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SECTION 166A (5)

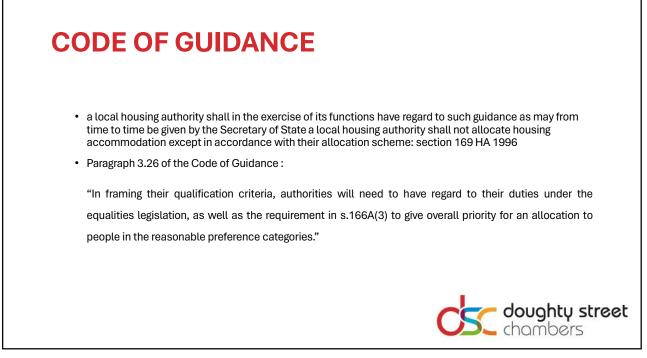
(5) The scheme may contain provision for determining priorities in allocating housing accommodation to people within subsection (3); and the factors which the scheme may allow to be taken into account include—

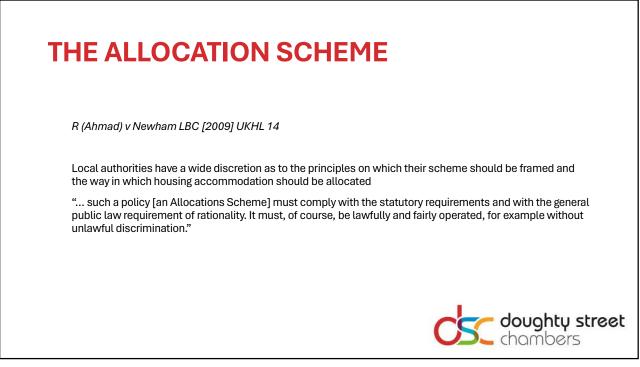
(a) the financial resources available to a person to meet his housing costs;

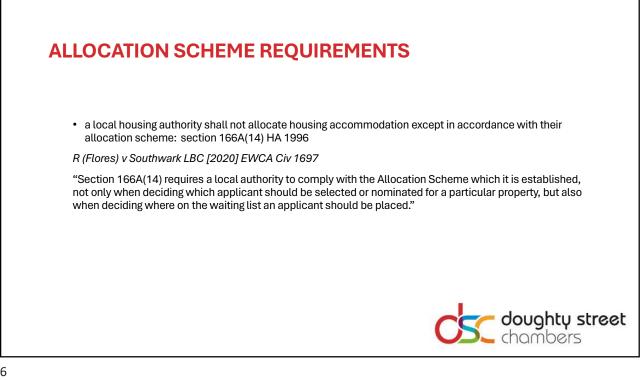
(b) any behaviour of a person (or of a member of his household) which affects his suitability to be a tenant;

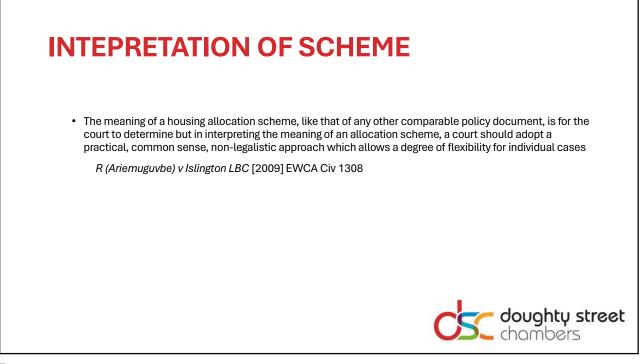
(c) any local connection (within the meaning of section 199) which exists between a person and the authority's district.











INTERPRETATION: NUR V BIRMINGHAM CC [2020] EWHC 3526 (Admin)

The First Claimant's household comprised of the First Claimant and her three adult daughters

The Second Claimant has cerebral palsy with spastic diplegia

The Occupational Therapy Service assessed the Second Claimant as requiring an adapted property

Policy

To enable the best use of the Council and partner registered provider stock, properties will be allocated to those applicants who need that size and type of property.

