Claim No: K00SZ042

IN THE COUNTY COURT AT SCARBOROUGH
Sitting in the Leeds Combined Court Centre

The Combined Court Centre, Oxford Row, Leeds

Date: 30th October 2024

Before:

HIS HONOUR JUDGE DARREN WALSH

- -

Between:

YORKSHIRE HOUSING LIMITED **Claimant**

- and –

ABI-JADE SCOTT **Defendant**

- -
- -

Mr Gary Lewis (instructed by **MSB Solicitors**) for the **Claimants**
Miss Vilma Vodanovic (instructed by **Yorkshire Legal**) for the **Defendant**
Hearing dates: 19th, 20th June 2024

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Approved Judgment

I direct that pursuant to CPR rule 39.9(1) no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Walsh:

Introduction

1. This matter arises out of a claim for possession by the Claimant Landlord, Yorkshire Housing Ltd, against the Defendant tenant, Miss Abi-Jade Scott, in respect of a property known as 27 Rosedale Lane, in Scarborough, YO12 5AN ('the Property').

2. The Property is a 2-bedroom house on an estate of mixed tenure. The Defendant took up residence there on 21st October 2021 under the terms of an assured shorthold 'Starter' tenancy (the 'Tenancy').

3. Naturally, there were a number of terms of the Tenancy, including obligations to pay rent on time, looking after the Property, and ensuring that the Defendant or any of her visitors did not commit any form of Anti-Social Behaviour ('ASB').

4. If certain conditions were met, the Starter Tenancy, which in essence, could be accurately described as a probationary or trial tenancy, would at the expiry of the initial 12-month period, on 21st October 2022, convert to an assured tenancy.

5. The Defendant is 29 years of age, and lives at the Property with her 10-year-old daughter, who (according to the Defendant's witness statement before trial) spends 50% of her time with her father.

6. The Claimant's position, in short, is that from the start or near start, the Tenancy did not run smoothly. Further that despite repeated written warnings from the Claimant's Tenancy Enforcement Team, the Defendant breached, and has continued to breach, the Tenancy by reason of her failure to pay rent, and her ASB and the ASB of persons at, and/or in the vicinity of the Property.

7. In the Scott Schedule, the Claimant relies upon no less than 19 allegations of ASB ('the Allegations'). The same range in severity from various acts of noise nuisance to more serious allegations.

8. Those serious allegations include visitors to the Property snorting cocaine off the kitchen table, offering a neighbour's child vodka, and a visitor shouting whilst on his phone that he a had a knife and was '*going to Eastfield to put some people to sleep*'.

9. The Claimant's claim for possession and allegations of ASB is supplemented by amendment to include reliance upon further allegations which post-date the said Schedule, including assertions of further noise nuisance made on the eve of trial.

10. The Defendant resists the claim. The Defence is in 2 parts. First, what can be described as a technical defence on the basis that the notice served under section 21 of the Housing Act 1988 (the 'Section 21 Notice') is invalid, and accordingly, the Tenancy converted to an assured tenancy.

11. Second, if the technical defence fails, a substantive defence that the Defendant is disabled within the context of her mental health such that even if the Section 21 Notice

is valid, the claim is unlawful in a public law sense for breaching the Defendant's rights under Article 8 of the Human Rights Act 1998 (Schedule 1) ('Art.8').

12. Further, the claim is unlawful as it unlawfully discriminates against the Defendant under sections 15, 19, 20 and 21 of the Equality Act 2010 ('EqA'), and in failing to comply with the Claimant's Public Sector Equality Duty ('PSED') under section 149 EqA.

13. Mr Lewis appeared on behalf of the Claimant, and Miss Vodanovic on behalf of the Defendant. Both Counsels' Skeleton Arguments and written submissions, the latter of which were filed on the 8th July 2024, were exceptionally well structured and impressive, and were of great assistance.

14. This is my reserved Judgment.

Material Background

15. I will deal with the material background in a near chronological order incorporating any relevant documentary evidence as necessary.

16. Following reports of ASB on 7th April 2022, the Claimant sent the Defendant a warning letter. The letter included a notice that ASB will not be tolerated, and a caution against further such ASB that could lead to the Tenancy being terminated after (the initial) 12 months.

17. On 22nd July 2022, the Claimant served upon the Defendant an Extension Notice ('EN'), extending the probationary period of the Tenancy for 6 months from the date of its expiry to 22nd April 2022. Rent arrears at this time stood at £1,223.46.

18. Following a further report of ASB, on 22nd August 2022, the Claimant sent the Defendant a further warning letter. The letter included confirmation that the Claimant would be contacting the Defendant on 30th August 2022 to discuss the allegations, and a further warning about the risk to the Tenancy.

19. On 21st October 2022, the Claimant served upon the Defendant the Section 21 Notice requiring the Defendant to give up possession by 21st December 2022. The Section 21 Notice set out the Defendant's right to appeal by 4th November 2022.

20. In support of the Section 21 Notice, the Claimant relied upon, inter alia, a witness statement from Miss Lesley Storey, the Claimant's ASB Enforcement & Tenancy Officer, dated 20th October 2022.

21. The said statement set out the basis for serving the Section 21 Notice, and why the same was proportionate and reasonable, including allegations of ASB between January 2022 and August 2022.

22. In addition, the said statement highlighted several unsuccessful attempts to contact the Defendant between August to the middle of October 2022, including a visit to the

Property on 9th September 2022 (unbeknown to the Claimant during this period the Defendant was in prison).

23. Further, Miss Storey recorded that warning letters were sent to the Defendant, which received no response, followed by a telephone conversation between the Defendant and a Mr McGuinn on behalf of the Claimant on 10th June 2022, where the Defendant stated, inter alia, that she had not received either of the warning letters.

24. Miss Storey recorded that during the said telephone conversation the Defendant denied, in essence, that she had committed any incidents of ASB. She accepted that that she did play music when '*cleaning the house*', but this was during the day, and that she was '*allowed to blast music up until 11pm and no one can stop her*'.

25. Miss Storey detailed further allegations of breach of Tenancy for rent arrears, and assertions that the Defendant had made the '*street a very difficult place to live*', and that '*it is frightening and other neighbours are avoiding going in their gardens out of fear of being targeted*'.

26. On 24th October 2022, following service of the Section 21 Notice, the Defendant contacted Miss Storey. The Defendant informed her of having been in prison for the last 9 weeks, and that (1) she wanted to resolve issues with her tenancy, (2) she had a 9-year-old daughter living with her, and (3) she had depression and mental health issues.

27. On 15th December 2022, the Defendant exercised her right of appeal by way of remote hearing. The Defendant informed the Appeal that she was '*very sorry for all the problems that had happened and for all the upset and distress*' she will have caused to her '*neighbours*'.

28. Furthermore, the Defendant informed the Appeal that while she denied some of the allegations made against her, stating that she would not jeopardise her tenancy as she had her child to think of, she admitted holding some parties, but maintained that these were with family members only such as her father and brother.

29. In addition, the Defendant attributed many of the allegations of noise nuisance to her brother stating, in short, that the same was due to his autism and ADHD, but that she had now prevented her brother from visiting the Property.

30. The Defendant did not, however, provide the Appeal with any corroborate evidence of her position, nor any medical evidence of her mental health conditions (as to the same see more below) as outlined to Miss Storey on 24th October 2022.

