



Case No: J01KT607

IN THE COUNTY COURT AT CENTRAL LONDON

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

14 July 2023

BEFORE:

HIS HONOUR JUDGE LUBA KC

BETWEEN:

**ROYAL BOROUGH OF
KINGSTON UPON THAMES**

Claimant

- v -

SARAH KHAN

and

RASHAD KHAN

Defendants

Hearing dates: *19 and 20 June 2023*

Ms Catherine Rowlands appeared on behalf of the Claimant

Mr Philip McLeish appeared on behalf of the First Defendant

The Second Defendant did not attend and was not represented

JUDGMENT

I direct that no recording shall be taken of this Judgment and that copies of this version as sealed and handed down may be treated as authentic.

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Introduction

1. This is a social landlord's claim for possession of residential premises. The basis of the claim is that the tenancy has been determined by a notice to quit. A possession order is sought together with judgment for substantial arrears of rent. In the alternative, if the notice to quit did not end the tenancy, possession is sought under statutory grounds for arrears of rent and breach of the conditions of the tenancy.
2. The First Defendant, Ms Sarah Khan is the person to whom the landlord granted the relevant tenancy. The Second Defendant, Rashad Khan, is her adult son. He lives at the premises. He has played no part in the proceedings and, indeed, has been debarred from defending them.
3. The claim is defended by the First Defendant (hereafter 'Ms Khan'), and she advances a counterclaim. The Claimant (hereafter, 'Kingston') defends the counterclaim.
4. As the Defence and Counterclaim raise issues of alleged breach by Kingston of the provisions of the Equality Act 2010, I sat with a specialist assessor, Ms Lucy Moreton, a lay member of the Employment Tribunals. I pay tribute to the assistance I received from her in relation to those matters within her specialism.
5. The trial had been set down for two days, to include time for discussion between Judge and Assessor and for the delivery of judgment. However, the evidence and submissions overran and concluded only late on the second day. I reserved judgment and took the opportunity of a face-to-face discussion with the assessor immediately post-trial.
6. At trial, Kingston was represented by Ms Catherine Rowlands instructed by South London Legal Partnership. Ms Khan was represented by Mr Philip McLeish instructed by Hamptons solicitors. They submitted skeleton arguments and agreed a list of issues for trial.
7. Page references given in the judgment are to the Trial Bundle which ran to over 800 pages.

The premises

8. These proceedings are concerned with premises at 14c Acacia Grove, New Malden, Surrey (hereafter '14c' or 'the flat'). It is a one-bedroom ground floor flat in a building of which Kingston is the freehold owner. Kingston granted Ms Khan a weekly periodic tenancy of the flat commencing on 12 April 2010. Unsurprisingly, given its size and

layout, the tenancy agreement recorded that Ms Khan was the only intended occupier of the flat.

