant's case that she is sofa surfing with the intention of returning to the Property. She has no such intention.

57. It is also suggested by the Defendant that the court should consider her absence from the Property since the fire against her long history there, Ms Jean Charles having lived at the Property for more than 20 years before the fire. I do not accept the argument that the Defendant's admitted absence from the Property for more than 4 years is either not prolonged, such that the rebuttable inference of a cesser of occupation never arises, or that her history at Property before the fire rebuts her own evidence that she does not intend to return there now.

58. The Defendant's position in respect of section 1(1)(b) of HA 1988 is that, notwithstanding her admitted prolonged physical absence from the Property and her having no intention or, she says, ability to return there, it is her intention to remain in the tenancy so as to continue to seek suitable accommodation from the Claimant.

59. The Defendant puts her case on the tenancy condition best in her witness statement, where she says:

> "*…whilst I cannot currently live at 23 Steve Biko Court it is my intention to mutually exchange or seek a transfer from this property. If I lose the accommodation then I will be street homeless.*" [B/478 ¶3]

60. What the Defendant asks the court to do is to take her desire to retain the legal status of "Tenant" as satisfying the tenancy condition. This, in my view, strains the proper interpretation of section 1(1)(b) of HA 1988. I cannot take the Defendant's desire to remain in legal tenancy under the Tenancy Agreement as being the same as an intention to occupy the Property, when her evidence is that this is not her intent.

61. The Act refers to occupation, and the authorities I have cited provide bases upon which non-occupation, even if prolonged, may be rebutted by a showing of a realistic intent to re-occupy within a reasonable timeframe. We do not have that intent here. I find that the Defendant does not intend to return and re-occupy the Property because she has told the court she does not intend to.

62. This raises the question: what should the court make of the application of section 1(1)(b) of the HA 1988 where the Defendant says she does not intend to return to the Property because she cannot due to disability?

63. In my view, this depends on how a case is pleaded and the evidence before the court. I can envision circumstances where a tenant has given evidence that they do not intend to return to a property because it is not practical for them to do so as a result of disability, but where they maintain that if certain adjustments were made to accommodate their disability then their intention would be to return. That is not how this case was pleaded, nor was it an argument which was run by the Defendant.

64. I will deal separately with the Defendant's arguments on disability discrimination and the public sector equality duty when I consider defences to possession. In this case, the Defendant's argument that she is unable to occupy the Property due to disability is not as a rebuttal to the inference that she has ceased occupation of the Property due to her prolonged absence.

65. While the Defendant puts the Claimant to strict proof in her Defence that a valid Notice to Quit was served [B/66 ¶8], it was not agued at trial that the NTQ failed to comply with

the formal requirements of section 5 of the Protection from Eviction Act 1977. As set out in the witness statement of Ms Steele, the NTQ was sent by tracked post to the Property on 7 August 2024 per clause 9 of the Tenancy Agreement (Serving of Notice). The court has seen tracking details showing delivery on 8 August 2024. [B/95] Recognising the Defendant was not occupying the Property so as to receive the notice, it was also sent by email from Ms Steele to the Defendant on 7 August 2024 [B/96] and the Defendant acknowledged on cross-examination that she thought it was correct the notice was sent to her.

66. For the reasons set out above, I find that the Defendant ceased occupying the Property as her only or principal home, for the purposes of section 1(1)(b) of HA 1988. She failed to satisfy the tenancy condition as at expiry of the notice period for the Notice to Quit. As a result, the Claimant is entitled to an order for possession, subject to consideration of the defences which the Defendant has raised with reference to the EA 2010.

Right to possession under the Notice of Seeking Possession

67. Without prejudice to its claim for possession under the Notice to Quit, the Claimant alternatively seeks possession in reliance on discretionary Grounds 12 and 13 of Schedule 2 to HA 1988.

68. Given my conclusion on the Claimant's entitlement to an order for possession further to the Notice to Quit, subject to consideration of the defences which the Defendant has raised under the EA 2010, I need not consider the Claimant's alternative grounds for seeking possession under the Notice of Seeking Possession. Nevertheless, as I sit as the trial court and have considered the evidence and argument of the parties on these grounds, I will consider them briefly.

Formal requirements of notice

69. While the Defendant also puts the Claimant to strict proof in her Defence that a valid Notice of Seeing Possession was served [B/66 ¶8], it was not agued at trial that the NOSP failed to comply with the formal requirements of the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 SI No 620.

70. It was served alongside the Notice to Quit, both to the Property and by email, as set out above.

Ground 12: Breach of tenancy – Principal Home

71. The Claimant argues that the Defendant has breached the tenancy by failing to comply with clause 2 of the Tenancy Agreement:

"*Principal Home - To occupy the Premises as his or her only principal home and not leave them unoccupied for a continuous period of 42 days without prior written permission from the Trust*."