31. Having considered the Defendant's explanations (as outlined), and the said witness statement of Miss Storey, in addition to '*accounts of disturbances from neighbours*' and '*video footage of some incidents*' of ASB at the Property, by subsequent letter and email, the Claimant dismissed the appeal and upheld the Claimant's decision to serve the Section 21 Notice, and recommended proceeding with eviction.

32. While acknowledging that the dismissal of the Appeal was serious, and would possibly impact upon the Defendant's wellbeing, the Appeal panel explained that the appeal was refused due to a number of factors.

33. Such factors included the seriousness of the breaches involved, the continuation of ASB despite verbal and written warnings, and despite the serving of the Section 21 Notice, along with the likelihood of such continuing behaviour and the unfairness on the Defendant's neighbours.

34. On 16th February 2023, Miss Storey undertook the first of 4 PSED assessments (I will deal with these in more detail below). On 23rd February 2023, following the expiry of the Section 21 Notice, the Claimant issued proceedings for possession. At this stage, rent arrears stood in the sum of £1,265.63.

35. On 25th May 2023, the Claimant wrote a further warning letter to the Defendant seeking a response to further allegations of ASB that occurred that day with a warning that the Claimant could take further steps such as applying to the court for an injunction.

36. In November 2023, Miss Storey undertook 2 post-issue PSED assessments based on the disclosure by the Defendant of the medical report of Dr. Frazer (see below). On 1st December 2023, the Claimant wrote to the Defendant seeking a response to further allegations of ASB that occurred on 9th and 11th November 2023.

37. On 1st February 2024, Miss Storey undertook a final post-issue PSED assessment based on Dr. Frazer's replies to questions put by the Claimant.

Medical Evidence

38. In support of the second limb of its Defence, the Defendant relies upon the psychiatric report of Dr. Frazer, dated 10th August 2023, in addition to replies to questions dated 8th January 2024.

39. That evidence established, inter alia, that the Defendant has been in the past a victim of both physical and sexual abuse, and that as means of '*coping*' and to '*forget*', she consumes up to 1 litre of vodka a day '*in a binge*'.

40. Dr. Frazer recorded that the Defendant woke up angry every day, that she can be quick to anger when drunk, and that she has a significant number of criminal convictions for violence, 2 of which have led to a prison sentence, the latter of which in 2022 was after the consumption of alcohol.

41. In addition, Dr. Frazer noted that the Defendant admitted that in relation to her neighbours' complaints of noise nuisance late at night, she had at times been a '*bit loud*'.

42. Dr. Frazer was of the opinion that the Defendant suffered from significant mental health difficulties in the form of Chronic Recurrent Depressive Disorder, and Emotionally Unstable Personality Disorder of borderline type along with harmful use of alcohol.

43. Dr. Frazer noted that the Defendant was prescribed 45mg of Mirtazapine at night and that she took her prescribed medication at times, but due to side effects, requested changes of dose.

44. Dr. Frazer agreed that any of the incidents of ASB could have been caused, or contributed to by the Defendant's own intoxication at the time of the allegations, but that the Defendant could display anger management problems without alcohol intoxication due to emotional instability secondary to her Emotionally Unstable Personality Disorder of borderline type secondary to her chronically low mood.

45. Furthermore, Dr. Frazer accepted that the Defendant was more likely to behave in an antisocial manner and be a violent risk to third parties when in drink, and that her use of alcohol dates back to March 2011.

46. Dr. Frazer accepted that the prognosis for the Defendant was poor if she continued to binge drink in response to stress, and that previous behaviour is the only reliable predictor of future behaviour.

47. Dr. Frazer opined, however, that Emotionally Unstable Personality Disorder tended to improve from the age of mid 30's onwards, and the prognosis is improved if the Defendant can establish a positive therapeutic relationship with psychotherapy and dialectal behaviour therapy in particular.

48. Dr. Frazer opined that an order for possession would likely cause the Defendant's mental health to substantially deteriorate and cause her chronic anxiety. He recorded that the Defendant was currently clinically depressed, and there was an increased risk that she might act on her current frequent thoughts of self-harm were she to be made homeless.

49. Dr Frazer further concluded that the Defendant was disabled within the meaning of the EqA, and that the conduct complained of (save for rent arrears and conduct of third parties) did arise in consequence of that disability.

Issues

50. As noted above, there 2 issues that fall to be determined:

(1) Is the Section 21 Notice valid?

(2) If so, is the claim for possession unlawful on public law grounds for breaching the Defendant's Art.8 Rights or sections 15, 19, 20, 21 or 149 of the EqA?

Law

51. The Defendant's public law challenge to Issue 2 is based on conventional judicial review grounds (illegality, irrationality, and procedural impropriety), and include Art.8 contests, considerations of the PSED duty, as well as considerations of breaches of the Claimant's own ASB policy.

PSED

52. A failure to comply with the duty under s. 149 EqA amounts to illegality. Some useful guidance on the approach to the question of whether there has been compliance with such duty can be found in London and Quadrant Housing v Patrick [2020] HLR 3, 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. In housing cases, such countervailing factors may include, for example, the impact which the disabled person's behaviour, in so far as is material to the decision in question, is having upon others (e.g., through drug dealing or other anti-social behaviour). The PSED is 'designed to secure the brighter illumination of a person's disability so that, to the extent that it bears upon his rights under other laws it attracts a full appraisal'.
>
> 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. In such cases, the lateness of the knowledge may impact on the discharge of the PSED. For example, cases may arise in which countervailing interests justify a less formal PSED assessment than would otherwise have been appropriate. Thus, a tenant whose anti-social conduct has already been adversely affecting his neighbours for a considerable time but whose disability is raised at the eleventh hour may well find that the discharge of the PSED does not necessarily mandate a postponement of the date or enforcement of a possession order. Of course, the obligation to have 'due regard' still arises but the result of the discharge of that obligation may well be less favourable to the person affected where, through delay, the landlord's options have been limited and the rights and reasonable expectations of others have assumed a more pressing character. Each case will, of course, depend on its own facts.

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.

53. While the above is a useful list of factors which are likely to be the most relevant to be considered in the context of possession cases, Turner J made quite clear that the list is not intended to be either comprehensive or definitive and, as always, judicial observations ought not to be treated as if enshrined in statute.

Article 8 Proportionality

54. A failure of a public body, or one exercising public function, to comply with the ECHR would amount to illegality.

55. Art.8 provides:

(1) *Everyone has the right to respect for his private and family life, his home and his correspondence.*

(2) *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*.

56. Art.8, therefore, confers a right that respect be had for a person's home, such that an interference with it by a public authority must be both lawful and a proportionate means of achieving a legitimate aim.

57. The legitimate aim, which the court should accept, for local authorities/housing associations is provided by the fact that possession orders serve to maintain their ownership rights and enables compliance with their public duties to allocate and manage housing stock.

58. Furthermore, in many cases other cogent reasons, such as the need to remove a source of nuisance to neighbours, may support the proportionality of dispossessing the tenant - Manchester City Council v Pinnock [2010] 3 WLR 1441 at [52].