The relevant factual background

9. Ms Khan was born on 1 June 1951. She is therefore now aged 72. She is now disabled, both in respect of her physical and mental health, and receives Personal Independence Payment, a form of benefit paid to disabled persons.
10. In early 1987, aged 35, she began a relationship with a Mr Fergus McNeill. They bought a house together a few months later in Hounslow, West London. They contributed jointly to its purchase on an equal basis. On 25 August 1987, Ms Khan's son Rashad was born. Her evidence was that Mr McNeill was not the biological father. However, he considers that he is the father and has treated Rashad as his own son since birth. The couple and their child lived together in the Hounslow house for some ten years.
11. In about 1995, they all moved to a different house at 76 Chaucer Road, Ashford (hereafter '76'). That had been purchased by Mr McNeill in his own name. That became the new home for the family of three.
12. A few years later, in June 2001, when Rashad would have been a teenager, Ms Khan was granted the social housing tenancy in her own name of a property in Staines, Middlesex. Her landlord was Thames Valley Housing Association. She claimed housing benefit to help her pay the rent. Later, the local council formed the view that she was not living at the Staines property but was still living at number 76 in Ashford and it stopped her housing benefits. Arrears accrued and she lost the social housing tenancy. She thereafter stayed with a friend as a lodger until he sold his house and she had to leave. In 2004, she applied to Kingston for assistance as a homeless person. By that date, Rashad was in his late teens and attending Kingston College.
13. In 2005, Kingston accepted that it owed a duty to accommodate Ms Khan. It provided her with temporary accommodation and placed her on its waiting list for council housing. She was no longer living with Rashad when, in 2010, she was offered the tenancy at 14c. She was allocated the ground floor flat because by then she had mobility issues ranking her at the top of her Band on the waiting list. She accepted it in April 2010.
14. By now her son Rashad, was in his twenties. He was living at 76, with Mr McNeill, until he moved out in 2014. He formed a relationship of his own and has two children who are now aged nine and seven. Unhappily the couple have separated. The mother and children have their own home, but Rashad sees his children.
15. In October 2019, Kingston received information that 14c was standing empty. It began an investigation. That included an 'under caution' interview with Ms Khan. The investigation concluded that Ms Khan was not occupying 14c but was in fact living at number 76 in Ashford. Her housing benefit and council tax benefit were stopped. In May 2021, she was served with a Notice to Quit. It expired four weeks later on 13 June 2021.

16. The claim for possession is brought against both Ms Khan and Rashad because both she and the council agree that *he* is living, and has been living, at 14c as *his* home since he and his partner separated.

The Relevant Law

17. The tenancy of 14c had started as an introductory tenancy but thereafter became a secure tenancy enjoying security of tenure under the Housing Act 1985 Part IV. Such security of tenure may be lost if the tenant ceases to occupy the property as her “only or principal home”: section 81 of the 1985 Act.
18. Whether a tenant is or is not occupying in the requisite sense is a question of fact. Guidance on the proper approach to be taken in such cases, and on the evidential and legal burdens of proof, was authoritatively given in *Islington LB v Boyle* [2011] EWCA Civ 1450, [2012] HLR 18, CA.
19. In those circumstances, the parties were agreed as to the applicable law. Accordingly, this judgment is wholly concerned with disputes of *fact* as to occupation of 14c. The question of fact is whether Ms Khan was occupying 14c as her only home or principal home on 13 June 2021 when the notice to quit expired.
20. The Defence and Counterclaim raise issues under the Equality Act 2010. The defence is that the possession claim should, in any event, be dismissed on public law grounds because Kingston has unlawfully breached Ms Khan’s private law rights protected by the 2010 Act and/or has failed in its statutory public sector equality duty under section 149 of the Act. The counterclaim seeks a remedy for the unlawful breaches of Ms Khan’s private law rights. This judgment sets out the relevant statutory provisions when dealing later with the counterclaim.

The parties’ contentions

Kingston

21. The council’s case is that, no later than Autumn 2019, Ms Khan had moved back to live at 76 with Mr McNeill. She managed a programme of building works to enlarge the house at 76 to make it a more comfortable home for the two of them. She cleared the flat at 14c of her belongings.
22. After her adult son’s relationship broke down, she refurbished the empty flat at 14c of which she had retained the tenancy (the rent being paid by housing benefit). She installed him in the flat. Because she was no longer occupying the flat herself, she had lost security of tenure and her tenancy was ended by the notice to quit.
23. Indeed, in June 2021, a few days after the notice to quit had expired, Ms Khan wrote to Kingston that “I want to transfer my flat in my son’s name and need the process to do...now my son is working, and he can pay the rent”. (p668)
24. In support of its case, Kingston led the oral and written evidence of: Anthonia Shodiya (its housing officer responsible for a patch including 14c); Anthony Lovegrove (a fraud investigator commissioned by Kingston to carry out its investigation into occupation

of 14c); Chris Morbey (an investigation officer commissioned by Spelthorne Borough Council to consider who was living at 76, which is in its area); and William Gerrish (who lives next door to Mr McNeill at 74 Chaucer Road). In addition, I was invited to consider voluminous documentary material, including the transcripts of interviews undertaken by council officers with both Ms Khan and Mr McNeill and a statement prepared by the tenant at 14d Acacia Grove.