72. For the reasons I have already set out in my analysis of the tenancy condition under section 1(1)(b) of HA 1988, above, I find on a balance of probabilities that the Defendant has ceased to occupy the Property as her only principal home and has left the Property

unoccupied for a continuous period of 42 days without prior written permission of the Claimant.

73. As such, a breach of clause 2 of the Tenancy Agreement is proven and Ground 12 is made out as a discretionary ground for seeking possession, subject to further consideration of whether making an order for possession would be reasonable and the defences raised under the EA 2010.

Ground 12: Breach of tenancy – Damage to Premises

74. The Claimant also argues that the Defendant has breached the tenancy by failing to comply with clause 12 of the Tenancy Agreement:

> "*Damage to Premises – Not to cause damage to the premises, the Trust's fixture and fittings, the common parts or another tenants belongings and if such damage is caused by the neglect or carelessness of the tenant, his/her household or visitors to make good such damage*."

75. With respect to damage to the Property in alleged breach of clause 12 of the Tenancy Agreement, the Claimant avers in its Additional Particulars of Claim:

> "*As a result of the Defendant's failure to occupy the property as her only/principal home, squatters were able to enter the property. The latter caused considerable damage to the property as well as a nuisance and annoyance to neighbours*." [B/12 ¶8]

76. The court was taken to photos exhibited to the witness statement of Mr Vandi [B/108-111] which appear to show damage to the Property caused by squatters. Based on Mr Vandi's witness statement, these squatters would occupy not only the Defendant's flat but also the roof of the building above the Property.

77. The fact that squatters have entered the Property and caused apparent damage was not contested by the Defendant. What the Defendant contests is that such damage was caused by the neglect or carelessness of her or her visitors within the meaning of clause 12 of the Tenancy Agreement.

78. I agree with the Defendant that clause 12 does not describe the fact pattern we have here. Clause 12 is directed at damage or dilapidation caused by the tenant or their visitors. I do not think the best reading of that clause is that it encompasses failure to stop squatters from damaging the Property.

79. It troubles me that the Claimant appears, both in respect of the clause 12 argument on Ground 12 and in respect of its argument on Ground 13, to blame the Defendant for what appears to be a clear failure by the Claimant to adequately secure Steve Biko Court.

80. Mr Vandi says in his witness statement: "*With the assistance of the Police, the Trust have managed to get the squatters removed. However, whilst the property remains unoccupied, there is the continuing risk that they will return*." [B/106 ¶8] I accept that an unoccupied property is more vulnerable to squatting than an occupied one, but the Claimant offers no reflection on its responsibility for securing the building from invasion by drug dealers (as Mr Vandi identifies them) in the first place. I do not consider it to be

the Defendant's responsibility, for example, to secure the building roof and Ms Steele quite correctly agreed when I put that to her.

81. In cross-examination, the Defendant was asked if she had been made aware at the time squatters first broke into the Property and she said that she was only made aware after they had been cleared out. It was put to her that the reason the squatters broke in was because she was not there. She rejected that suggestion and said that it was because the Claimant hadn't secured the Property. I agree with her.

82. Ms Steele gave evidence that she asked Mr Vandi to keep her informed if the Property was squatted in again and, as of the Friday before trial, she had not been informed of any new squatters. I asked Ms Steele to clarify whether she was given positive evidence from Mr Vandi that the Property was known not to be occupied by squatters, or whether she simply had not heard from Mr Vandi one way or another, and she confirmed the latter.

83. On re-direct, Ms Steele was asked if it was the Claimant's intention for the Defendant to return to the Property while it was occupied by squatters. She replied that the squatters had been cleared out and that the Claimant was wanting the Defendant to return to live at the Property with the expectation that the squatters would not return when the Defendant had resumed occupation.

84. I find the record of when squatters were present, when cleared, and when it was in fact safe for the Defendant to return to be unclear. I have seen correspondence from December 2023 in which Ms Rebekah McCollin, the Claimant's Neighbourhood Housing Lead, is seeking the Defendant's return to the property, followed by correspondence between Ms McCollin and the Met Police in January 2024 where she says it would not be safe for her to attend the property alone. [B/154].

85. It is also not clear to me how the evidence of Ms Steele that the Property is ready for re-occupation should be reconciled with the witness statement of Mr Vandi, which says that the photos shown to the court depict "*the current state of the inside of the flat*" [B/106 ¶9], noting his witness statement was dated 28 May 2025. I think it is likely this is an imprecision of drafting, but the overarching point remains that I do not see in the record before me clear evidence which was given to the Defendant that would give her assurance as to the security of the Property, particularly when the Defendant gave evidence that she understood squatting to have happened after sitex was installed to secure the entrance.