As such, preference for houses with two or more bedrooms will be allocated to families with dependent children.

Sheltered housing and extra care accommodation will be allocated to older people.

Properties with adaptations will be allocated to persons with a physical or sensory disability."



INTERPRETATION: NUR V BIRMINGHAM CC [2020] EWHC 3526 (Admin)

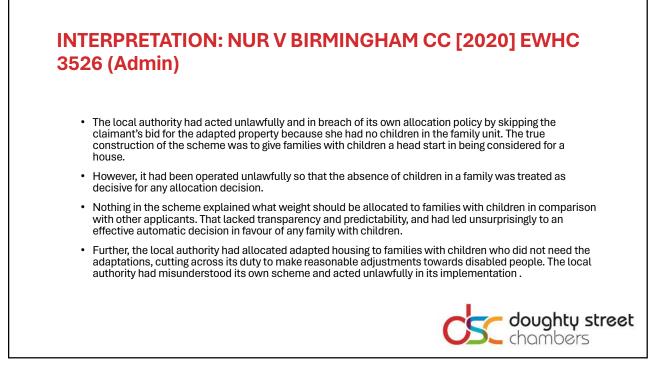
As a result of the Second Claimant's disability, the Claimant was only permitted by the Defendant to bid on fourbedroom properties that were adapted or adaptable.

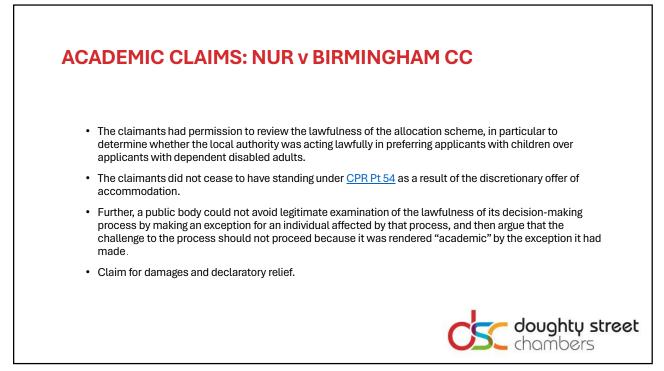
In 2019 Council stated that in the exercise of its discretion the First Claimant was now eligible to bid for three bedroomed property

The First Claimant made a bid and as of 7 July 2019 was listed on the website as being at bid position one The Defendant then withdrew the First Claimant's bid.

Your client's children are all adults, and therefore she is classed as not having dependent children. Your client continues to be eligible to bid for accommodation, including bids for flats and maisonettes.