Ms Khan

25. Ms Khan's case is that she has never left 14c. It was and remains her home. She does not live at 76. So, this is not a 'two home' case. She has only one home, and it is at 14c.
26. The reason why the flat was found empty in 2019 was that the council had failed to carry out necessary repairs. The flat had fallen into poor condition as a result. The contents were put into storage while Ms Khan and Rashad refurbished the flat, having carried out the necessary remedial works themselves.
27. After completion of these works, Ms Khan continued in occupation and, because his relationship broke down, Rashad joined her to live in the flat. In January 2020, she had notified the council that he was living there on the basis that it was his "permanent address" (p652). She considered him her live-in carer.
28. Because it is only a one-bedroom flat with a living room, he occupies one room and she another. It being a small one-bedroom flat, it was and is very cramped. That was the situation both during the COVID lockdown and when the notice to quit expired in June 2021. It remains the situation today.
29. Her case is that neither she nor Rashad have any other home and would have nowhere else to live if evicted.
30. Ms Khan made two witness statements and gave oral evidence. Although she is an older woman and disabled, the Court was not invited to make any special arrangements or adjustments in relation to her oral evidence, although the opportunity to do so was available under CPR PD 1B and the possibility of an invitation to make such arrangement was canvassed with counsel. In the event, she gave evidence from the witness box over the course of some two hours without any apparent difficulty at all.
31. She called no other witnesses. In particular, she led no evidence from her son Rashad or from Mr McNeill. She told me that they were both at work and that she needed no corroboration by anyone else of her account of the relevant facts. She relied upon an expert report as to her disabilities prepared by Professor George Christopher Fox, a Consultant of Old Age and Adult Psychiatry.

Assessment of the witnesses

32. My assessment of the witnesses and the reliability of their evidence turns not solely or even mainly on the impression I formed from observing them in the witness box. It is an assessment made having had regard to all the evidence placed before the Court.
33. Mr Lovegrove and Mr Morbey, the two investigators, gave perfectly straightforward accounts of the conduct of their investigations. Each was asked to comment on the content of the ‘under caution’ interviews they conducted with Ms Khan and Mr McNeill respectively, but the transcripts speak for themselves, as do the documents generated by their respective enquiries. Nothing in their oral evidence gave me any reason to doubt any of its content nor the content of the evidence contained in their respective witness statements. I consider that each was seeking to assist the Court in a measured, professional, and dispassionate way.
34. Ms Shodiya, despite being an experienced housing officer, was not a particularly impressive witness. She had to be recalled to deal with matters which could and should have been addressed in her witness statement or in a supplementary statement. But she was plainly seeking to assist the Court and made sensible concessions in her evidence; for example, that she had failed to deal properly with a neighbour’s complaint about the nuisance that Rashad had created since he moved into 14c. On balance, I felt able to be confident in the account given in her written and oral evidence.
35. Mr Gerrish not only provided a witness statement and gave oral evidence but also made reference to an extensive “to whom it may concern” letter (p709) he had produced – with embedded photographs and several attachments - at the request of Spelthorne Council as to dealings between himself and Ms Khan. He readily accepted that she and he had had many ‘run ins’ over the years, particularly about the building works she was managing next door at 76. He sensibly conceded that relations between them had been emotionally charged over many of the incidents. Despite the opportunity to give harmful evidence motivated by spite or dislike, I assessed him as seeking to be measured and candid with the Court. I felt able to accept his oral and written evidence, much of it being supported by contemporaneous documents.
36. Ms Khan had produced two witness statements and, as already mentioned, gave oral evidence over some hours. I approached my assessment of her evidence informed as to her medical condition and disabilities with material taken from both the report of Professor Fox and a more recent letter from her GP. I made due allowance, accordingly. I regret that, save where corroborated by the evidence of another person or by some independent documentation, I felt unable to accept the credibility of her account. Her evidence in Court reflected that given in her ‘under caution’ interview. In response to questions to which the answers might speak against her account, she was evasive and difficult. In contrast, where a question might lead to an answer supporting her account she answered directly and with confidence.
37. By way of examples from a wider cohort, I mention the following.
38. First, she was hopelessly unclear and contradictory about the circumstances in which she came to have bank accounts in her name with over £30,000 in them during periods