86. In any event, I do not find that damage caused by squatters falls within the proper interpretation of clause 12 of the Tenancy Agreement and Ground 12 is not made out on this basis.

Ground 13: Deterioration of property

87. The Claimant's argument on Ground 13 largely mirrors its argument on Ground 12 as it relates to clause 12 of the Tenancy Agreement and fails for the reasons I have just set out.

88. It appears from the drafting of Ground 13 that it contemplates deterioration caused by a tenant or persons residing with them, including lodgers, as well as sub-tenants. I do not read Ground 13 as covering damage to a property caused by squatters, particularly if – as is the case here – the property in question is a flat within a block of flats and the

squatters occupy not only that single flat but also areas such as the rooftop of the building. Squatters in that case are no more the invitees, licensees or sub-tenants of the tenant whose flat they have taken over than they are the invitees, licensees or sub-tenants of the landlord whose building roof they occupy.

Conclusions on discretionary grounds

89. I have found that Ground 12 is made out in respect of the Defendant's alleged breach of clause 2 of the Tenancy Agreement, but not in respect of the Defendant's alleged breach of clause 12. I have also found that Ground 13 is not made out.

90. As Ground 12 is a discretionary ground, the court will only make an order for possession if it is satisfied that it is reasonable to do so. It is therefore relevant to consider the defences raised to the claim.

Disability discrimination defence to possession

Is the Defendant disabled?

91. The Defendant describes having disabilities under section 6 of the EA 2010 in her Defence at [B/64-65 ¶6]. They are set out in the Defence as follows:

 (i) Depression, an anxiety disorder, low mood and panic attacks, exacerbated following fire at the Property;

 (ii) Sciatica and back pain which flares up when she has to use the stairs; and

 (iii) PTSD which is worsened by her current living conditions.

92. For the reasons set out below, I find on a balance of probabilities that the Defendant has proven she is a person with disabilities within the meaning of section 6 of the EA 2010. In particular, she has persistent depressive disorder, agoraphobia based on claustrophobia, and post-traumatic symptoms linked to the fire in her flat, each of which has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.

93. I do not find that sciatica or back pain have been proven on a balance of probabilities to rise to the level of a disability for purposes of the EA 2010.

Persistent depressive disorder

94. With respect to the Defendant's claimed psychiatric disabilities, I have placed considerable weight on the expert evidence of Dr Freedman. Dr Freedman produced a psychiatric report dated 23 April 2025, following interviews with the Defendant on 1 April 2025 (lasting 1 hour, 55 minutes) and 9 April 2025 (lasting 2 hours) and reviewing nearly 200 pages of health records. Dr Freedman then answered the Claimant's Part 35 questions and produced an addendum psychiatric report on 22 Mary 2025, followed by a further Part 35 reply on 7 July 2025. Finally, Dr Freedman gave oral evidence on the first day of trial, and I found her to be a credible witness – she defended her conclusions

on cross-examination appropriately and without giving any impression that she lacked independence or was unwilling to make concessions where appropriate.

95. Dr Freedman has diagnosed the Defendant as disabled due to suffering from persistent depressive disorder, agoraphobia and posttraumatic symptoms linked to the fire in her flat, which symptoms include flashbacks, nightmares and avoidance of memories of her flat and the fire. She does not go so far as to diagnose the Defendant with PTSD on the basis that, while finding the Defendant demonstrates the intrusive, re-living symptoms of PTSD in relation to the fire, a formal diagnosis of PTSD would require a further observation of hypervigilance [B/597].

96. With respect to the Defendant's persistent depressive disorder, Dr Freedman notes that the Defendant has had a longstanding history of depression since her teenage years and that it has been moderate but debilitating. Her diagnosis is based on the criteria of DSM 5. [B/596]

97. Dr Freedman was challenged on this diagnosis in cross-examination. It was put to her that the Defendant's record at the Property indicates that, during the period of time when she allegedly has had this disorder, she in fact did work and managed to reside in the Property. She undertook vocational training and self-reported PHQ-9 scores which appeared to indicate improvement over time (at least between 2009 and 2019), assisted by anti-depressants. This, it was said on behalf of the Claimant, shows that there was not a substantial impairment of the Defendant's ability to undertake day-to-day tasks within the meaning of the EA 2010 or to live in the Property. It was also said that the Defendant's ability to organise her own sofa surfing indicates she is capable or organising, moving and arranging her day-to-day affairs.