59. In addition, '*if a tenancy has given rise to complaints by neighbours of anti-social behaviour the authority does not have to be in a position to prove that these are well founded in order to justify terminating the tenancy*' - Hounslow LBC v Powell [2011] 2 WLR 287 at [93] agreeing the dicta in R (McLellan) v Bracknell Forest Borough Council [2002] QB 1129, para 97, that: '*under the introductory tenancy scheme it is not a requirement that the council should be satisfied that breaches of the tenancy agreement have in fact taken place. The right question under the scheme will be whether in the context of allegation and counter-allegation it was reasonable for the council to take a decision to proceed with termination of the introductory tenancy*.'

60. The Court's assignment is to subject the process towards possession to a proportionality review, here beginning with the Section 21 Notice, followed by the issue of possession proceedings, and the obtaining of judgment after a hearing.

61. The starting point, however, is a presumption that proceedings are proportionate, and the making of an order for possession a proportionate means of achieving a legitimate aim in the overwhelming majority of cases - Powell at [34-35] & [91-94].

62. In addition, the Court will only have to consider whether the making of a possession order is proportionate if the issue has been raised by a defendant and it has crossed the '*high threshold of being seriously arguable*' and that '*the threshold for raising an arguable case on proportionality was a high one which would succeed in only a small proportion of cases*'- Powell at [34-35].

63. Furthermore, '*it will only be in "very highly exceptional cases" that it will be appropriate for the court to consider a proportionality argument*" although '*exceptionality is an outcome and not a guide*'- Pinnock at [51].

64. The court should summarily dismiss any attempt to raise a proportionality argument unless a defendant can show that they have substantial grounds for advancing this, and

that '*Two factors make it extremely unlikely that the defendant will be in a position to do this. The first is the relatively low threshold that the authority has to cross to justify terminating the introductory tenancy. The second is the significant procedural safeguards provided to the tenant*' viz, the right to ask a claimant for a review of the decision to terminate including an oral hearing - Powell at [92].

65. A consideration of proportionality under Art.8 requires consideration of the effect of the eviction on any children living in the property, and the best interests of a child must be a primary consideration (but not the status of the paramount consideration), though the best interests of a child can be outweighed by the cumulative effect of other considerations - Zoumbas v Secretary of State [2013] 1 WLR 3690 at [10].

Breach of Policy

66. A failure by a public body to follow published policy while carrying out a public function can amount to procedural impropriety. However, not every departure from the strict wording of a policy will involve an error of law.

67. Policies must be subjected to a purposive and pragmatic construction, and the breach must be material - Ahern v Southern Housing Group Ltd [2017] EWCA Civ 1934.

Equality Act

68. Section 15 EqA provides:

'(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.'

69. Section 136 EqA provides:

'(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.'

70. Section 19 EqA provides:

Indirect discrimination

'(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 protected 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.'

71. The relevant test to be adopted when looking at proportionality within the context of disability discrimination is set out in Akerman-Livingstone v Aster Communities Ltd [2015] UKSC 15 at [28]:

'(i) Is the objective sufficiently important to justify limiting a fundamental right?

(ii) Is the measure rationally connected to the objective?

(iii) Are the means chosen no more than is necessary to accomplish the objective?

(iv) Is the impact of the rights infringement disproportionate to the likely benefit of the impugned measure?'

72. Section 20 EqA provides:

Duty to make adjustments

'(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 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.'

73. Section 21 provides:

Failure to comply with duty

'(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.'

Lay Evidence

Lesley Storey

74. I found Miss Storey a straight forward witness who seemed to be doing her level best to provide the Court with an accurate account, and who made relevant concessions when necessary.

75. For example, she accepted that the rent arrears and issues with the garden at the Property would not by themselves have caused the Claimant to proceed with possession as at the date of trial, but emphasised that rent has been a significant issue right up to trial, and at each stage of the decision-making process.

76. Miss Storey further conceded that there was insufficient evidence as to the Defendant's absence from the Property on which the Claimant could rely to justify this as the reason for seeking possession.

77. Miss Storey further conceded that she did not have evidence of the steps taken by her colleagues before her involvement with the case. She made clear, however, that she had since spoken with the witnesses as part of her own investigations into the complaints which included the receipt of emails from the same.

78. Miss Storey reiterated that the decision to pursue possession had been made in the context of a Starter Tenancy in which all of the issues had been considered, including the fact that the Defendant has a history of not engaging with the Claimant.

79. Miss Storey highlighted that such non-engagement included following correspondence sent to the Defendant, and that, as part of those investigations, she tried to engage with her including the attendance at the Property on 9th September 2022 before serving the Section 21 Notice but to no avail (as noted, the Defendant was in prison at this point in time).

80. Further, Miss Storey stated that the Claimant did not apply for an injunction as not only would it set the Defendant up to fail given her alcohol misuse and breaches of Tenancy, but it would not have addressed the rent arrears.

81. Miss Storey reiterated that the Defendant was provided with the opportunity to put forward her case and any evidence when the Section 21 Notice was served for the purposes of the Appeal but failed to do so.

82. Miss Vodanovic criticises Miss Storey's role in this case at great length even suggesting a lack of objectivity and lack of impartiality, not borne out of a deliberate act to conceal or with any particular agenda, but borne out of a lack of understanding as to what the proportionality assessments required to be considered.

83. I will deal with Miss Vodanovic's criticisms of Miss Storey's approach to the PSEDs and Miss Storey's response further below.

Defendant

84. From her presentation in the witness box, the Defendant at times emerged as a frustrated and angry witness, but also one who appeared quite straight forward. For example, she accepted receiving the Section 21 Notice, and accepted that there had been issues with rent and the maintaining of her garden.

85. Further, when put to the Defendant by Mr Lewis whether, in essence, it was her position that her neighbours were making up the allegations, she replied that they were not '*making up lies*', and that '*maybe they have been disturbed, but not like the neighbours describe*'.

86. When pressed later into her evidence by Mr Lewis as to her behaviour when drinking and returning to the Property with friends, the Defendant stated again that she accepted that there had been noise, but '*not to extent they say*', and again stated that the neighbours '*had not made it up*', but that '*their version of noise was different*' to hers.

87. Moreover, when questioned directly by Mr Lewis as to whether the allegations by neighbours were '*false*' and '*exaggerated*', she stated that she was '*not saying that'* she *'had not been loud*', but that she had '*not meant to be loud*', and that she had '*not done anything to make them scared*'.

88. In addition, in relation to the warning letter the Claimant sent to her, dated 7th April 2022, which warned of reports of ASB, and a threat of terminating the Tenancy after 12 months, if in essence, the Tenancy was breached again, the Defendant did not deny receiving the same. The Defendant stated that she did not recall '*receiving it*', but '*not saying did not get it*'.

89. Moreover, in relation to the serious allegation of ASB on 25th March 2022, she did not deny that she had people at the Property, stating that she could not recall, but that '*if they* [the neighbours complaining] *say had people there then probably had*,' though she denied that they would be having drinks at 8.30am as alleged. She also maintained that she did not have a kitchen table until December 2022.

90. Mr Lewis submitted that the Defendant showed a reluctance to accept that she has a history of criminal convictions, including for violence when in drink and, in turn, she was more prone to misbehave when drunk and that the same would affect her medications.

91. That does not accord with my recollection of her evidence where, when being questioned about the care of her daughter, she accepted that she had been to prison

twice, first for 6 weeks in 2021, and second for 9 weeks in 2022, again consistent with what she informed Dr. Frazer.