for which she was claiming means-tested benefits. On one account, this was money belonging to unnamed young men to whom she was related (one since deceased) which she was simply “holding” in the bank for them. On another account, it was money belonging to Mr McNeill, given to her to finance the building works. Neither account appeared plausible. Both were contradicted by Mr McNeill’s account that she was funding the building works from her own savings (see below). I was satisfied the money was and is hers. Not least because her explanation of frequent drawings of large sums from her accounts in 2019/2020 was hopelessly muddled and she tendered in oral evidence an account that, in the words of her counsel in closing, “doesn’t make sense”. It made no sense because it was, in my judgment, a botched attempt to disguise the truth.

39. Second, she was wholly vague and unclear about the employment Rashad did or didn’t have despite the fact that, on her account, they had lived together since 2019, through the pandemic, and were still living together, cheek-by-jowl, in a tiny flat.
40. Third, she plainly sought to mislead officers, who thought they recognised her at 76 (see below), by refusing to engage with them.
41. Fourth, her account that she had met Mr McNeill in early 1987, bought a house jointly with him only some months later, had a child raised by him from birth to adulthood, but yet had not been in a close, intimate, or romantic relationship with him was not credible.
42. I need only add that:
 - (1) Ms Khan is prone to making outlandish allegations against others. Her first witness statement is replete with them. Not least of which is an allegation that police officers “ransacked” the front and back garden at 14c when looking for her at the flat;
 - (2) she is prone to being untruthful, as demonstrated: (i) on her own account – by the fact that she deliberately gave potential credit providers the address at 76 as ‘her’ address rather than 14c because the latter might uncover her poor credit rating; and (ii) by her false evidence to a Valuation Tribunal that she was not resident at 76 “and never had been” (p770 at [17]); and
 - (3) her explanation for not calling any evidence or securing any statements from Mr McNeill or her own son was wholly unconvincing.
43. Informed by those assessments and having considered all the evidence before me (not all of which could or should be mentioned in this judgment), I can turn to my factual findings about the occupancy of 14c. It is convenient to start with 14c and then consider the evidence relating to 76 before drawing the strands together. I have directed myself throughout that it is for Kingston to prove its case of non-occupation of 14c on the balance of probabilities.