98. I found Dr Freedman's responses measured and convincing. Her reading of the Defendant's history is that she has demonstrated longstanding depression – moderate, but debilitating. She has had periods of work, but they were interrupted by her medical issues and she has not demonstrated vocational progression. With respect to the Defendant's sofa surfing, I accept the Claimant's submission that the evidence indicates the Defendant coordinates with friends and family herself and this is not done within her support network away from her on her behalf, but I think it overstates the case somewhat to characterise this as requiring a level of functioning on the Defendant's part which rebuts the conclusion that the Defendant's day-to-day activity is limited by virtue of her persistent depressive disorder.

Agoraphobia

99. With respect to the Defendant's agoraphobia, which I understand under DSM 5 includes fear or anxiety about being in enclosed places and fear of escape, Dr Freedman notes that it is common for this kind of anxiety-based disorder to also present in people with a depressive disorder. [B/596] It is clear from Dr Freedman's analysis that she understands the impact on the Defendant's daily life of her persistent depressive disorder and her agoraphobia to be very much linked.

100. Dr Freedman, as well as the Defendant and her supporting witnesses, were appropriately challenged by Claimant's counsel with respect to how much the Defendant's agoraphobia impacts her daily life. For example, the Defendant described to Dr Freedman difficulty using public transportation or fear when using a crowded lift, but it was pointed out on

behalf of the Claimant that she nevertheless managed to do so. She managed to get into the lift for court, for example, and has boarded the plane to go on holiday. A comparison was also drawn to the preference many of us have to avoid getting on a crowded bus and simply wait for the next one, and it was pointed out that the Defendant told Dr Freedman she herself had in the past understood the anxiety she suffered was just something to get on with. It was put to Dr Freedman that there could be no casual connection between the Defendant's agoraphobia and her failure to return to the flat when she had lived there for 20 years.

101. It was an appropriate line of questioning, but one Dr Freedman addressed convincingly. She reviewed the Defendant's history of repeatedly requesting to move, citing the anxiety she suffered from living in the Property, but noted she had no choice as she was not in privately funded accommodation and coped the best she could, even when it meant having family collect her or staying outside the flat when her anxiety peaked.

102. This Defendant's history of depression and claustrophobia which she described to Dr Freedman is corroborated in the Claimant's own records of the Defendant's self-assessments. For example, in a Medical Assessment Form completed by the Defendant for L&Q in support of a transfer reference request dated 20 May 2016, the Defendant refers to the feelings of claustrophobia, anxiety and depression she feels in the Property. [B/451-452] While the Defendant's earlier medical self-assessments, for example from 2002 and 2004, only refer to depression and not claustrophobia, she does describe having difficulty leaving the Property and the progression in the way she describes her symptoms and the impact on her daily life over time are in any event consistent with what Dr Freedman says about how these disorders develop and present over time.

103. On the whole, it is clear that Dr Freedman understood the Defendant to have suffered from the depression and anxiety she demonstrates now, even before moving into the Property, but that her symptoms worsened over time in the Property, including due to its small size and proximity to the cemetery where family is buried. While the Defendant's records show a moderate decrease in her self-reported GAD-7 score for generalised anxiety disorder in April 2016, this was after she had completed a course of low intensity CBT and I find indicates some management of her condition rather than evidence that it did not exist to begin with or does not persist now. It is also clear from Dr Freedman's assessment that the fire was then a tipping point in the Defendant's ability to manage her anxieties about living in the Property and her ability to escape from it if she needed to.

<u>Post-traumatic symptoms linked to the fire</u>

104. Dr Freedman describes in her report the flashbacks and nightmares the Defendant says she has experienced following the fire [B/561]. Both Dr Freedman and the Defendant were challenged with respect to how these were described, as the Defendant reported having flashbacks to the first time she went back to the flat to clear out her belongings after the fire and not to the fire, itself, which she witnessed. I am not persuaded that Dr Freedman's diagnosis of post-traumatic symptoms *linked to* the fire is effectively challenged on this basis, nor is the credibility or reliability of the Defendant. If anything, flashbacks to the trauma of returning to the Property after the fire may be more relevant to the defence here than flashbacks to the fire, itself. Experiencing flashbacks to returning to one's home destroyed by a fire is plausibly a traumatising experience in its own right and it appears from the evidence that it was here. While I have not relied on the oral evidence of the Defendant's supporting lay witnesses in this judgment thus far,

I do note that Ms Alleyne was questioned about accompanying the Defendant to return to the Property after restoration works were complete and her evidence was that the Defendant was anxious, nervous and needed support returning to the Property. She could not say how the Defendant would respond upon actually entering her flat, as they could not gain access.

105. Whereas the court heard evidence of the impact of the Defendant's persistent depressive disorder and agoraphobia on her daily life with respect to her ability to maintain work, establish a long-term relationship and move about in public, the impact on her daily life of her post-traumatic symptoms linked to the fire primarily relate to her inability to return to the Property. An inability to return to one's home such that one faces the precarity of sofa surfing for a period of years is, in my view, a significant impact on one's ability to undertake day-to-day activities. While these post-traumatic symptoms may be, as the Claimant says, intermittent and limited when the Defendant is not present at or forced to confront the prospect of returning to the Property, the fact that they appear to inhibit her from returning to her home does significantly impact her ability to undertake day-to-day activities.