92. The Defendant also readily accepted that her brother was currently in prison. Furthermore, the Defendant accepted that she still drank enough to be intoxicated and that she was more likely to misbehave when in drink which is '*why I cut it down*'.

93. I accept Mr Lewis' submission, however, that the Defendant's suggestion that it was her probation officer who advised her to cut off her court-ordered ankle tag monitor (in breach of her licence conditions, and which resulted in her imprisonment) simply in order to go on holiday as inherently unlikely and untrue.

94. I remain unconvinced, however, that the Defendant could have appreciated the significance of the evidence she gave (as to removing the tag). I doubt that the Defendant could have appreciated how the same could affect her credibility and how it could be argued this militated against any suggestion the Defendant should have sought an injunction before seeking possession.

95. I reject, therefore, Mr Lewis' submission that the Defendant deliberately withheld this information from her written evidence as she knew full well it was harmful to her case. Nevertheless, given that I am satisfied that the Defendant's suggestion that it was her probation officer that advised her to cut off the monitor was untrue, I am driven to the conclusion that the same clearly damages the Defendant's credibility.

96. Unfortunately, the issues with the Defendant's credibility and/or reliability do not end there. I consider the fact she did not deny during cross-examination receiving the letter of 7th April 2022 from the Claimant was directly inconsistent with paragraph 41(6) of her witness statement, dated 16th January 2024.

97. In addition, the Defendant's assertion that she now only drank a couple of drinks once a month was not consistent with her later evidence when she accepted that she had been intoxicated on at least 2 occasions already in the month of June.

98. Further, the Defendant's admission during cross-examination that she had parties at the Property which were not limited to her family members was inconsistent with what she informed at the Appeal.

99. This does not necessarily mean, however, that the Defendant is wrong as to the substance of her evidence or her pleaded case. For these reasons, however, I approach the Defendant's evidence with a degree of caution.

Discussion

100. In determining the issues in this case, I will deal with the facts incorporating any witness and documentary evidence, along with Counsels' submissions as necessary.

Issue 1

101. As Miss Vodanovic submits, the technical defence can be divided into 2 distinct arguments: (i) did the Tenancy convert to an assured tenancy, and if it did not, (ii) do proceedings still need to be brought within 2 months of the expiry of the Section 21 Notice.

102. The Tenancy provides as follows:

'1.1 On the conversion date (given on page 2), this assured shorthold tenancy will become an assured (non-shorthold) tenancy unless before the conversion date:

1.1.1 We start court proceedings for possession of your home against you; or

1.1.2 We serve a notice on you under section 21 (4) or section 8 of the Housing Act 1988 requiring you to give up possession of your home providing that we start court proceedings for possession of your home against you within two months of that notice expiring; or

1.1.3 We serve a notice on you extending the period this tenancy is an assured shorthold tenancy (called the 'starter period' in this agreement) by up to six months.

1.2 In any of the circumstances set out in section 1.1.1., 1.1.2 or 1.1.3 above, the starter period will continue until:

1.2.1 Two months after the expiry of the notice referred to in section 1.1.2 above (if this is after the conversion date), or if court proceedings commence,

1.2.2 28 days after we receive written notice that court proceedings (including any appeal) for the possession of your home have been determined (if no possession order is made), or

1.2.3 We serve notice on you converting this tenancy into an assured (non-shorthold) tenancy (called a 'conversion notice' in this agreement).'

Issue 1(i)

103. Miss Vodanovic's position can be summarised simply. The Claimant relies upon clause 1.1.3. As noted above, that step can only be taken to extend the starter period up to 6 months. The EN was served on 22nd July 2022 which sought to extend the starter period (from 21st October 2021) up to 22nd April 2023.

104. Therefore, it is submitted that the extension took the starter period beyond 6 months (by 1 day), which is not permissible under the Tenancy. As such the EN is not valid, and the Tenancy converted to an assured tenancy on 21st October 2022, rendering the Section 21 Notice, served on the day of conversion void. Accordingly, the proceedings stand to be dismissed.

105. In response, Mr Lewis reminds the Court that, as a matter of principle, the fact that a contractual notice such as the EN is served pursuant to the Tenancy contains an

incorrect date does not in, and of itself, render the same invalid. Minor irregularities do not operate to override the clear intention of the notice.

106. The construction of notices must be approached objectively. The issue is how a reasonable recipient would have understood the notices, and in considering this question the notice must be construed taking into account the relevant objective contextual scene - Mannai Investment v Eagle Star Life Assurance [1997] AC 749 (at p.767 G)

107. In applying the Mannai approach, therefore, it is important to have well in mind the context of the evident purpose of the requirement of a notice in the prescribed form. If, notwithstanding errors or omissions, the substance of the notice is sufficiently clear to the reasonable person reading it, the notice is likely to serve its purpose - White v Chubb, Ravenseft Properties Ltd v Hall, Freeman v Kasseer [2001] EWCA Civ 2034 at [13].

108. Mr Lewis submits, correctly, therefore, that the test is to be applied here is whether the notice would be quite clear to a reasonable tenant reading it, and whether it is plain and the tenant cannot be misled by it.

109. Miss Vodanovic highlights that whilst the EN refers to the 6-month period of extension, it makes 2 errors: first, in relation to the conversion date and, second, the date on which the starter tenancy will end. There is, therefore, it is submitted, doubt as to what the Claimant intended and for that reason the EN is not valid.

110. As attractive as Miss Vodanovic makes the argument sound, it is not one I can accept. The purpose of the EN is essentially twofold: (i) to warn the Defendant that the Claimant is concerned that there have been breaches of the Tenancy, and accordingly, it is not content to grant an assured tenancy, and (ii) extending the probationary period by 6 months to provide the Defendant with the opportunity and time to remedy the breaches to allow an assured tenancy to be granted later should possession proceedings not have been commenced.

111. Despite the errors correctly identified by Miss Vodanovic, I consider that the substance of the EN is sufficiently clear for its purpose. A tenant would know from reading the notice that they are not being granted an assured tenancy at the end of the starter period, and the reasons why. They would know that the probationary period was to be extended for a period of 6 months, and that the same terms and conditions of the Tenancy would continue to apply. At the end of 6-month period following the extension, the Tenancy would automatically become an assured tenancy if the Claimant had not commenced possession proceedings.

112. The error as to the end date of the extension period is an obvious one. Having considered the whole of the notice in its context, therefore, I consider the error in the dates could not reasonably have led that the recipient of the notice to infer anything else, and could not possibly be misled by it.

113. While the test to be applied is objective (and strictly, the Defendant's subjective view irrelevant), I am supported in that view by the fact that the Defendant did not make enquiries in respect of the EN despite being provided with the opportunity to do so.

114. In fact, as Mr Lewis pointed out, the Defendant's own witness statement at paragraph 32(4) confirms that she '*appreciated*' that the Tenancy '*would have been extended due to rent arrears*'.

115. Accordingly, I am satisfied that the EN was valid, and the Tenancy did not convert to an assured tenancy

Issue 1 (ii)

116. Miss Vodanovic submits that if the Tenancy was validly extended up until 20th April 2023, then clause 1.1.2 of the Tenancy operates with the revised conversion date being the starting point, and proceedings still have to be commenced within 2 months of the notice expiring.