Occupation of the flat at 14c

44. Ms Khan's tenancy agreement required her to occupy the flat as her "only or main home" (clause 6.1) and to inform Kingston if she was "going to be away" from the property for more than 30 days (clause 8.6). She has never given such notification.
45. On 11 October 2019, she was not physically occupying 14c at all. Nevertheless, she had recently raised "loads" of repair requests – all at once - with the council (p280). A carpenter found the flat "completely empty, not even a toothbrush" (p280). Ms Khan told the carpenter that she was redecorating and that all her belongings were in storage. The carpenter suspected she was subletting. Those concerns were passed on to Ms Shodiya, the housing officer, by the contractors. Unsurprisingly, she immediately alerted Kingston's fraud investigation team.
46. On 23 October 2019, Ms Shodiya and a fraud investigation officer visited the property. In the circumstances, it is surprising that this was an *arranged* appointment. Unsurprisingly, Ms Khan was there. A note of the visit was made (p281). The flat was largely unfurnished and unoccupied. The flooring had been removed. Ms Khan said that this was because her son was going to decorate and lay new flooring. Meanwhile her goods were in store, and she was staying with her son. When asked where the goods were, and where she was staying with her son, she was evasive and unable and unwilling to provide exact addresses. The officers said they would monitor the situation and return after completion of the works
47. On 4 December 2019, another visit was made to the flat. This time unannounced. Ms Khan was not there but Rashad was. He told Ms Shodiya and Mr Lovegrove that his mother was an hour away "at the other house" (or words to that effect). There is no note of the visit, but I accept the account of it given in the evidence of the two officers. Not least because it is referenced in a contemporaneous note made relating to the next visit and was put to Ms Khan in her 'under caution' interview.
48. The officers arranged to return on 18 December 2019. Having been given notice, Ms Khan was present at that visit. There is a note of the visit (p383). It records that when it was put to her that her son had said she had not been present a fortnight earlier because she was at the other house, she "appeared shocked and loss (sic) for words" and very abruptly said she had no other property. When asked for the address at which her belongings were being recently stored, she "reluctantly" gave a different location to one mentioned earlier. No receipt for any storage has ever been produced. The best Ms Khan could put in evidence was a cover email dated 19 August 2020 for an invoice from a storage company. The invoice was not produced.
49. On inspecting the flat, the officers found no sign that Ms Khan lived there and good evidence that Rashad and his children did. There was male clothing, children's toys and books, children's toothbrush and toothpaste, photos of Rashad, a young woman and child and so on. The only bed was the one in the only bedroom. Ms Khan said she slept there, and her son slept on the living room sofa. When asked where her own belongings were, Ms Khan produced a black rubbish bag of clothing and a nightdress imprinted with a child's 'monkey' design. Unsurprisingly, the officers formed the impression that it was not Ms Khan but her son who was living at the flat, with his children either visiting or staying.

50. Ms Khan gives an entirely different account of the visit. She says that her clothing was out and visible in the flat and that Mr Lovegrove made a point of touching it, including her underwear. This was strenuously denied by the officers. I accept their account and reject Ms Khan's account. The officer's evidence is the more consistent with what I am satisfied was the actual state of play at the flat at that time and Ms Khan made no complaint at the time of any misconduct such as now alleged. Nor did she complain of it in her later 'under caution' interview with the same officers.
51. On 20 December 2019, Ms Khan wrote to Ms Shodiya that Rashad had moved into 14c some weeks earlier on 11 November 2019 to live with her and was "caring for me as I cannot care for myself" (p598).
52. On 4 March 2020, an officer of the council's contractors and a workman went to the flat for an appointment to discuss remedial work. Prior to the appointment, Rashad was seen driving away in his car and Ms Khan arrived in hers. Kingston had been due to instal a new kitchen at the flat, but the job had been cancelled when operatives repeatedly could not get access. Ms Khan asserted that other repair jobs had not been done, but during the visit it was found that they had been. This suggests that she was not familiar with the state of the flat because she was not living there.
53. When spoken to about possible access over a 10-day period, if the kitchen upgrade was to be reinstated, Ms Khan responded that "her son lived at the priority (sic) now and so he would give the access" (p285). This is notwithstanding the fact that he was employed, and she was not.
54. An email sent by the contractors the day after the visit recorded that there were children's clothes on the floor and that the flat contained lots of photos of her son in the company of other people. Further, that during the visit Ms Khan had opened a pantry door but had hurriedly closed it again on finding it contained tools. I am satisfied that I can infer they were Rashad's tools, and that Ms Khan did not know they were there because she was not living there.
55. In January and March 2021, appointments were booked for electrical inspections. Engineers attended. Ms Khan did not (p357). Nor did she seek to make fresh appointments.
56. On 28 April 2021, Ms Khan took part in an interview under caution with Ms Shodiya and Mr Lovegrove, although her witness statement says nothing about what took place (p460 at [20]). I have read the transcript (pp348-415). The officers put to her the results of their enquiries both relating to 14c and to the house at 76 (see below).
57. The content is illuminating. When asked to confirm that 14c was her "sole and principal home" she responded that it was "my *main* home" (emphasis added). That was repeated (pp 349, 353). When asked where she was, when not at 14c, she initially responded that she would be at hospitals or her brother's house, or her sister's house or a friend's house or another friend's house. (p359) She declined to name them or give their addresses. She did not volunteer anything about the house at 76.
58. When it was put to her that she had been associated with the address at 76, she said that it was a "friend's house" where she had recently "registered" as staying two days a