<u>Sciatica and back pain</u>

106. With respect to the Defendant's sciatica and back pain, I will not address this at length except to note that there was insufficient evidence put forward by the Defendant to persuade me on a balance of probabilities that she has sciatica or back pain which rises to the level of a disability under the EA 2010.

107. I accept the Defendant's evidence that she suffers from sciatica and back pain, but I do not have sufficient evidence of its impact on her ability to carryout day-to-day activities with reference to section 6 and the interpretive guidance set out in Schedule 1 of the EA 2010.

108. The Defendant reported sciatica in the aforementioned L&Q Medical Assessment Form on 20 May 2016 [<u>B/451</u>] and it was also recorded in the medical note of Dr Nazeer Ahmed BM DCH, dated 31 May 2022 [<u>B/372</u>]. Dr Ahmed is the Senior GP at Queens Park Health Centre, where the Defendant is registered, and he notes that the stairs at the Property exacerbate her condition.

109. Having said that, the impact on the Defendant of her sciatica is scarcely covered in the evidence. As Claimant's counsel rightly pointed out on cross-examination, the sole reference to the Defendant's sciatica in the Defendant's witness statement appears where she describes a flare up caused by having to move the belongs out of her property after the fire [<u>B/486¶54</u>]. I do not consider that would be a normal day-to-day activity. I also note that although Ms Hart, the Defendant's friend and cupping therapist, said in her oral evidence that she helps the Defendant when she is physically unable to do things, for example as a result of sciatic pain or when her leg has given out, that is materially all that is said in her evidence about the impact on the Defendant of sciatica and there is no other medical evidence on this beyond what I have already cited.

Was the Defendant treated unfavourably by the Claimant because of something arising in consequence of her disabilities?

110. Having found that the Defendant is a person with disabilities within the meaning of section 6 of the EA 2010, I turn to the question of whether she has been treated unfavourably by the Claimant because of something arising in consequence of her disabilities within the meaning of section 15.

111. The Claimant accepts that the decision to seek possession of the Defendant's property is unfavourable treatment in that the Defendand stands to lose something she formerly possessed. What the Claimant contests is that the unfavourable treatment arises in consequence of the Defendant's disabilities.

112. The Claimant argues that the Defendant refuses to return home because she does not like the Property, has never liked it, and her history of transfer requests and comments to friends and neighbours about the Property proves she has never wanted to live there, not that she is unable to as a consequence of her disabilities.

113. The Claimant's theory that the Defendant is now holding out on returning is captured by an exchange with the Defendant on cross-examination, where it was put to her that she refuses to return to the Property not because of her symptoms resulting from any disability, but because she doesn't want to return. The Defendant responded, saying this is incorrect – she stayed at the Property for 20 years and tried to make it a home. On behalf of the Claimant, it was then said that this was the entire thrust of the Claimant's case – that the Defendant had lived there notwithstanding the disabilities she now says she has. The Defendant replied that she had lived there "with difficulty." It was then submitted on behalf of the Defendant that what she was able to do with difficulty before the fire she was unable to do afterward.

114. The Defendant argues that, to the extent she no longer occupies the Property as her only or principal home and thus fails to satisfy both section 1(1)(b) of HA 1988 and clause 2 of the Tenancy Agreement (which she denies), her non-occupation of the Property arises out of her disabilities.

115. I find on a balance of probabilities that the Defendant's non-occupation of the Property does arise out her disabilities. The possession claim, which treats the Defendant unfavourably, arises in consequence of that non-occupation and thus in consequences of her disabilities.

116. I think Dr Freedman put it best in her second Part 35 response letter to the Claimant, where a single question was put to her [B/634]:

"*Please can you confirm whether or not the client's non-occupation, and refusal to return to the property is being caused by her disabilities?*"

Dr Freedman's reply [B/635]:

"*When the fire occurred in her flat in October 2021, I think that she reached the tipping point. She could no longer face the claustrophobia and depression associated with returning to the flat. She was overwhelmed by intrusive memories* *of the fire. She was panicked at the thought of not being able to evacuate from the flat, due to her combined mental and physical health problems.*

In my view, her disabilities cause her non-occupation and refusal to return to the flat."