117. Miss Vodanovic further develops her argument in this way: clause 1.2 deals with the extension of the starter period. The first part of clause 1.2.1 is engaged to safeguard the position where a notice is served towards the end of the original starter period, the notice then expires after what would have been the original conversion date, and allows the Claimant to bring proceedings within 2 months of the expiry of the notice, thereby extending the starter period until those proceedings are commenced.

118. In those circumstances, that time period must be determined with reference to clause 1.1.2, with the revised conversion date in mind, and still applying the 2-month period from the expiry of the notice seeking possession.

119. Following the above reasoning, the Section 21 Notice expired on 21st December 2022. Proceedings have to be '*commenced*' within 2 months of the expiry of the notice. The claim was not issued until 23rd February 2023 which is over 2 calendar months after the notice expired. Therefore, the claim stands to be dismissed.

120. Despite the usual skill in which Miss Vodanovic has developed this argument, it is again not one I can accept. I consider that Mr Lewis' submission that the Defendant's position disregards the fact that clauses 1.1.1 – 1.1.3 of the Tenancy are expressed in the alternative as important.

121. Furthermore, as Mr Lewis noted, the caveat in clause 1.2.1 which makes it clear that that 2-month limit applies if, and only if, '*this is after the conversion date*' (here 21st October 2022); and the alternative scenario in clause 1.2.1 which must naturally apply before the conversion date and by which the period otherwise runs '*if Court proceedings commence*' until determination of those proceedings.

122. In addition, I accept Mr Lewis' submission that, following on from the same, if the EN extended the original conversion date by 6 months, the conversion date is the 21st April 2023.

123. The Claimant served the Section 21 Notice on 21st October 2022 which expired on 21st December 2022 (before the conversion date) and also commenced proceedings before that extended conversion date.

124. Moreover, I accept Mr Lewis' submission that if the Defendant's case is right, it gives rise to an inherent absurdity which renders the alternative contractually agreed scenario of court proceedings commencing before the conversion date as completely redundant.

125. Finally, I agree with Mr Lewis that the purpose of the provision upon which the Defendant relies is abundantly clear – that is, to permit the service of section 21 notices at any time before the conversion date, and to bridge the 2-month period required by such notices or else otherwise be left in an illogical position where the tenancy converts during that period. That cannot possibly be the case here due to the extension.

Issue 2

ASB

126. I accept Miss Vodanovic's submission that the Court can, in light of the concessions made by Miss Storey in evidence (as noted above), ignore 3 out of the 4 allegations made by the Claimant as to why it is seeking possession.

127. Accordingly, Miss Vodanovic invites the Court to focus on the allegations of ASB only, while conceding, quite correctly, that the Court need not, strictly speaking, make individual findings of fact as to each and every allegation.

ASB - Overarching submission

128. Miss Vodanovic submits that given the Claimant has to have a reason for serving the Section 21 Notice, the factual context for that decision has to be considered carefully. In doing so, Miss Vodanovic has taken a detailed examination in relation to most of the substantive allegations of ASB from before the serving of the Section 21 Notice through to beyond the issuing of proceedings.

129. Before dealing with that examination, I will first deal with Miss Vodanovic's overarching submission, and general criticism of Miss Storey's approach to the allegations of ASB.

130. Miss Vodanovic submits that given the complainants upon which the Claimant relies – in particular, Witnesses A, B and C were identifiable individuals, but whose evidence was beyond testing during cross-examination, the Court should be slow to overlook the fact that Miss Storey made no follow ups with any of those witnesses identified.

131. I remind myself that, in the context of a case where the Defendant is not suggesting that the complainants are lying, or that, for example, she is a victim of a vindictive smear campaign by these complainants, the duty on the Claimant does not extend to a need to, in essence, forensically investigate the complaints.

132. The Claimant is duty bound to do no more than that set out in its ASB Policy at section 6, such as carrying out interviews and seeking evidence. When pressed as to why she did not interview the 3 witnesses, Miss Storey confirmed, and I accept, that she had conversations with the witnesses including email correspondence and even tried to persuade them to do a witness statement, but they declined to do so as they were '*too frightened*'.

133. Miss Storey also explained, and I accept, that some of the complainants outside of the 3 said witnesses remained anonymous to her. Therefore, I consider that the Claimant plainly complied with the extent of their duty under section 6.

Specific Allegations

134. Miss Vodanovic submits that in relation to the incident complained of by Witness A on 13th January 2022, there is no detail as to when the music was playing and for how long (the complaint is, in fact, slightly broader given that as it is alleged that the Defendant had visitors in her garden who were also shouting and swearing).

135. Miss Vodanovic also submits that the reference to 2 men fighting in the garden at 11.30pm on 13th January, is vague and lacks detail, and that noise, as well as a description of 'fighting', can be extremely subjective.

136. In addition, in relation to the incidents on 25th March 2022, Miss Vodanovic submits that the source of the first part of the allegation as to noise is not made clear, and the Claimant has not made further inquiries with Witness B as to how they may have been able to see the Defendant's visitors '*snorting coke from the kitchen table*', and particularly in light of the fact that the Defendant maintains she did not have a table at the material time in her kitchen.

137. For my part, in relation to these events, I am not quite sure how much more detail is required. The incidents rather speak for themselves, and the serious allegations made as to 25th March 2022 are very specific.

138. The Defendant provided no evidence at all, whether before the Section 21 Notice, at appeal, or at trial, to corroborate her assertion that her kitchen table was not obtained until December 2022 to undermine the account of the incident that the Claimant received so as to give the Claimant cause to doubt, and re-evaluate, the accuracy or veracity of the allegations made.

139. I accept Miss Vodanovic's submission that paragraphs 11 to 14 of Miss Storey's first witness statement, dated 20th October 2022, do not identify who makes the complaints as to (1) one of the Defendant's male visitors offered a neighbour's child vodka, and (2) another male shouting, inter alia, about how he had been arrested for possession of class A drugs, had a knife and was going to Eastfield '*to put some people to sleep*'.

140. I consider, however, whether it was one of the 3 witnesses A, B, or C, or a truly anonymous witness, is nothing to the point. The complaints received were serious and contained a clear level of detail. I take the same view in relation to the incidents on 17th/18th May 2022.

141. I reject Miss Vodanovic's submission that the incident on 14th June 2022 is extremely vague. To my mind, the detail is quite specific, that 4 men were playing loud music throughout the day from 8.10am, were performing some form of acrobatics in the garden, and that 1 of the men shouted that he would climb over a neighbours' fence.

142. I also reject Miss Vodanovic's submission that the incident on 6th August 2022 is also extremely vague. The complaint made was that there was a party/social gathering at the Defendant's Property where the neighbours complained of '*being disturbed by raised voices and swearing from males*'. This kind of ASB seems wholly consistent with what had gone before.

143. In addition, I reject Miss Vodanovic's submission that at this point, the incidents which had been described related to day-time incidents only on 25th March and 14th June 2022. The noise nuisances on 13th January 2022 occurred at 11.30pm and on 17th/18th May 2022 at around 3.00am.

144. I would accept, however, Miss Vodanovic's submission that paragraph 31 of Miss Storey's first witness statement is not clear as to what incident is being referred to by Witness A when the witness asserted that visitors to the Property '*were all behaving in the usual loud, offensive manner*'.

145. While Miss Vodanovic relies upon the fact that there had been no further complaints prior to service of the Section 21 Notice since 6th August 2022, I consider that the same can be adequately explained by the fact that the Defendant remained in prison from the middle of August to middle of October 2022.

