Neutral Citation No: [2024] NICty 3	*Ref:* **2024NICty3**
	ICOS No: **20/027667**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **10/05/24**

IN THE COUNTY COURT FOR NORTHERN IRELAND

SITTING IN BELFAST

PATRICIA BOYLE
and
RICHARD BOYLE

v

THE NORTHERN IRELAND HOUSING EXECUTIVE

Mr Michael Potter (instructed by Norman Shannon Solicitors) for the plaintiffs
Mr Aidan Sands KC (instructed by NIHE Legal Department) for the defendant

---

DCCJ MURRAY

The claim

[1] The plaintiffs' claims are contained in the Civil Bill which was issued on 11 March 2020. At hearing the claims had narrowed to a claim for discrimination under the Disability Discrimination Act 1995 (as amended) ("DDA").

[2] This case concerns the actions of the defendant as a public authority exercising its functions under the Housing Orders as regards homeless persons.

The legal framework

[3] Both sides agreed that this case involved s21B and s21D to s21E of the DDA which outlines disability-related discrimination and the duty on a public authority to make reasonable adjustments for disabled persons in carrying out its functions. In the event disability-related discrimination was not the focus of this case as the focus was on the duty to make reasonable adjustments.

[4] Whilst there was disagreement on whether s19 of the DDA in relation to the provision of services also applied (the plaintiffs said it did the defendant said it did not) for reasons which will become clear the court did not need to consider that issue. It appears that conceptually both sets of provisions are on all fours with each other albeit with some differences in language.

[5] The Housing Orders (NI) 1981 and 1988 constitute the background to this case as in that legislation are set out the duties and obligations of the Housing Executive in relation to the provision of housing generally and in relation to homeless persons in particular. Central to this case are two policies of the Housing Executive which were put in place essentially to give effect to those obligations. Those policies are contained in, firstly the Housing Allocation Scheme which contains the long-standing points system and secondly, in the Special Acquisition Scheme. Offers of housing to homeless persons must be "suitable" and "reasonable." (Housing Order 1988 A10-11).

[6] The DDA provides where relevant as follows:

> "**21B Discrimination by public authorities**
>
> (1) It is unlawful for a public authority to discriminate against a disabled person in carrying out its functions.
>
> (2) In this section, and sections 21D and 21E, "public authority" —
>
> (a) includes any person certain of whose functions are functions of a public nature;"
>
> …
>
> **21D Meaning of "discrimination" in section 21B**
>
> (1) For the purposes of section 21B(1), a public authority discriminates against a disabled person if —
>
> (a) for a reason which relates to the disabled person's disability, it treats him less favourably than it treats or would treat others to whom that reason does not or would not apply; and
>
> (b) it cannot show that the treatment in question is justified under subsection (3), (5) or (7)(c).
>
> (2) For the purposes of section 21B(1), a public authority also discriminates against a disabled person if —

(a) it fails to comply with a duty imposed on it by section 21E in circumstances in which the effect of that failure is to make it—

(i) impossible or unreasonably difficult for the disabled person to receive any benefit that is or may be conferred, or

(ii) unreasonably adverse for the disabled person to experience being subjected to any detriment to which a person is or may be subjected,

by the carrying-out of a function by the authority; and

(b) it cannot show that its failure to comply with that duty is justified under subsection (3), (5) or (7)(c).

(3) Treatment, or failure to comply with a duty, is justified under this subsection if —

(a) in the opinion of the public authority, one or more of the conditions specified in subsection (4) are satisfied; and

(b) it is reasonable, in all the circumstances of the case, for it to hold that opinion.

(4) The conditions are—

(a) that the treatment, or non-compliance with the duty, is necessary in order not to endanger the health or safety of any person (which may include that of the disabled person);

(b) that the disabled person is incapable of entering into an enforceable agreement, or of giving an informed consent, and for that reason the treatment, or non-compliance with the duty, is reasonable in the particular case;

(c) that, in the case of treatment mentioned in subsection (1), treating the disabled person equally favourably would in the particular case involve substantial extra costs and, having regard to

resources, the extra costs in that particular case would be too great;

(d) that the treatment, or non-compliance with the duty, is necessary for the protection of the rights and freedoms of other persons.

(5) Treatment, or a failure to comply with a duty, is justified under this subsection if the acts of the public authority which give rise to the treatment or failure are a proportionate means of achieving a legitimate aim.