117. The Defendant was clear in her evidence that she knows she should be living at the Property, but I accept her evidence that she is no longer able to. In reaching this conclusion, I have considered not only the Defendant's evidence on the impact of the fire, but also the subsequent security breaches at Steve Biko House and the exacerbation of the Defendant's mental health issues caused by living in an unsafe environment. I also consider it important to note that the Defendant's psychiatric disabilities cannot be artificially parsed for purposes of this analysis. It is not appropriate, under these circumstances, to apportion how each of the Defendant's persistent depressive disorder, agoraphobia and post-traumatic symptoms linked to the fire individually contribute to the Defendant's inability to return to the Property, when the expert evidence and the Defendant's evidence at trial consider the impact, correctly in my view, in aggregate terms.

118. For the reasons set out above, I conclude that the possession action taken against the Defendant is unfavourable treatment by her of the Claimant and that it has been taken on the basis of the Defendant's non-occupation of the Property, which arises in consequence of her disabilities.

Is the unfavourable treatment of the Defendant a proportionate means of achieving a legitimate aim?

119. Having found that the Defendant has been treated unfavourably in consequence of her disabilities for purposes of section 15 of the EA 2010, the burden shifts to the Claimant to prove that possession of the Property is a proportionate means of achieving a legitimate aim.

120. In considering the question of proportionality, I have reminded myself of the judgment of Baroness Hale in *Akerman* (cited above), in particular her commentary at [30] to [34] on the structured approach to proportionality in the context of an Equality Act claim and a defence of disability discrimination.

121. With respect to seeking possession in order to achieve a legitimate aim, the Claimant cites the twin aims of vindicating its property rights and managing its limited stock of social housing in line with its statutory duties as a social landlord. These are well established legitimate aims, however as Baroness Hale notes in *Akerman* (at [32]):

"*When a disability discrimination defence is raised, the question is not simply whether the social landlord is entitled to recover the property in order to fulfil its or the local authority's public housing functions, but also whether the landlord or the local authority has done all that can reasonably be expected of it to accommodate the consequences of the disabled person's disability and whether, at* *the end of the day, the "twin aims" are sufficient to outweigh the effect on the disabled person.*"

122. I must therefore consider whether the Claimant has done all that can reasonably be expected of it to accommodate the consequences of the Defendant's disabilities. In this case, I have found that the Defendant's non-occupation of the Property results from her disabilities, so the question is whether the Claimant has done all that can reasonably be expected to accommodate that. Hand in hand with this question is the question of whether there is any less dramatic means for the Claimant to solve its problem than seeking a possession order (per *Akerman* at [34]).

123. The Defendant's position is that the Claimant has not done all that can reasonably be expected of it to accommodate the consequences of the Defendant's disabilities because no offer of alternative accommodation has been made since the fire. I note that some time was spent at trial on the pre-fire history of the Defendant making unsuccessful applications for medical priority and the Claimant offering alternative accommodation – although not on the basis of medical priority and not, as confirmed by Mr Maloney on cross-examination, since 2010. As my findings in relation to non-occupation of the Property arising out of disability relate to the Defendant's non-occupation of the Property after the fire, and it is that non-occupation which provides the basis of the possession claim, I focus my analysis there.

124. It is not surprising that the Claimant made no offer of alternative accommodation since the Defendant ceased occupying the Property following the fire, given its position on her disabilities – at least prior to June 2025.

125. The Claimant's position, as set out in its Reply to Defence [B/73 ¶17], the witness statement of Mr Maloney [B/124 ¶48], the Equality Act Assessment Form completed by Mr Vandi on 28 May 2025 [B/112-115] and the skeleton argument of Claimant's counsel (at ¶35), has been that the Defendant has not proven the significant medical need or disability required in order to warrant a recommendation of rehousing when her prior applications for rehousing were reviewed.

126. I noted at the outset of the judgment the tension within the Claimant's position, given how it has subsequently assessed the Defendant's needs, as reflected in its 19 June 2025 medical approval letter [B/638-639]. I will return to that in greater detail when I discuss the PSED argument. For purposes of the proportionality analysis, it is sufficient to note that the Claimant accepted in that June 2025 letter that the Defendant has a medical requirement to move homes and that she will be given a direct offer of suitable accommodation.

127. Insofar as the Claimant has now undertaken to the Defendant that it will make a direct offer of suitable accommodation, I find that the Claimant has less dramatic means than a possession order at its disposal and that would be to make the offer of suitable accommodation that it has said it will make. That offer not having yet been forthcoming, I find the Claimant has not done all that can reasonably be expected of it to accommodate the consequences of the Defendant's disabilities.