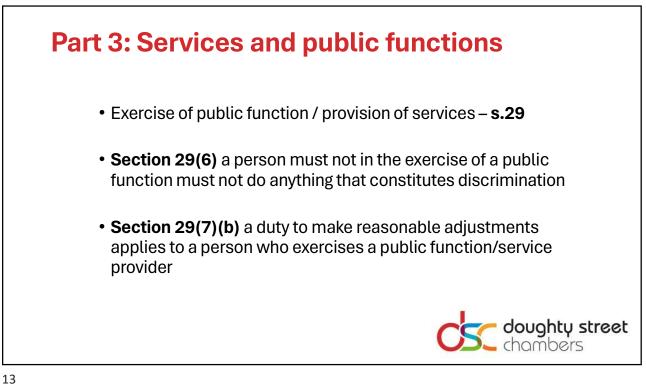




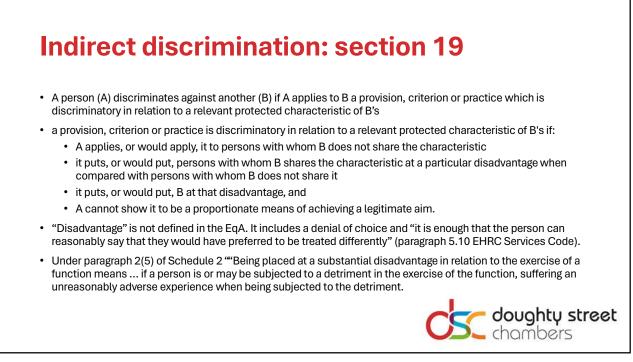


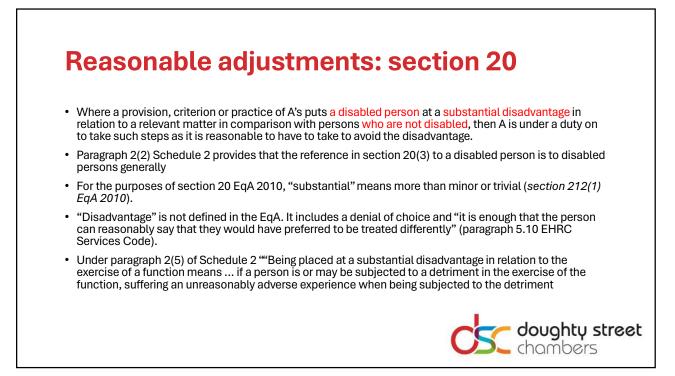
- Direct discrimination: <u>s.13</u>
- Discrimination arising from disability: <u>s. 15</u>
- Indirect discrimination: <u>s.19</u>
- Discrimination by failing to make reasonable adjustments: s. 21
- PSED: <u>s149</u>