week. The exchanges that then followed amply demonstrate that she was being uncooperative or evasive and unable to answer what were straightforward questions.

59. Kingston was satisfied that she was not occupying 14c as her only home or her principal home. It served a Notice to Quit and, on a without prejudice basis, Notice Seeking Possession on 13 May 2021 by delivering them to 14c
60. Ms Shodiya continued to visit 14c. She made unannounced visits on 27 May 2021, 2 June 2021 and 14 June 2021 but received no reply. On one such visit, she spoke to Mr Rayner who lived in the flat above at 14d. He said he had not seen Ms Khan, but he had certainly seen and heard Rashad who had been banging and shouting and causing a nuisance.
61. Mr Rayner agreed to keep a log of any further incidents. Eventually, he made a statement dated 25 May 2023 (p302). In it he recounts that in November 2019 Ms Khan had called at his door to say that she “was leaving”, that her son would be living at 14c, and that if he caused any difficulties, he should let her know. He then met Rashad (who he knew as ‘Ricky’) who said that he had “moved into 14c” and that his two daughters would be coming to visit him there. Since then, Ms Khan had “only attended the flat to collect her mail, look around the garden and then leave.” Also, if there were repair works that needed to be carried out “she would return and then leave”. He recounted a stream of instances of anti-social behaviour by Rashad through April to July 2021. During one such incident in the early hours of the morning, Mr Rayner heard Rashad’s girlfriend tell him to stop banging and swearing. As far as he was concerned, Ms Khan had “left in November 2019”.
62. I need to treat Mr Rayner’s evidence with caution. He was not called. So, it was not tested. Moreover, the evidence as to why he was not called (that Rashad had made threats to kill him) was not given in the proper way. It was a hearsay assertion made in Ms Shodiya’s statement.
63. But I do consider that I can give some weight to it. First, it chimes with all the other evidence. Second, the reporting by Mr Rayner of Rashad’s behaviour during the relevant time has been corroborated by Ms Shodiya and by the local police. Third, in order to discredit the evidence, Ms Khan outlandishly suggested that Mr Rayner was himself abusing council property by using his flat as a brothel. That was despite her having confirmed during her April 2021 interview that she had never complained about him or the use of his flat. This slanderous suggestion was, I find, intended to cause me to diminish any reliance I might place on his evidence. It has had the reverse effect.
64. Obviously, if Ms Khan’s account is correct – that she and Rashad were from 2019 to date sharing life at 14c where they both lived – it would not have been difficult to corroborate. Most straightforwardly, Rashad could have been produced as a witness for her, or on his own account as he was a party. He is the person best placed to say who – if anyone - has been living with him since 2019 in 14c. No good reason was advanced as to why no statement had been tendered by him and why he was not called.
65. Nor was Ms Khan able to produce an account from anyone else who had visited 14c and found her and Rashad living there together over the past 4 years. Not a single ‘family photograph’ or video has been produced showing her with Rashad, her

grandchildren or anyone else at the flat over all those years. I am satisfied that I can safely infer, having regard to all the other evidence, that the reasons are that Ms Khan was not actually living at 14c after late 2019.