128. The Claimant suggested during trial that, if it succeeded in the possession claim, it would be open to giving an undertaking not to enforce possession until an offer in line with its 19 June 2025 letter had been made. This was not a position it took, so far as its pleaded

case or argument filed was concerned, until after the trial started. I do not find that seeking a possession order, but then undertaking not to enforce it until it does something it has already undertaken to do (i.e. make a suitable offer of accommodation), is a sufficiently less dramatic means for the Claimant to pursue its aims so as to support a finding that it has done all that can reasonably be expected of it to accommodate the consequences of the Defendant's disabilities. The question is whether grounds for possession are made out and, if so, whether there is any defence such that a possession order should not be made. I do not think that a possession order which, if enforced, would amount to unlawful disability discrimination can safely be made off of the back of an undertaking that the otherwise unlawful order will not be enforced.

129. The Claimant has therefore failed to discharge its burden of proving that the unfavourable treatment of the Defendant is a proportionate means of achieving a legitimate aim. The Defendant has accordingly made out a disability discrimination defence under section 15 of the EA 2010 and the possession claim must fail.

The public sector equality duty

130. Given my judgment that the possession claim must fail on the basis of a disability discrimination defence, my observations on the Claimant's discharge of the PSED will be relatively brief.

131. The Defendant completed a Medical Assessment Form in order to be assessed for medical priority on 13 May 2022 [B/474-477]. Based on correspondence included in the bundle between the Defendant and the Claimant's Rehousing Manager, Ms Kesto, it appears that the Defendant also sent the aforementioned medical note of Dr Nazeer Ahmed dated 31 May 2022 and a supporting statement from Ms Hart dated 1 August 2022 [B/473], wherein Ms Hart describes her observations of the Defendant's mental and physical health decline since the fire as compared to her observations treating her before the fire. Ms Kesto directed the Defendant to complete a medical form if she had not completed one already [B/471] and a caseworker for the charity Z2K Trust emailed Ms Kesto on 8 August 2022 confirming she had helped the Defendant complete the form on 15 July 2022.

132. The Claimant had the Defendant's application reviewed by a medical advisor, who completed a Medical Transfer Recommendation dated 26 January 2023 [B/373]. The advisor concluded:

> "*to recommend a direct let using the very strict criteria adopted by L&Q that 'medical need is so severe that you cannot remain in your home' would require much more in the way of information directly linking contemporaneous health with contemporaneous housing. On the detail provided advise as above [referring to recommendation of no direct let on medical grounds], though happy to review as an urgency with more relevant background (in particular, where is the applicant currently living?).*"

133. That recommendation form also contained indications from the Claimant's medical advisor assessing the Defendant's physical disability as "*Mild?*" and mental health problems as "*Moderate?*" according to the tick boxes in the form, together with a stated housing requirement of "*Maximum floor level **without** lift: 1st*". The medical advisor notes that it is "*a difficult case to assess*" given *"[a]ll medical information is at least 8*

months old", presumably referring to the medical note of Dr Nazeer Ahmed dated 31 May 2022, and the advisor was shown "*no hospital letters on file, no investigation reports and very little background regarding mobility*."

134. It is notable that, while the medical information was 8 months old by the time it was reviewed by the Claimant's advisor, the letter from the Defendant's GP was only about 6 weeks old when the Defendant submitted her medical form with the assistance of Z2K Trust. It does not appear that there were any investigations undertaken or a request made to the Defendant to assist with providing further information in order for the medical advisor to undertake the urgent review that was offered.

135. The Claimant then sent a letter to the Defendant dated 20 March 2023 confirming she had not met the criteria to be approved for the Rehousing List on the basis of medical priority [B/377].

136. That conclusion on the Defendant's medical need for rehousing is what was pleaded in the Claimant's Reply to Defence and supporting witness statement of Ms Steele as of November 2024, and it was reiterated in the 27 May 2025 witness statement of Mr Maloney. Notably, the witness statement of Mr Maloney was signed *after* service of Dr Freedman's expert report dated 23 April 2025 and after the Claimant had sent Part 35 questions to Dr Freedman on or around 7 May 2025.

137. In my view, a duty to make further enquiries as contemplated by Turner J in *L&Q v Patrick* arose after the Defendant completed the medical form with a supporting letter from her GP citing features which raised a real possibility that the Defendant was disabled. This included references by Dr Ahmed to the Defendant suffering from depression and claustrophobia which worsened after the fire. He concludes: "*She must be supported not to return to her previous address*." [B/372]

138. When this was reviewed by the Claimant's medical advisor in January 2023, it is clear from the recommendation form completed by the medical advisor that the possibility of disability had been raised, even if the information available to the Claimant at that stage did not support a recommendation of rehousing on the basis of medical need. Further enquiries should have been made.

139. The Claimant decided to initiate possession proceedings and I was taken to the Equality Act Assessment Form completed by Mr Vandi, dated 28 May 2025 [B/112-115], as evidence that the Claimant discharged the PSED, recognising the continuing nature of the duty.