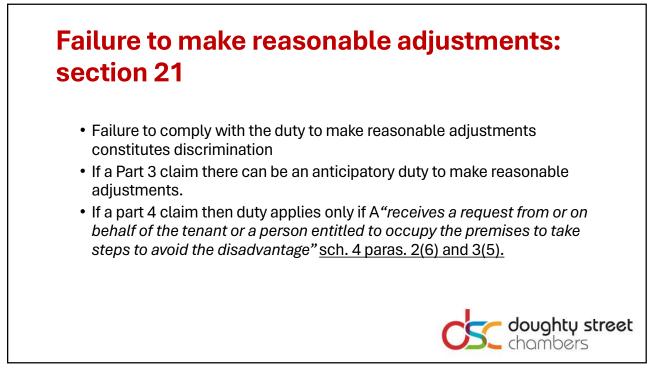








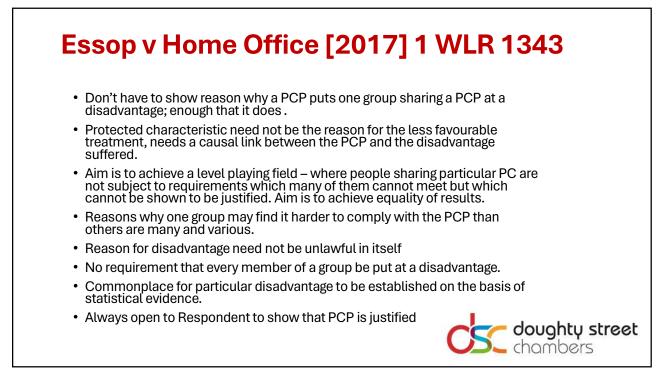


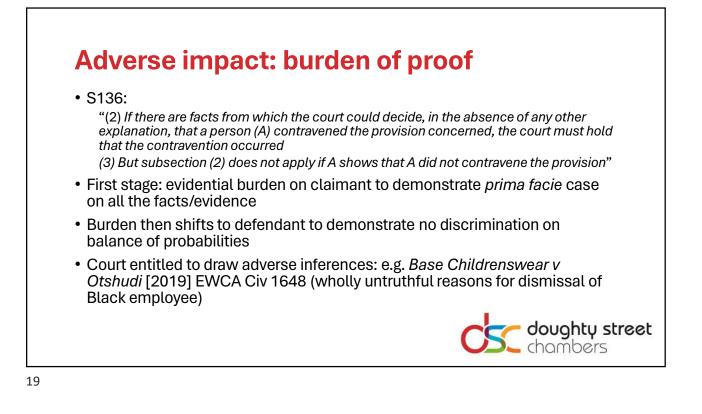


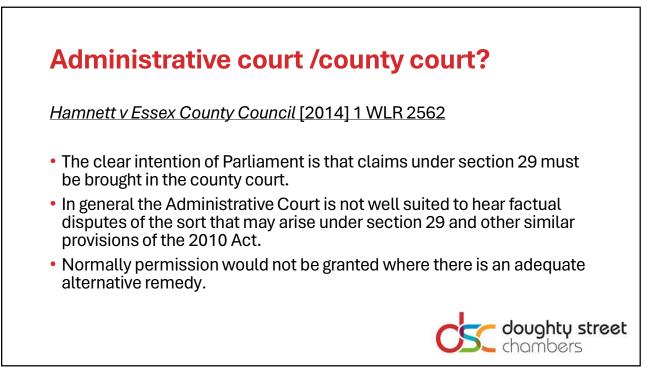
PCP

- PCP not defined in the Equality Act 2010.
- In Ishola v Transport for London [2020] EWCA Civ 112 it was held that:
 - Provision, criterion or practice were ordinary English words
 - All three words carry the connotation of a **state of affairs** (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that practice here connotes some form of continuum in the sense that it is **the way in which things generally are or will be done**.
- Allocations policies qualify as a PCP









Remedies

- The county court has power to grant any remedy which could be granted in proceedings in tort or on a claim for judicial review: <u>section 119(2)</u>
 - Tortious damages for consequential loss, damage and injury
 - Injunctive relief
 - · Quashing orders, mandatory orders and declaratory relief
- An award of damages may include compensation for injured feelings whether or not it includes compensation on any other basis: <u>section 119(4)</u>
- In cases of unintentional indirect discrimination, the county court must not make an award of damages unless it first considers whether to make any other disposal: <u>sections 119(5) and (6)</u>

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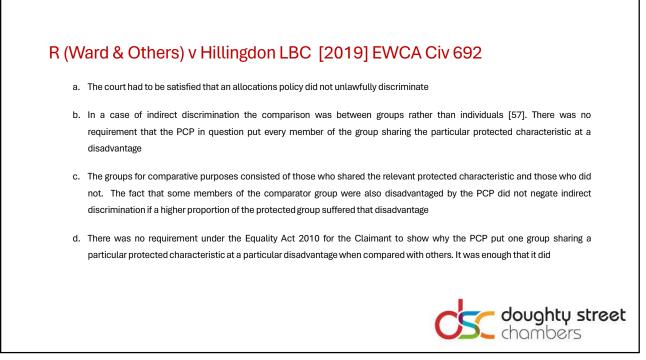
Allocations

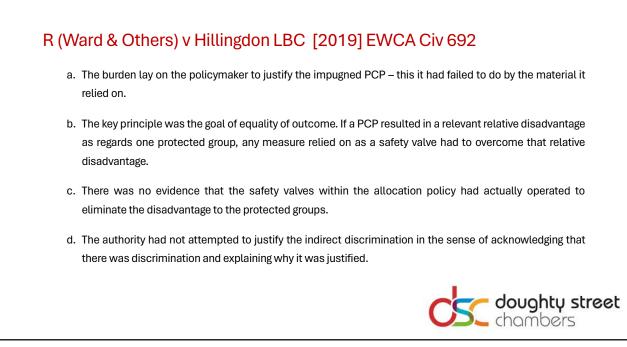
R (H) v Ealing London Borough Council [2017]