146. Looking at the history of incidents as a whole, I am satisfied that, but for that period of incarceration, there would have been further incidents of ASB. I am fortified in that conclusion by the fact that further incidents were recorded as having occurred on 18th November 2022 as identified in February 2023 PSED.

147. That allegation also had a level of detail. It was alleged that, inter alia, on the evening of the 18th/early hours of 19th November, loud music was played at the Property, along with other noise nuisance including shouting and swearing.

148. Moreover, it is recorded that there were other examples of ASB including fighting on the street, screaming and shouting under the influence of alcohol, and 1 visitor outside banging on the door to the Property shouting '*I'm going to F***in kill you*'.

149. While I accept that this incident did not form part of the Schedule of Allegations, or was set out in Miss Storey's witness statements, it was relied upon in the said assessment, and contained the Defendant's response to the same when she was spoken to by Miss Storey on 9th December 2022.

150. Not only did the Defendant not deny the said incidents, she gave an explanation that it was her brother who had caused the issues, and that, in essence, she had taken action as to the same, by stating that he was no longer allowed to visit the Property.

151. Miss Vodanovic maintains that during 2023 and 2024 that there was an infrequency of allegations/reports of ASB along again with a lack of detail. It is important, therefore, to again look at these incidents in a little detail.

152. Miss Storey confirms that on 15th April 2023, a neighbour reported to her that the Defendant had a number of visitors at the Property resulting with arguing at the end of the night, which caused noise and disturbed the neighbours.

153. On 25th May 2023, Witness A reported that at 3am the Defendant arrived at the Property with another female and a male by taxi. At 6:50 am the witness was woken by shouting in Rosedale Lane, and complained that the Defendant was shouting at a man and telling him to '*fuck off*', while pushing him away down the street. It was reported that the male grabbed the Defendant by the arm and tried to pull her to the ground.

154. Another female was also present at the scene and she together with the Defendant were both described as '*completely out of it*' and that the witness found it '*very disturbing, fighting in the streets outside*'. In relation to the same incident, Witness B stated that at 6:45 am Defendant came out of the Property '*screaming, shouting, staggering about*'.

155. On the same day, the Claimant wrote to the Defendant about the same, invited her to respond, and informed her that the Claimant had a tenancy coach service who could signpost tenants to appropriate support agencies. The Claimant asked the Defendant to confirm whether she would like to be referred, but received no response at all.

156. On 11th July 2023, Witness C reported that the Defendant staggered up the street holding a can of alcohol, and started shouting and swearing that the neighbours '*will get what you deserve for trying to get me thrown out*' and that she '*will never leave my house*'.

157. The Defendant stated that she was '*going to carry on with the loud music and annoying you all*'. The Defendant then entered the Property and began to slam doors, bang, play loud music so it could be heard outside the Property.

158. Witness C stated that they felt '*threatened and scared by what may happen and that the different people coming and staying at the property were putting them on edge and making them feel unsafe*'.

159. Between 8-10th November 2023, Witness B made further complaints of noise nuisance, with '*loud cars coming and going revving their engines outside…*' Miss Storey reported that the witness stated that: '*We have to get up for work and have the right to be able to sleep through the night in our own homes. It's not just the horrendous disturbance. It's also how we are left feeling afterwards. We feel scared, as we have done for such a long time now.*'

160. Witness A also reported that the '*coming and goings of cars in the early hours and the company she keeps is very worrying and makes me feel very anxious',* and that *'on Friday at work I was so shattered and made two mistakes which I am going to have to rectify on Monday. I never make mistakes at work...*'

161. Following further noise nuisance in the early hours of 11th November 2023, Witness A stated that the Defendant returned to the Property at 4am by taxi '*with 2 men, they then had music playing again keeping me awake*'.

162. Miss Storey states the witness described getting up in the end at 5am, hearing raised voices, with 2 men stood in the street. It is recorded that the witness stated that: '*they [Defendant and third parties] do not give two hoots about the residents in the street, no respect and we feel like we are living on edge all the time not knowing if she or any of her friends are going to confront us. She's already been shouting abuse in the street threatening the neighbours which you are aware of…I am becoming very worried and to be honest Leslie I'm quite scared because either way if they evict or even if she gets to stay, they [SIC] will be repercussions for myself and the other neighbours…we are at the end of our tethers and considering selling up and moving elsewhere.*.' There were similar further complaints of noise disturbance in the early hours of 14th January 2024.

163. While the frequency of these complaints may be, as Miss Storey described them, more sporadic rather than persistent, I do not consider the descriptions of these events as vague.

164. As to the complaints in relation to 2 days in May 2024, I accept that they could be described, on their face, as just normal comings and goings from the Property at not unsociable hours for the most part. I accept, therefore, that it is difficult, at first blush, to see how the residents could have felt intimidated by these comings and goings.

165. I consider, however, that the context here is important, and given the history noted above, and taking a holistic view of the incidents, it is quite easy to see how the residents may have felt intimidated by these comings and goings. I would accept, however, that there is little detail that can be attributed to the complaints made of alleged incidents in June 2024.

166. As Miss Vodanovic submitted, however, when Miss Storey was questioned about the effect on the neighbours' 'physical' health, she accepted this was a reference to sleep disturbance rather than anything else.

167. Based on the above, I reject the submission that, in essence, Miss Storey's reference to neighbours being unable to sleep is unjustified and an overstatement, and appear to be assumptions made by her.

Appeal

168. The Appeal properly considered the incidents in June 2022, 4 days after the second warning, and the incidents in August and November. Moreover, I consider that the Appeal also accurately noted that the only quiet period was when the Defendant was incarcerated.

169. Further, the Appeal took into account evidence by way of '*accounts of disturbances from neighbours*' and '*video footage of some incidents*' of ASB at the Property along with the Defendant's admission that she was '*very sorry for all the problems that had happened and for all the upset and distress*' she will have caused to her '*neighbours*',

while attributing (rather than denying) many of the allegations of noise nuisance made against her to her brother.

170. Moreover, the Appeal took into account Miss Storey's first witness statement which included the fact that the Defendant had a young child living with her, as reiterated by the Defendant at the Appeal.

171. Furthermore, despite having the opportunity to do so, the Defendant provided absolutely no evidence at all to corroborate her medical conditions, or any medical conditions of her daughter.

172. Therefore, I reject the suggestion that there was no real attempt to assess the situation at the Appeal or at that point in time, nor for reasons given, that there had been no further incidents since the service of the Section 21 Notice.

S.149 EqA

173. The February 2023 PSED made direct reference to the Defendant's mental health and depression. At section 1, Miss Storey noted that the Defendant had informed her on 24th October 2022 that she suffers with mental health and depression, but noted in section 8 an absence of cogent evidence to confirm a disability within the meaning of the EqA.

174. Miss Storey continued that in the event that EqA applied, pursuing possession was a proportionate means of achieving a legitimate aim given the seriousness of the ASB, the impact of the behaviour and harm to neighbours, and the interventions previously attempted which had not resulted in a positive impact in the said behaviour.

175. Miss Storey noted that if possession proceedings were not instituted, there would be an impact on the '*neighbours well-being*' which had been '*very harmful*' to them over the last 12 months.