140. I find that the Equality Act Assessment Form falls short of the principles set out by Turner J in *L&Q v Patrick*. The form, which was completed nearly 6 months after this possession claim was issued. The first page of the form confirms: "*Details of any previous assessment: First assessment*." I take that to mean that no Equality Act assessment had been made until after possession proceedings were well under way.

141. Both in terms of timing and in terms of the substance of what is included in the form, this appears to me very much the kind of "'*rear-guard action' following a concluded decision*" discouraged by Turner J. I accept that an ex post facto documenting of a public authority's assessment in seeking possession is not, in and of itself, fatal to the authority arguing that it discharged the PSED. I am also aware of the Court of Appeal decision in

R. (West Berkshire District Council and another) v Secretary of State for Communities and Local Government [2016] 1 W.L.R. 3923, where it was considered that quashing an ex post facto decision would not be the correct approach if a fresh consideration would lead to the same result. In this case, however, there was no substantive engagement with the Defendant's medical history in the ex post assessment, notwithstanding the Claimant was, at that point, in possession of the expert report of Dr Freedman and the assessment form in fact cites "*Depression, anxiety and back problems as disclosed in the report of Dr Freedman*" under the heading "*Known or possible vulnerabilities/disability of resident or family member*". It also notes that "*Ms Jean Charles claims that she cannot live in the property as a result of her vulnerabilities*" but nothing is made of this other than to note the Claimant has attempted to engage the Defendant "*in order to persuade her to move back into the property and seek other rehousing options*". This is not a sufficiently rigorous consideration of the PSED.

142. It is also noteworthy that the form was completed just 3 weeks before the Claimant issued the 19 June 2025 medical approval letter revising its position (while maintaining the possession claim). Mr Vandi was not present at trial to address the court on this, but Mr Maloney was. He explained, with reference to the assertion in his witness statement dated 27 May 2025 that the Defendant did not meet the policy criteria for rehousing, that this statement was made before the Claimant's fortnightly Rehousing Panel (referred to in the 19 June 2025 medical approval letter) was convened.

143. I note the Claimant never sought to update its pleadings or file updating witness statements, and the inconsistencies in its position on the Defendant's medical need to be rehoused were left for the Defendant to raise on cross-examination.

144. On the basis of the Claimant's consideration of the PSED leading up to and during these proceedings, as evidenced by its review of the Defendant's application for medical priority before initiating the claim and the Equality Act assessment it undertook afterward, I find that the Claimant failed to discharge the PSED with reference to sections 149(1)(a) and (b) of the EA 2010.

145. I note that the Claimant argued the PSED defence was pleaded with lack of particularity, which is true, but I accept the Defendant's response that this was because there was no Equality Act assessment until well after the parties had put in their pleadings. I also note that much of the authority the parties have taken me to in respect of section 149 analysis in possession claims refers to the PSED in general terms and without specific reference to sub-parts of section 149. In any event, the Defendant was clear at trial that it agued a failure to have due regard to section 149(a) to (c) and I have said I would find a failure with respect to 149(a) and (b).

146. The final point on the PSED is the question of the effect the 19 June 2025 letter has on curing any breach.

147. If the Claimant had determined to withdraw its possession claim following its decision that the Defendant had a medical requirement to move homes, then I would accept this as a cure. Given the Claimant's position here was that possession was nevertheless pursued, I cannot find that the failure to discharge the PSED prior to the 19 June 2025 letter has been cured by issuance of the letter alone. Nor was it cured by the Claimant's request to stay the proceedings so that it could make an offer in line with its 19 June 2025

letter, which (as I noted above) it requested without being able to give any undertaking as to when such an offer would be.

148. It was open to the Claimant to withdraw the claim for possession when I refused its request to stay the proceedings and it decided to pursue possession anyway. The 19 June 2025 letter, which was not followed by a withdraw of the possession claim or an offer of suitable accommodation, is therefore no cure.

149. I noted above that the Claimant also suggested that, if it succeeded in the possession claim, it would be open to giving an undertaking not to enforce possession until an offer in line with its 19 June 2025 letter had been made. Given I have determined the claim must fail on the basis of the disability discrimination defence, my consideration of whether the Claimant could avoid a finding of a failure to discharge the PSED by undertaking not to enforce any possession order has only a theoretical effect on the outcome of this judgment. Having said that, where the Defendant has proven, based on the facts in existence at trial, that the Claimant has failed to discharge the PSED by pursuing the possession claim, I do not think an offer made via Claimant's counsel during trial that his client would be wiling not to enforce a possession order until it has made a suitable offer of accommodation cures the failure to discharge the PSED which the Defendant has proven.

150. For the reasons set out above, I find the Defendant has a defence to possession based on the PSED and the possession claim must also fail on that basis.

Conclusion

151. The claim for possession of the Property is dismissed.

Recorder Gard
County Court at Central London
23 June 2026