

## Case law update: Breach of Public Sector Equality Duty not an automatic bar to possession claims, Luton v Durdana [2020] EWCA Civ 445

1. In a recent case, Luton v Durdana [2020] EWCA Civ 445 the Court of Appeal gave useful guidance on the test to be applied by the court when a tenant alleges a failure by a landlord to comply with the public sector equality duty ('PSED').
2. The Tenant was found to have told several lies when she applied for her Tenancy. The county court judge found that, although these lies were serious, the Landlord had failed to carry out the assessment required by section 149 of the Equality Act, which imposes the PSED.
3. The Tenant suffered from post-traumatic stress disorder, and her daughter had cystic fibrosis.
4. The Court of Appeal restated that, where a Tenant relies on a landlord's failure to carry out the PSED a defence to claim for possession, the defence will fail **if the court is satisfied that it is highly likely that the outcome would not have been substantially different had no breach of the duty occurred.**
5. The judge in the court below had used the test of 'inevitability' instead of 'highly likely', and so the decision was overturned, with the matter remitted to different judge of the county court to make the reasonableness decision.
6. The Court of Appeal found that the landlord's policy of seeking possession where a Tenant has lied in order to obtain the Tenancy was a reasonable one, and one which was a significant and reasonable factor that would have been weighed had the PSED been undertaken.
7. The court also restated what the PSED is, which is *to have proper regard to [the] disabilities in deciding whether to continue to seek possession. [The] disabilities and their effect [are] a factor which mandates specific consideration as part of that decision.* The disability, or whichever protected characteristic is present, is only one factor that needs to be weighed by the decision maker. Once the decision maker has this factor in mind, so long as his consideration of it is evidenced, the court cannot ascribe a different weight to it, and come to its own conclusion, unless the decision is patently wrong on public law grounds.

**Alexander Pritchard-Jones**