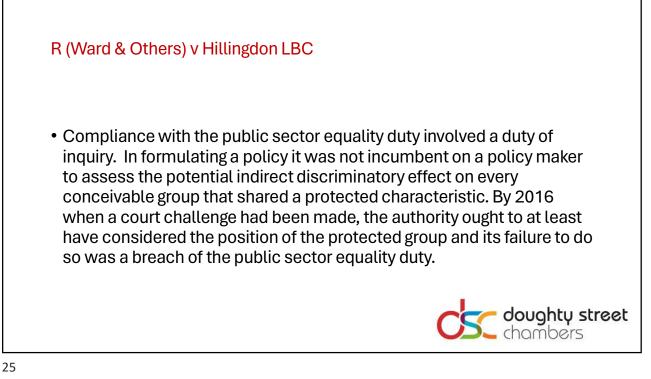
- The Council's Working Households Priority allocations scheme discriminated inter alia against disabled persons who were less likely to be able to satisfy its requirements of needing to be in work to be eligible for an allocation than non-disabled persons.
- There had been an initial failure to comply with section 149(1) EqA 2010 by failing to provide a proper equality impact assessment. There was no analysis of the number of non-working disabled people who had been overtaken or were at risk of being overtaken by working people lower down the same priority band or on a lower band.



doughty street





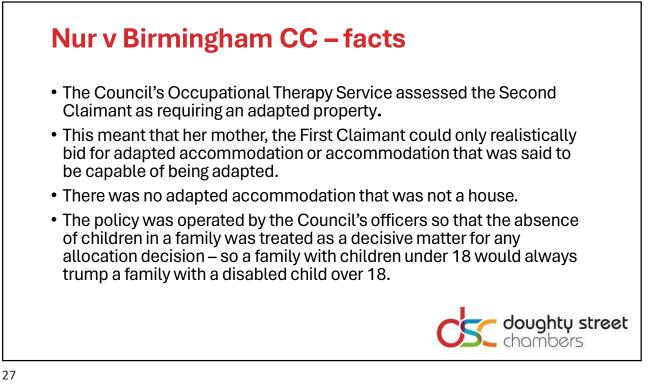


Nur v Birmingham CC [2021] EWHC 1138

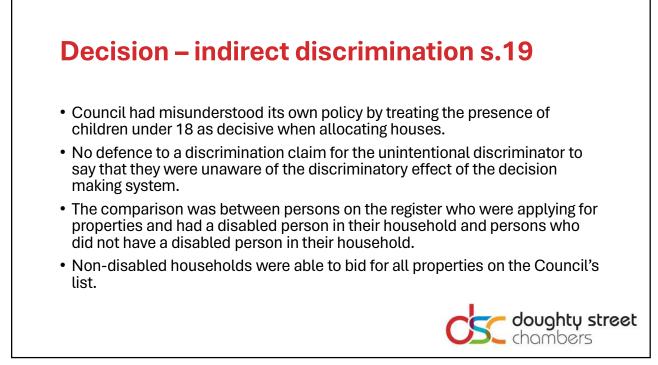
The policy

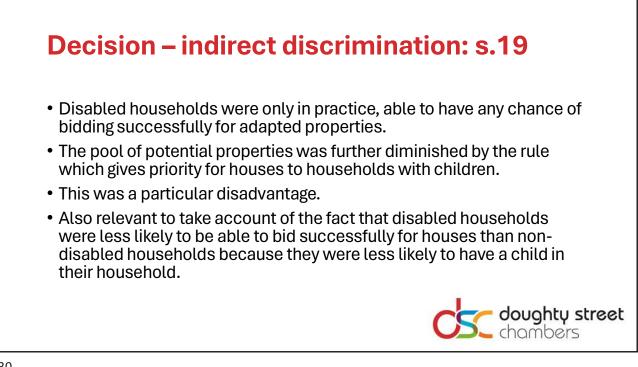
- To enable the best use of the Council and partner registered provider stock, properties will be allocated to those applicants who need that size and type of property.
- As such, preference for houses with two or more bedrooms will be allocated to families with dependent children.
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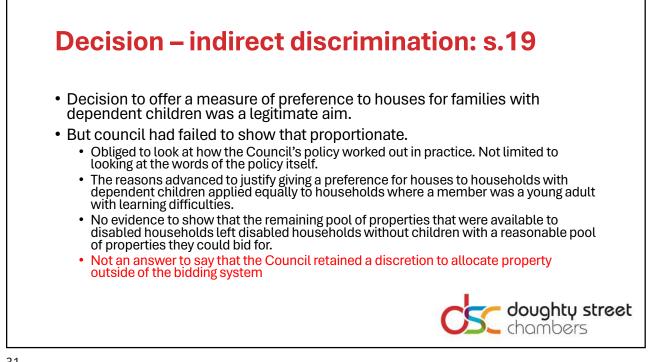