21E Duty for purposes of section 21D(2) to make adjustments

(1) Subsection (2) applies where a public authority has a practice, policy or procedure which makes it—

(a) impossible or unreasonably difficult for disabled persons to receive any benefit that is or may be conferred, or

(b) unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected, by the carrying-out of a function by the authority.

(2) It is the duty of the authority to take such steps as it is reasonable, in all the circumstances of the case, for the authority to have to take in order to change that practice, policy or procedure so that it no longer has that effect." (emphasis added)

[7] The initial burden of proof is on the plaintiffs to prove facts from which the court could conclude that the duty to make reasonable adjustments arose and was breached. If so the burden shifts to the defendant to prove that the duty did not arise, that any duty was not breached and that any breach of any duty was justified.

Sources of evidence

[8] For the plaintiffs the court only heard oral evidence from Mrs Boyle as Mr Boyle was medically unfit to give evidence.

[9] For the defendant the court heard evidence from Mr Hannity, Housing Support Officer; Mr Walsh, Neighbourhood Officer; Ms McSorley, Policy Officer who gave

evidence relating to the Housing Allocation Scheme; Mr Staples, Manager in the team involved in the Special Acquisition Scheme.

[10] The parties produced an agreed bundle of documentation (including extensive medical evidence and Occupational Therapist reports) running to approximately 500 pages and this was supplemented with further documentation during the hearing. All of the documents were presented in a commendably coherent way and the court is very grateful to both solicitors for achieving this.

[11] Skeleton arguments and written submissions were provided by both counsel supplemented by oral submissions and reference to some appellate authorities. The court is very grateful for both counsels' careful and comprehensive written and oral arguments in this case which everyone recognised as an unusual claim under DDA.

Findings of fact and conclusions

[12] The court considered all the evidence both oral and documentary together with the arguments and authorities presented by both parties' counsel. It is important to note that this judgment contains the principal findings of fact drawn from all of the evidence and does not record all the competing evidence. The court applied the law to the facts found to reach the following conclusions.

Introduction

[13] It was conceded by the defendant that, as both Mr Boyle and Mrs Boyle had physical and mental health issues, they were disabled for the purposes of DDA throughout the period in issue in this case. Whilst the defendant's position was that Mrs Boyle's disabilities were not germane to the claim, the defendant however did accept that Mr and Mrs Boyle were liable to be treated as one "unit" for the purposes of the allocation of housing. The arguments and submissions related to Mr and Mrs Boyle as one and there was no suggestion, for example, that Mrs Boyle's claim before the court should be dismissed. In essence the approach of all concerned was that both of the plaintiffs' claims stood or fell together.

[14] The Boyles had been designated as Full Duty Applicants ("FDAs") and "homeless at home" in or around 2011. That designation subsisted throughout the period in issue in this case. The effect of this was that they had priority to some degree to be offered homes as they became available. Those within the FDA group comprised those deemed most at need for housing on various grounds not all of which related to disability.

[15] The background to this case is that the stock of public housing is limited and demand for such housing outstrips supply. On the figures provided to the court this disparity between supply and demand has worsened considerably over the last number of years.

[16] The Housing Allocation Scheme contains the points system. Points were accorded to Mr and Mrs Boyle for various matters including Mr Boyle's disability. The total points accorded to the Boyles did not, however, mean that they were at the top of the priority list.

[17] It was agreed that the relevant period for these proceedings is the period from 2013 until December 2022 when the plaintiffs were allocated a house in a new development. They were able to move in February 2023 after suitable adaptations for Mr Boyle's conditions. It was in June/July 2013 that Mr Boyle's condition had deteriorated meaning that he thereafter needed his own bedroom. The Boyles' house was from that point unsuitable for them. The period in issue in this case is therefore nine and a half years.

[18] Mr Boyle suffered from serious physical and mental health conditions the combined effect of which was that his mobility was severely adversely affected. The physical conditions and associated psychological and mental health conditions from which he suffered were severely debilitating and progressive throughout the period 2013 to 2022.

[19] Throughout the period in issue the Boyles resided in a private rental house in the Upper Lisburn Road area in Belfast. It was common case that this accommodation was not suitable for Mr Boyle in view of his medical conditions throughout the relevant period and for this reason they were designated as "homeless at home."