176. Miss Storey also noted that further incidents of ASB would have a detrimental effect on the neighbours' health and well-being, when they are unable to sleep or enjoy peace and quiet in their homes, but recognised the impact on the Defendant and her daughter who would need to seek new accommodation.

177. When pressed during cross-examination, in essence, as to whether consideration was given in the February 2023 PSED as to the impact eviction would have on the Defendant's mental health or the Defendant's daughter, Miss Storey referred to section 10 where she stated the same was addressed.

178. The first PSED in November 2023 was carried out following disclosure of Dr. Frazer's report. Miss Storey sets out, inter alia, Dr. Frazer's diagnosis of the Defendant's condition, records now that she has a disability within the meaning of s.6 EqA, and notes that the Defendant relied upon alcohol as a '*crutch*' which can '*lead to disinhibited behavior*'.

179. At section 6 of that assessment, Miss Storey noted that the Defendant had previously attempted suicide due to difficulty in obtaining mental health support during the pandemic, and that '*this information was disclosed in Dr. Frazer's report*.'

180. Miss Storey noted the possible negative impact eviction may have on the Defendant and her daughter's well-being while also noting that there has not been disclosure of 284 pages of the Defendant's medical records that were reviewed by Dr. Frazer which could not, therefore, be considered when addressing proportionality or considering questions to the expert.

181. During cross-examination, as to the first November 2023 PSED, Miss Storey stated that the whole purpose of that exercise was, in short, in reference to Dr. Frazer's report which noted the effect that her homelessness would have on the Defendant's mental health.

182. In addition, Miss Storey stated, inter alia, that in relation to the second November 2023 PSED, proportionality was '*taken to account during the whole assessment*' but that, in short, based on Dr. Frazer's report as to the Defendant's alcohol use, she deemed there to be '*little hope*'.

183. The February 2024 PSED was made following service of Dr. Frazer's responses to questions. Miss Storey set out in detail large amounts of information taken from those replies when considering her assessment.

184. At section 10, Miss Storey stated, inter alia, that she had '*considered the impact of potential homelessness upon the Defendant and her daughter*'. At section 16, Miss Storey stated that she understood '*the seriousness of the possession applications and the possible negative impact it may have on their well-being*'.

185. Throughout all 4 reports, Miss Storey noted that the Defendant's daughter resided at the Property 50% of the time, thus assuming that she spent the other 50% of her time residing with her father, a position maintained by the Defendant until trial.

186. At paragraph 17 of Miss Storey's witness statement, dated 1st February 2024, she stated that she '*took into account the Defendant's disabilities and the impact that seeking possession would have upon her*.'

187. Miss Vodanovic pressed Miss Storey as to whether she truly had, in essence, considered the impact on the Defendant's mental health when carrying out her assessments. Miss Storey replied: '*Yes, it's part of the whole assessment*', along with considerations of the impact on the Defendant's '*daughter and the neighbours*.'

188. In assessing compliance with the PSED, I consider that the Court is not limited to the content of these documents only, but has to consider the evidence in its totality, including the oral evidence of Miss Storey and the action taken overall.

189. Taking all of the above into account, I am satisfied that Miss Storey considered the contents of Dr. Frazer's medical report in detail, and the questions in response that followed.

190. Moreover, I am satisfied, having done so, that Miss Storey took into account the conclusions reached by Dr. Frazer as to the impact eviction would have on the Defendant's mental health, and the possible effect upon the Defendant's daughter. Accordingly, I am satisfied that the Claimant has not failed to have 'due regard' to the Defendant's status as a disabled person under s.149.

191. If I am wrong as to this conclusion, and it can be said that it is not clear, on the assessments, the extent to which Miss Storey took the same into account, and in particular, the effect of homelessness generally on the Defendant's actual mental health and that of her daughter, despite the content of Dr. Frazer's report being considered, and accordingly, there is a material breach, I am satisfied that, on the facts, it is highly likely that such consideration would not have led to a different outcome.

192. As Mr Lewis put it, in short, it is clear that greater weight was given to the fact that the breaches of Tenancy were continuing (and likely to continue due to the intake of alcohol), the Tenancy being probationary, and the impact upon the neighbours as noted in the assessments.

193. As to the failure to contact the Defendant's probation officer, Miss Vodanovic is quite correct that Miss Storey accepted in her second witness statement, dated 10th May 2023, that the Defendant informed Adam Greenwood at the Appeal that she was engaging with her probation worker and that she informed the panel that she was happy for them to speak to her probation worker.

194. There is no evidence of any follow up being made with the probation officer. This possibly may be explained by the fact that following the Appeal, Mr Greenwood was away from work for over 3 months.

195. I consider that, in accordance with its own ASB Policy, the Claimant should have spoken to the Defendant's probation officer. Miss Storey gave evidence that even if the probation officer had been contacted it would have made no material difference as the Defendant's visitors were seen drinking alcohol in the Property most likely leading to further noise nuisance.

196. I consider the more significant point, however, being that the Defendant has elected not to adduce any evidence from her probation officer, Caroline Thompson. As Mr Lewis points out, this is despite the fact that the Defendant has a direct line of communication with Miss Thompson.

197. On balance, therefore, I consider the evidence overall insufficient to hold that had contact been made, the Claimant may well have been able to understand better what the Defendant's needs were, and been able to signpost the Defendant to the right agencies, at the right time.

198. While I also accept Miss Vodanovic's submission that there is an absence of any express reasoning as to why an injunction was not considered in the February 2023 and November 2023 PSEDs, for reasons that will become clear below, I am satisfied that it is highly unlikely that it would have made a material difference to the outcome.

Art.8

199. The medical evidence demonstrates that the Defendant has established mental health problems that are being treated with prescribed anti-depressant medication, though she has not yet seen clinical specialists even though referred in around March 2022.

200. Dr. Frazer's evidence also highlights the risk that an order for possession would likely cause the Defendant's mental health to substantially deteriorate, cause her chronic anxiety and lead to a risk that she might act on her current frequent thoughts of self-harm. For reasons given, I consider the evidence has established that the Claimant considered the same in its assessments.

201. Against that, the Claimant has a mandatory right under domestic law to possession of a property that is not additional to its needs, and to enable it to perform its duty efficiently to manage its properties.

202. As is clear from Pinnock and Powell, in the absence of evidence to the contrary, the court is entitled to accept that the Defendant is acting in the interests of best management of its stock of social housing in order to meet the housing needs of others, and are best equipped to make management decisions about the way such stock should be administered.

203. Despite warnings in April 2022 and August 2022, and the EN, there have been a number of complaints of ASB, some of which are more than just noise nuisance, and breaches of the Tenancy (some of which the Defendant accepts occurred).

204. It cannot even be said that the ASB ceased as soon as the Defendant was served with the Section 21 Notice or even after proceedings seeking possession were issued. This is, as Mr Lewis submits, consistent with the evidence of Dr. Frazer that the behaviours complained of will likely continue to be repeated and, for as long as the Defendant drinks, she is at a higher risk of breaching and being a risk to third parties.

205. In addition, I accept Mr Lewis' submission that the Defendant has until the eve of trial, failed to engage with the Claimant's multiple offers of support from over a year ago in May 2023.

206. Though I accept Miss Vodanovic's submission, in part, that the Defendant has taken some steps to address the issues, in that she stated that she now listens to music on her earphones when cleaning, the Defendant was quite clear that she feels entitled to play loud music into the late evening.