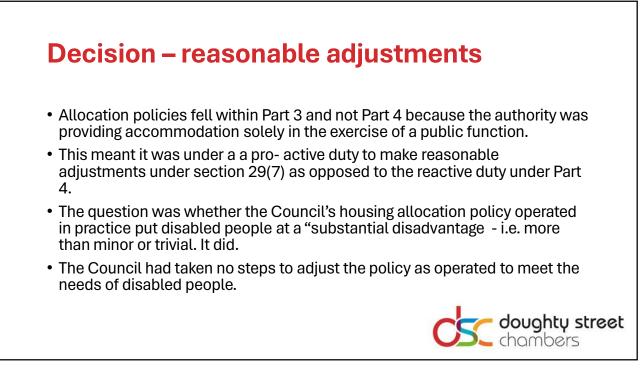


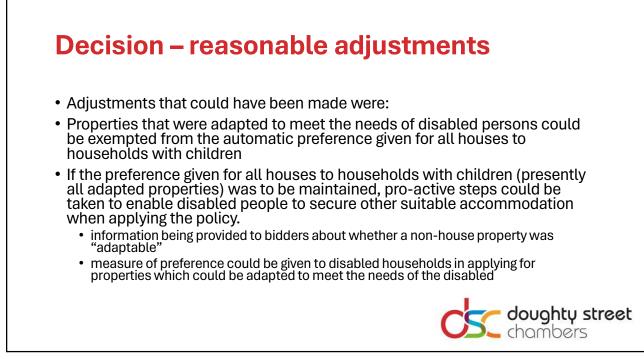














- One of the purposes of the PSED is to ensure that unintended discrimination is identified by a public body before it results in individuals with protected characteristics from suffering adverse outcomes.
- Accepted by the Council that this made it very difficult for it to demonstrate that it had discharged its Public Sector Equality Duty because it simply did not have any reliable information to enable Council officers or members to know how the scheme was working and whether the scheme was, in practice, impacting adversely on any group of Birmingham residents with protected characteristics.



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R (Willott) v Eastbourne Council (2024) EWHC 113

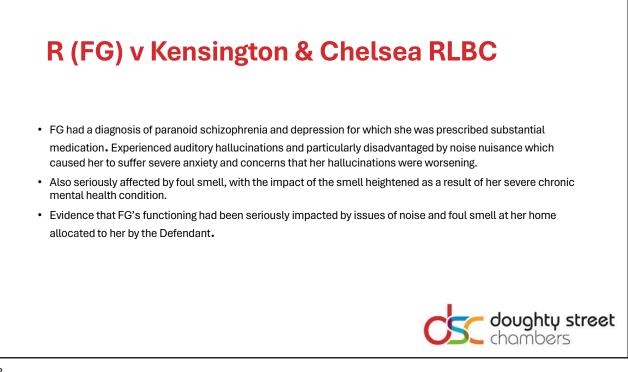
- Claimant had diagnoses of ADHD and autistic spectrum disorder. Evicted for ASB.
- Council refused entry on to the housing register on grounds of serious ASB.
- Alleged that this amounted to disability discrimination.
- Claim failed.