[20] In January 2017 Mr Boyle had a fall on the stairs in his house which led to a spell in hospital. His condition deteriorated substantially as a result and thereafter he was largely confined to bed in the living room on the ground floor of the property. He had to use a wheelchair, and this necessitated the use of a hoist to get him in and out of bed. As the bathroom was upstairs in this property, he therefore had no access to the toilet nor to washing facilities. This situation lasted for over five years. There is no doubt that these were abject conditions for Mr Boyle, and for Mrs Boyle as his carer, to endure.

[21] From the documents it is clear that there was an acceptance by the defendant in December 2018 that Mr Boyle's condition was such that, at that point, he was not fit to be moved to temporary accommodation because of his disabilities. It still took a further four years for the Boyles to be offered in December 2022 the home that they moved into in February 2023.

[22] The dispute in this case centered on the extent of the obligations on the Housing Executive to offer suitable accommodation in the form of reasonable offers, and on an alleged lack of flexibility on the part of the plaintiffs in refusing offers which the defendant deemed suitable. Approximately eight of the properties that were actually offered were analysed in detail in the evidence presented in this case.

The plaintiffs' needs

[23] Mrs Boyle could not live in a flat nor in Ballymurphy as a result of the effects of a very adverse experience when she was young. These requirements were accepted by the defendant's officers.

[24] For the purposes of the Housing Allocation Scheme the plaintiffs' preferred Areas of Choice ("AOCs") were in the Lisburn Road/Upper Finaghy areas in Belfast excluding Taughmonagh. The reason for these being the plaintiffs' preferred areas were that the Boyles wanted to be near their son's home as Mrs Boyle was also his carer. Mrs Boyle was also anxious to be close to a bus stop and to the hospital as she could not drive and suffered from physical disabilities herself.

[25] The plaintiffs had previously suffered serious sectarian incidents in a previous home off the Antrim Road and were thus reluctant to consider offers of housing in areas they perceived to be loyalist. This was the reason given by Mrs Boyle for the refusal of several offers of homes in the vicinity of the Lisburn Road. I find that it was not unreasonable for the plaintiffs to refuse those offers on those grounds as set out below.

[26] Other reasons for refusal of offers included limited room for manoeuvre for a wheelchair user and inadequate storage facilities for Mr Boyle's extensive medical supplies and equipment.

The reasonableness of the offers and refusals

[27] Having assessed in detail the evidence in relation to the offers and refusals I find that the Boyles were not unreasonable in refusing the offers made as I find that the offers were not reasonable in the circumstances. I specifically reject the argument by the defendant that the reason for any refusal of offers of housing had to be directly related to Mr Boyle's disability as I find that the phrase "in all the circumstances" referred to in DDA at s21D(3)(b) and s21E(2) encompasses the wider reasons for refusal set out above.

[28] I also reject the defendant's argument that, as a "neutral" organization, the defendant, in effect, did not recognise sectarian fear as a reasonable reason for refusing an offer of accommodation. Whilst the defendant's witnesses appeared to put forward that position in hearing and this was one of the submissions, this was not borne out by the contemporaneous documentation.

[29] In particular the refusal of a property at 53 Torr Way Taughmonagh on 24 May 2019 was recorded in the relevant document as a "reasonable" refusal. It was uncontested that the reason given by Mrs Boyle at the time was because she perceived the area to be loyalist. The defendant's witnesses stated that this entry on the record was a typographical error. I reject that explanation and accept the evidence of Mrs Boyle that her reason was accepted as reasonable at that point. The net position

at that time therefore was that it was formally accepted that it was reasonable of the Boyles to refuse that offer due to sectarian fear because of their previous experiences.

The relevant Housing Executive policies

The Housing Allocation Scheme

[30] The Housing Allocation Scheme at the time relevant to these proceedings required that people in the Boyles' situation had to nominate two AOCs and as a result offers of housing would be restricted to particular geographical areas as defined by the defendant. The documents show that the Boyles were repeatedly pressed by the defendant's officers to switch at least one of their AOCs from their two nominated areas of Lisburn Road and Finaghy.

[31] I accept Mrs Boyle's evidence that her reluctance to do so stemmed from the fact that she would be giving up any chance of being offered a dwelling in her preferred location if she switched one of her locations to Andersonstown, for example. I find that the Boyles were repeatedly placed by the defendant in the invidious position of having to consider such a choice with no guarantee of a quick enough solution and with the attendant risk that they were foregoing any offers in their preferred AOCs.