207. Even though some apologies have been made, particularly at the Appeal, I accept Mr Lewis' submission, therefore, that the Defendant shows no real insight into her behaviour or that of her visitors nor her continued misuse of alcohol.

208. Accordingly, I am satisfied that there remains a real risk of continuous repetition of ASB. This all must be considered in light of the fact that the Claimant is under a duty to third parties affected by the behaviour of its tenants, including in this case a number of owner-occupiers.

209. I consider, therefore, that in the circumstances here, the making of an order for possession would not be a disproportionate interference with the Defendant's Art.8 rights, and the eviction would be a proportionate means of achieving a legitimate aim.

210. In coming to that conclusion, I have not felt the need to take into account the fact that Defendant has also breached the terms of the Tenancy as to the payment of rent. It is beyond dispute that the Defendant has been in significant arrears of rent throughout the subsistence of the Tenancy, and throughout the subsistence of these proceedings, until just weeks before trial. On its face, therefore, the same could be considered also supportive of the finding made.

211. I accept, however, Miss Vodanovic's submission that the rent arrears was not a reason cited for serving the Section 21 Notice, and Miss Storey's clear evidence that possession proceedings would not have been pursued had it been for the rent arrears alone.

S.15/19 EqA

212. Mr Lewis highlights the fact that to rely upon the EqA, the Defendant must first establish that its provisions are engaged by reason of (1) the Defendant being a '*disabled person*' within the meaning of s.6 and Schedule 1, noting that an addiction to alcohol is specifically excluded by Regulation 3(1) of the Equality Act (Disability) Regulations 2010/2128; and (2) that the Claimant was on notice of the same.

213. Miss Vodanovic notes, correctly, that it was accepted by the Claimant in its first November PSED that the Defendant is disabled within the meaning of the EqA. Whether the same amounts to a pre-action admission from which the Claimant has not sought to resile, is an argument upon which I have not heard submissions, and for reasons that will become clear, I do not deem necessary to determine. Accordingly, for the present purposes here, I will proceed on the basis that the relevant provisions are engaged.

214. Miss Vodanovic submits that the seeking of possession against a starter tenant, based on Section 21 Notice is a criterion which is adopted by the Claimant against all its tenants and those who do not share the Defendant's characteristic of disability, as opposed to utilising the section 8 notice procedure with greater judicial safeguards.

215. Therefore, the reason for seeking possession is ASB, and that behaviour is directly linked to her disability, which Miss Vodanovic submits puts the Defendant at a particular disadvantage and would put any other person with her disability at such a disadvantage.

216. Applying the proportionality test in Akerman-Livingstone v Aster Communities, Miss Vodanovic quite properly accepts that it is not a high threshold for the Claimant to establish that the objective here is sufficiently important to justify limiting a fundamental right. Miss Vodanovic also quite properly accepts that the measure is rationally connected to the objective (to ensure cessation of ASB).

217. I accept Miss Vodanovic's submission that the key question here is whether there were lesser measures that could have been deployed, and if so, was the Claimant justified in not deploying them. I also accept further, that thereafter, the overall balance of the ends and the means has to be weighed up, and the impact on all parties concerned has to be considered.

218. Miss Vodanovic correctly identifies that there was nothing within the medical report of Dr. Frazer which stated that the Defendant was not capable of understanding the terms of the Tenancy, or understanding the terms of an injunction, or complying with either of those. I also agree that the fact that the Defendant denied the allegations is not a reason for not seeking an injunction.

219. In addition, I also accept that Miss Storey's assertion that it was not appropriate to seek an injunction because '*residents were worried about providing witness statements for fear of reprisals*' is not a valid reason, as injunctions can still be obtained based on hearsay evidence.

220. Moreover, while it is clear that the Defendant was willing to disobey a court order with the threat of prison, which clearly was not a deterrent, and therefore, it would seem inherently likely that she would not have complied with an injunction, I accept Miss Vodanovic's submission that the Claimant cannot retrospectively seek to justify a position based on information it has only just acquired at trial.

221. During cross-examination, it was put to Miss Storey that she had not considered an undertaking or injunction. Miss Storey stated that: '*because of alcohol misuse*' she '*believed*' the Defendant '*would struggle to adhere to the terms*'. I consider the same a rational and relevant consideration.

222. Even if it could be said, therefore, that on the face of the assessments, it is not clear the extent to which Miss Storey took those relevant factors into account, or even if it could be said that she failed to take such factors into account at all, I am satisfied that had she done so, it is highly likely that it would have made no material difference to the outcome.

223. Dr. Frazer accepted that the Defendant was more likely to behave in an antisocial manner and be a violent risk to third parties when in drink. Moreover, he accepted that the prognosis for the Defendant was poor if she continues to binge drink in response to stress, and the alleged breaches of the Tenancy (save for the rent arrears and the conduct of third-party visitors) arise in consequence because of chronic anger management problems and excessive alcohol intake.

224. Moreover, as Mr Lewis highlighted, the Defendant admitted to Dr. Frazer that she could consume up to 1 litre of vodka per day in a binge, and her alcohol abuse had been a feature since 2011. Dr. Frazer also accepted that previous behaviour was the only reliable indicator of future behaviour.

225. Accordingly, it is quite clear from the evidence that it is likely that the behaviours complained of will be repeated and breaches of an acceptable behaviour contract or injunction would take place.

226. In the round, therefore, considering the question whether the treatment of the Defendant is proportionate, I am satisfied that the decision to issue possession proceedings did achieve a fair balance between the Claimant's duty to manage its housing stock for the benefit of the whole community, its duty to alleviate the complaints of ASB, protect neighbouring residents, and the hardship that the Defendant would suffer as a disabled person by reason of the eviction.

227. I consider the same considerations apply in relation to the suggestion that section 8 proceedings should have been instigated as an alternative. Moreover, I accept Mr Lewis' submission that to do so would undermine the probationary nature of the scheme under which the Tenancy has been granted, and render redundant the contractual right to use section 21 proceedings, undermining the whole purpose of the starter tenancy scheme.

Section 20/21 EqA

228. Mr Lewis reminds the Court that the applicability and scope of the duty here is only engaged if the disabled person makes a request for adjustments (Schedule 4, Paragraphs 2(6) and/or 3(5) EqA).

229. In short, Mr Lewis submits that the duty is not engaged here as no such request was ever made in respect of the matters of which complaint is now made, nor have any particulars been pleaded by the Defendant despite having the opportunity to amend her Defence.

230. For present purposes, I am content to accept Miss Vodanovic's submission, however, that the request was received when the Defence was served. To the extent that the duty is engaged, therefore, but for the same reasons already given, I reject the assertion that the Claimant failed to make reasonable adjustments by not taking lesser measures.

231. Further, I reject the suggestion that the Claimant failed to make inquiries of the Defendant's mental health. As pointed out by Mr Lewis, the Claimant complied with the same not least because it did so by taking the reasonable and practicable step of requesting disclosure of the Defendant's medical records, and thereafter, putting questions to Dr. Frazer in consequence.

232. Finally, for the same reasons given, I reject the suggestion that there is a failure to make reasonable adjustment by relying on section 21 as opposed to section 8 proceedings.

Conclusion

233. The Claimant has therefore established that it is entitled to a possession order. I trust that the parties will be able to agree an order that reflects the substance of the same.