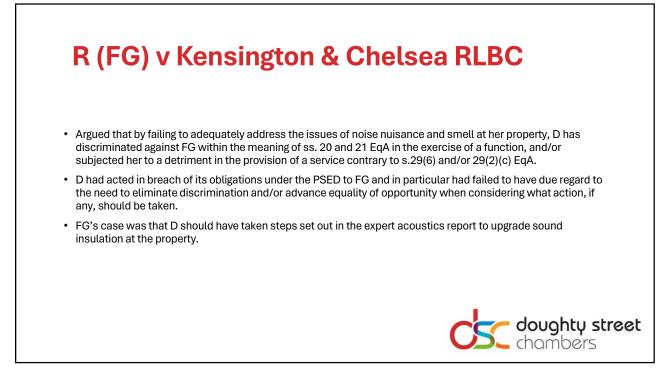


doughty street

R (Willott) v Eastbourne Council (2024) EWHC 113

- Section 19 indirect discrimination: C had failed to show that policy excluded a greater number of persons with ADHD and an autistic spectrum condition than persons without those disabilities. In any event, policy proportionate.
- Ss. 20 & 21: C had failed to show that establish that policy resulted in substantial comparative disadvantage to people with neuropsychiatric conditions. No duty to make reasonable adjustments.
- Section 15: evidence did not show that C's ASB was in consequence of disability.







Section 20

- (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.
- (4) The second requirement is a requirement, where a physical feature 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.



R (FG) v Kensington & Chelsea RLBC

Section 20

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a) removing the physical feature in question,

(b)altering it, or

(c) providing a reasonable means of avoiding it.

SECOND REQUIREMENT DOES NOT APPLY IF PART 4 IS THE APPLICABLE PART OF EQUALITY ACT



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R (FG) v Kensington & Chelsea RLBC

Section 20

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

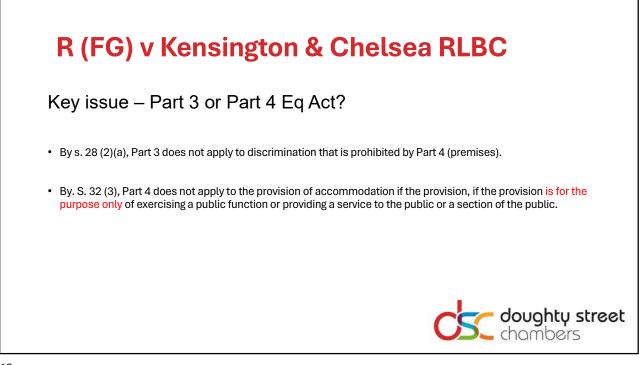
(a) a feature arising from the design or construction of a building,

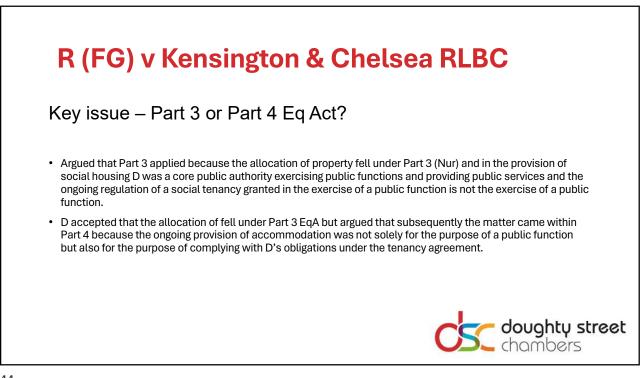
(b) a feature of an approach to, exit from or access to a building,

(c)a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.







R (FG) v Kensington & Chelsea RLBC

- Court found that claim fell under Part 4 not 3, as the provision of social housing was not solely for the purpose
 of a public function but also to enable D to
 - comply with its statutory obligation to make the accommodation available to the person to whom it was allocated pursuant to its housing allocation scheme;
 - · managing its social housing stock in the public interest;
 - complying with its private law obligations under the tenancy agreement and its statutory obligations as a landlord.
- If Part 3 had applied then although there was no anticipatory duty on the facts of the case,
 - a duty would have arisen once D was notified of FG's noise and smell issues
 - · Noise and smell could be a relevant physical feature of premises
 - There was a burden on D to show that it had made reasonable adjustments
 - On the facts D had not failed to make reasonable adjustments