[32] At one point prospective new developments were discussed in Andersonstown but were rejected because there was going to be a delay of up to four years before they were built. If the Boyles had accepted that option, they would not have been eligible for any offers within that four-year period in the area that they really wanted to live in for the reasons set out above as this would have involved changing one of their AOCs to Andersonstown.

[33] Essentially the plaintiffs were blamed by the defendant's officers for a lack of flexibility by not switching at least one of their AOCs to, for example, Andersonstown. The defendant made the case that it would have been much easier to place the plaintiffs in suitable accommodation in that area given the bigger stock of housing available with the resultant greater availability of accommodation that was either suitable for a person with a mobility disability or could be made suitable with adaptations within relevant budgetary requirements.

[34] The Scheme included the possibility of points for a disability. This went some way to addressing the needs of disabled people in general. The duty to make reasonable adjustments is also however owed personally to a particular disabled person (once the duty arises) to take account of the individual's particular difficulties so that a reasonable adjustment to the practice, policy or procedure can be considered in order to address those difficulties.

[35] Mr Boyle's disability had several aspects including severe mobility problems which involved the use of a wheelchair after his hospitalisation due to the fall in 2017.

It was common case that there is, and has been, a shortage of public housing. It was also common case that within the available public housing stock an even smaller number of dwellings are suitable or potentially suitable for someone with such severe mobility issues.

[36] The shortage of housing in general applied to the detriment of everyone in the FDA group. However, the paucity of houses suitable for someone with such severe mobility issues meant that the operation of the policy (whereby a person was restricted to two AOCs) had more of an adverse impact on disabled people with mobility problems than on the general group of those in the FDA group seeking public housing because of homelessness. The detriment common to all in the FDA group thus had a particularly adverse impact on Mr Boyle as a disabled person with mobility issues as the number of dwellings suitable, or potentially suitable, for his needs was a small subset of the limited housing stock available for those in the FDA group as a whole.

[37] The Housing Allocation Scheme and its application in practice therefore had more of an adverse impact on disabled people with such mobility problems and clearly adversely affected Mr Boyle in particular because fewer homes were available to him than to those in the FDA group as a whole.

[38] The court notes that there already was flexibility contained in the Housing Allocation Scheme whereby homes could be allocated other than in accordance with the policy in exceptional cases. Relevant extracts are as follows:

> "Rule 8. Legislation. It is noted that the Housing Executive continues to be subject to the legal requirements imposed upon it. The other rules of the scheme must be construed in the light of the Housing Executive's obligations in that connection.
>
> Rule 55. General housing areas (GHA). An applicant who has been awarded homeless/threatened with homelessness full duty applicant points and has not been allocated accommodation on a permanent basis after six months, will be considered for accommodation in a wider area which includes one or both of his/her areas of choice. This will be known as a General Housing Area.
>
> Rule 84. Authority of the Department/Board. 1(a) The board of the Housing Executive may, after consultation with the Department of the Environment, make allocations otherwise than in accordance with the scheme."

[39] The Housing Allocation Scheme has been changed since the period in issue in this case as applicants for housing can now specify as many AOCs as they wish. This

change in policy was made in 2022 after 10 years of consultation. The fact that the policy has changed relatively recently is not however determinative of the Boyles' case. On the facts in this case there was already flexibility built into the existing scheme to allow for exceptional circumstances such as those pertaining in the Boyles' case.

The Special Acquisition Scheme

[40] The Special Acquisition Scheme team became involved because no suitable accommodation could be identified. This was a recognition by the defendant's officers of the length of time the plaintiffs had been in unsuitable accommodation and of the difficulty in providing suitable accommodation for them.

[41] The process was that the defendant nominated three Housing Associations who were told that the area to be considered by them comprised the two areas which had been stipulated by the plaintiffs as their AOCs.

[42] Mr Staples' evidence was this scheme was not geographically restricted. The reality in practice however was that the enquiries sent by his team in nomination letters to the chosen Housing Associations, stipulated the two AOCs named by the applicants. The restriction to two AOCs thus carried through to the operation of the Special Acquisition Scheme. The effect of this was that in practice the chosen Housing Associations were effectively instructed by the defendant largely to confine their search for, and assessment of, properties to those geographical areas.

[43] The response of the Housing Associations in this case was that they stated that: in the areas stipulated there was a limited supply of dwellings that might be suitable for adaptation; such dwellings were high cost; and any suitable adaptations would likely exceed the normal cost allowable under guidelines which stipulated Total Costs Indicators ("TCIs"). The Housing Associations were pointing out that they would need additional funding to proceed.

[44] This response from the Housing Associations was interpreted by Mr Staples as a refusal to proceed and for his team that was therefore the end of the matter. The result was that whilst the policy allowed for the possibility of exceeding the normal costs in exceptional cases this was not explored at all by the defendant's specialist team.

[45] It is clear that there was scope for exceptional circumstances already in the Special Acquisition Scheme. As a rule of thumb costs of 130% of the TCI for a particular area could be acceptable. Anything in excess of that would have to be referred to the defendant's senior management to see if approval and exceptional funding could be given to a nominated Housing Association to go ahead.

[46] Mr Staples' understanding was that the initiative for taking this forward lay with the Housing Associations once they had received the nomination letter from the

Housing Executive. This would have involved a detailed proposal following a survey and costings of a particular property which the Housing Association would put to Mr Staples' team and approval could be sought at that point from the defendant's senior management.

[47] I find that the duty to make adjustments under DDA lay with the defendant as the public authority exercising functions but in practice it effectively abdicated responsibility to the Housing Associations for the exercise of that function when considering assessment under the Special Acquisions Scheme. Requesting the input of Housing Associations to the Special Acquisition Scheme was not wrong but that did not absolve the defendant of its own duty proactively to explore options under that Scheme.

[48] As regards the operation of the Special Acquisition Policy the following would likely have made a positive difference for the Boyles if the defendant had explored these options rather than relying on the Housing Associations' responses as determinative:

(i) The defendant could have cast the net wider by not restricting the Housing Associations' search to the two AOCs given the admitted larger stock of less costly housing in Andersonstown in particular.

(ii) There was clear scope for exceptional circumstances to be invoked under Rule 84 of the Scheme to enable the applicable costs guidelines to be exceeded but this was not explored at all by the defendant.

[49] Given its findings on the Housing Allocation Scheme the court does not need to analyse any further the application of the Special Acquisition Scheme except to note with concern the defendant's failure to explore the scope for exceptional action already contained within it.

The time point

[50] The time limit for this case is six months and is found in the DDA at s6 of Schedule 3 Part II.

[51] The defendant's case was that there was a time point in that the offer of the property at 53 Torr Way in May 2019 complied with any duty to make reasonable adjustments and that the six months' time limit therefore ran from that date. As the civil bill was issued on 11 March 2020, the defendant's argument was that it was out of time.

[52] The plaintiffs' case was that there was an ongoing failure to make reasonable adjustments and therefore no time issue arose.

[53] The defendant's Chief Executive stated in a letter of 21 October 2019 that it was not under a duty to make reasonable adjustments and the plaintiffs' point was that that statement was not compatible with any argument by the defendant that it had complied with any duty after that. After that date the plaintiffs' solicitor still pursued the defendant on an ongoing basis, as did Mrs Boyle, to seek suitable accommodation.

[54] As I have found that the plaintiffs' refusal of the offers made was not unreasonable and indeed that the offers themselves were, in the circumstances, not reasonable then making those offers did not comply with the duty to make reasonable adjustments. This meant that there was an ongoing failure. I therefore find that the claim was not out of time because there was an ongoing failure to make reasonable adjustments.

[55] If I am wrong in my conclusion that the proceedings are in time, I hereby exercise my discretion to extend time on just and equitable grounds. My principal reasons for extending time are: this is a meritorious case; the plaintiffs were both disabled throughout the relevant period; the plaintiffs were trying to press for suitable accommodation whilst all the while Mrs Boyle tended to her extensive caring responsibilities and Mr Boyle's health continued to deteriorate; and, they had to apply for legal aid in order to issue proceedings.

Disposal

[56] There are three key issues for consideration for the court as follows.

Did the duty to make reasonable adjustments arise?

[57] The first issue for consideration is whether a practice policy or procedure of the defendant made it unreasonably difficult for disabled persons to receive a benefit compared to those who are not disabled, or, whether a detriment suffered by a disabled person due to the carrying out of the defendant's function was unreasonably adverse for the disabled person. If so the duty to make reasonable adjustments arose.

[58] The court concludes that the duty to make reasonable adjustments to a practice, policy or procedure arose in this case given the particularly adverse effect of the operation of the Housing Allocation Scheme on disabled people with severe mobility issues and on Mr Boyle in particular as compared to the adverse effect of the shortage of housing on those in the FDA group.

Would the adjustments in issue have been reasonable in the circumstances?

[59] The second issue for consideration is whether the defendant took reasonable steps in the circumstances (ie made reasonable adjustments) to remove that unreasonably adverse effect.

[60] The adjustments relied upon by the plaintiffs in this case were:

(i) That the defendant apply the Housing Allocation Scheme flexibly to allow a third AOC; and/or,

(ii) That the defendant apply the Special Acquisitions Scheme with a wider search unrestricted by two AOCs; and /or to pursue the exceptionality route set out in that Scheme.

[61] The defendant relied on the following as sufficient to meet any duty to make reasonable adjustments. The plaintiffs' case was taken out of the local area and put into Mr Hannity's team which meant that properties within a wider area as defined by the defendant could be considered. This was under Rule 55 of the Scheme set out above. Crucially however that wider area still centred on the two AOCs which meant that the wider area, in the main, included areas that were not suitable because of the plaintiffs' previous sectarian experiences.

[62] Given that the duty to make reasonable adjustments arose then it was incumbent on the Housing Executive to apply the policy with its inherent flexibility by allowing the Boyles to nominate a third AOC (or indeed more than three) in order to cast the net as widely as possible given their dire circumstances which persisted for so many years.

[63] I find that this amounted to a failure to comply with the duty imposed under section 21E. There therefore was a duty to take reasonable steps to apply (and if necessary to change) the practice, policy or procedure so that it no longer had that effect. The touchstone in this is reasonableness.

[64] The following would have been reasonable in my judgement as regards the Housing Allocation Policy:

(i) The defendant could have used the existing flexibility built into the Housing Allocation Policy to allow a third AOC of Andersonstown thus enabling the defendant to cast the net wider and improve the plaintiffs' chances of obtaining a suitable property or one that could be adapted without excessive cost.

(ii) The defendant could have allowed the refusal of offers in perceived loyalist areas without the penalty of the plaintiffs essentially using up the limited number of offers available to them. Whilst this is effectively what happened on one occasion in relation to a property at 53 Torr Way, the plaintiffs reasonably believed that repeated refusals could result in them losing the priority they had as this is what the relevant Scheme provided.

[65] As the defendant accepted that having Andersonstown as an AOC would likely have resulted in a quicker allocation of suitable housing then I conclude that adding Andersonstown as the third AOC would likewise have increased the chances of the Boyles being offered suitable accommodation under the Housing Allocation Scheme.

[66] The simplest adjustment would have been for the Boyles to be allowed to add Andersonstown as their third AOC. The court's conclusion on the evidence is that if they had been allowed to do so they would have been placed in suitable accommodation much earlier than they were.

[67] I find that there was therefore a failure to make reasonable adjustments which resulted in the Boyles languishing for years in wholly unsuitable accommodation.

[68] I find that the defendant's approach to the operation of the Housing Allocation Scheme displayed a fundamental misconception about the nature of the duty to make reasonable adjustments under DDA. Once that duty arises a proactive duty is placed on the public authority to consider whether the practice policy or procedure could reasonably be adjusted to remove the adverse effect. Any failure to do so would have to be justified as a proportionate means of achieving a legitimate aim.

The justification defence

[69] The third issue for the court's consideration is whether the failure to make an adjustment was justified. This is where the issues of proportionality and of cost in particular are relevant. (DDA s21D(3) (4) and (5)).

[70] The justification defence in this case centres on the legitimate aim of sharing out limited housing in a fair way to those in need as efficiently as possible within budget. The Housing Allocation Scheme points system, which incorporates some points in relation to disability generally, was relied upon as a proportionate means of achieving that legitimate aim.

[71] I find that this ignores the proactive and positive nature of the duty to make reasonable adjustments to take account of disability and of the particular disability in issue. I find that the points system, of itself, is not a proportionate means of achieving that legitimate aim in a situation where a disabled person with severe mobility issues such as those suffered by Mr Boyle is particularly adversely affected by the operation of the Scheme because the search for the limited stock of dwellings suitable for a severe mobility disability was unduly restricted. Accordingly, points for disability did not bring the Boyles to the top of the list.

[72] Adjusting the application of the Housing Allocation Scheme by allowing an applicant to increase the number of AOCs thus widening the search, would not necessarily have involved cost at all, or alternatively any cost might have been within existing financial guidelines as set out in relevant policies.

[73] The arguments on cost and shortage of accommodation as elements of the justification defence are therefore rejected. Applying the policy in the rigid way it was applied in this case was neither proportionate nor necessary to achieve the legitimate aim.

[74] As the defendant has failed to prove justification in relation to the Housing Allocation Scheme the court does not need to assess justification in relation to the Special Acquisition Scheme save to say that the effective restriction of the assessment under that scheme to the two AOCs which were high-cost areas appears to have been the reason for cost being, on the face of, it prohibitive. It may well be that if the AOCs had been extended to include Andersonstown then the cost issue would have fallen away as any potentially suitable property may well have been within the existing parameters of that Scheme.

Declaration

[75] The court declares that the plaintiffs suffered discrimination under the DDA and their claim therefore succeeds.

Compensation

[76] The next issue is the assessment of compensation. Mr Potter confirmed at hearing that no claim in respect of personal injury nor for rent arrears was included in the claim before the court. Injury to feelings was therefore the sole head of compensation claimed.

[77] For the plaintiffs Mr Potter referred to the English County Court case of *Plummer v Royal Herbert Freehold Ltd [2018]* where £9000 was awarded to a disabled person who, due to mobility issues, could not access leisure facilities in his block of flats and the failure to provide a stairlift as a reasonable adjustment persisted for five years.

[78] For the defendant Mr Sands submitted that in assessing any compensation, account needs to be taken firstly, of the fact that the plaintiffs were already homeless; secondly, of the difficulty in obtaining accommodation generally; and thirdly, that they might have remained homeless for a period even if any adjustment in issue had been applied. There is some force in that argument as it is not necessarily as simple as assessing injury to feelings to reflect the deeply unsatisfactory living conditions which the Boyles endured over the whole period from 2013 to 2022. Causation is key as any injury to feelings award must reflect the effect of the discriminatory act.

[79] It weighs heavily with the court however that the Boyles' situation was so dire and persisted for such a long time despite the commendable persistence of Mrs Boyle and her solicitor Ms Knight to try to persuade the defendant to apply policies flexibly in the Boyles' favour. Not only was flexibility not forthcoming but the Boyles were effectively blamed for inflexibility and for being unreasonable even though their concerns in relation to the history of sectarian harassment and their other key needs, were accepted at various times by various officers of the defendant.

[80] In summary, rather than applying flexibility the defendant made a series of unreasonable offers to the Boyles and then blamed them for being too restrictive in their choice.

[81] The court's assessment having considered all the evidence is that the Boyles seem to have fallen between the different teams who dealt with them at different points as there appeared to be little effective connection between those teams. No one seemed to take an overall proactive view of the extreme seriousness of the circumstances to try to apply the existing flexibility in policies in order to reach a speedier solution. It was effectively left to the Boyles and their solicitor Ms Knight to persist in pushing the matter even though there was a recognition over many years that this was a dire situation for Mr and Mrs Boyle to endure.

[82] Taking account of all of that the court finds that this is a case that falls into the more serious category of discrimination in the high-Vento band (*Vento v Chief Constable West Yorkshire Police [2002] EWCA Civ 1871*).

[83] The Vento bands are used in Employment Tribunal claims of discrimination and are no more than a guide. The convention on applying the Vento guidelines in Employment Tribunals is that those applicable at the time of issue of the proceedings are normally followed. The civil bill in this case was issued on 11 March 2020 which was just before the Vento guide was updated in April 2020. The mid-Vento band at that point became £9,000-£27,000 and the high-Vento band became £27,000-£45,000. This was a slight increase on the previous bands which were mid-level £8,800-£26,300 and high-level £26,300-£44,000.

[84] Mrs Boyle gave vivid and compelling evidence of the effect of the discrimination on her and on her husband and the physical and mental toll it took when it persisted over such a long period. Her caring responsibilities were extensive and unrelenting but nevertheless she had to continue to engage over a long period with numerous officers of the defendant in different teams in order to try to obtain suitable accommodation whilst all the while Mr Boyle's serious conditions deteriorated further.

[85] Given the extensive period during which the failure to make reasonable adjustments persisted (ie for most of the relevant period but particularly after Mr Boyle's fall in January 2017) the court finds this to be an egregious breach of the defendant's duty under the DDA and therefore concludes that the sum of £30,000 is a suitable award to reflect the plaintiffs' injury to feelings which resulted from the breach of that duty.

[86] The plaintiffs are therefore awarded compensation in the sum of £30,000.

[87] In the absence of agreement the parties may address the court on the issue of any interest on the award and on the issue of costs.