66. In the course of its enquiries, Kingston was able to trace the mother of Rashad's children - Jade-Marie Pitts - at her own home. Mr Lovegrove visited her on 30 January 2020. (p312 at [9]) She told him that "she knew Ms Khan did not stay at her Kingston address" and that "she had been renting out the Acacia Grove property for years whilst living in Ashford" but she refused to give a statement. She said that she wanted nothing to do with Ms Khan, was scared of her and believed that Ms Khan would cause her "issues". Again, this is total hearsay evidence and must be treated with caution. But I nevertheless give it some weight. It was recounted by Mr Lovegrove in his statement, confirmed on oath. I have accepted his credibility. It chimes with the other evidence in the case. And it rings true with a state of animosity between the women which, as Ms Khan explained, has resulted in her not seeing her grandchildren for several years. Of course, if she had actually been living at 14c as she claimed, she would have regularly seen her grandchildren when they visited their father.
67. A final piece of evidence about 14c, contributing to the assessment of whether Ms Khan was in fact living there, is the fact that this is the second time she has faced loss of social housing because the view has been formed, based on evidence, that she does not occupy it as a home. That is, in my judgment, not simply a coincidence.
68. I give no weight to the view formed by the council's housing benefit and council tax benefit officers that Ms Khan has not been living at 14c. Their actions in stopping her benefits and seeking to recover overpayments are matters subject to separate statutory processes of scrutiny and review and it is not suggested that the material they have had went beyond the evidence led before me.

Occupation of the house at 76

69. In the course of Mr Lovegrove's investigations relating to 14c, he commissioned a credit research report for Ms Khan. He provided only her name, the postcode, the flat number at 14c and her date of birth. The report produced in October 2019 identified Ms Khan as having a credit card and bank accounts registered to 14c.
70. But it was the credit report that also linked Ms Khan to the house at 76 Chaucer Road. It showed more current credit links to her at 76 than at 14c (for a store card, a bank account containing over £32,000, and phone contracts). Moreover, it contained a credit search history from 2017 to 2019 showing that she had given number 76 as her address in respect of 94 potential credit transactions mainly, but not exclusively, for insurance. Further enquiries established that the registered address for Ms Khan's car was 76, that it was regularly parked there, and that 76 was the car insurance's address.
71. As noted above, 76 is in the district of Spelthorne Council. That council told Mr Lovegrove that the owner of 76 was Mr McNeill. He was not claiming benefits but did receive a discount to his council tax as a result of having declared that he was a single person living alone.

72. Mr Lovegrove visited 76 on 19 February 2020. No-one was at home, but he likened the front of the property to a building site for works to construct an extension. He met Mrs Littlewood of 78 and asked her if she knew her neighbour at 76. She replied “Who? Ms Khan?”. (p313 at [13]). She said she had known Mrs Khan as her neighbour for more than 15 years and had seen “the child grow up next door”.
73. On 8 December 2020, Mr Lovegrove and Ms Shodiya went back to 76 Chaucer Road. Ms Khan’s car was parked outside and when they knocked on the door, a female voice asked who they were and what they wanted. They identified themselves. Ms Shodiya recognised Ms Khan’s voice and Mr Lovegrove recognised her features through the glass of the door. The person refused to allow them in, told them to go away and to make an appointment. Ms Khan accepts that this was indeed her. I am satisfied that I can infer that there was an easily discernible reason why she did not want to let Kingston officers see her at 76 and it has nothing to do with her not wishing to be “hounded” by council officers as she asserts (p460 at [17]).
74. While on this visit, the officers called at 74 and met Mr and Mrs Gerrish who by then had lived at their home for eight years. They told the officers that through that time they had thought Ms Khan and her partner, Mr McNeill, were their neighbours at 76. Mr Gerrish agreed to make a statement. His written evidence was before me, and he was examined on oath. He considered Ms Khan his neighbour and said that by the date of trial she had been living at 76 for 10 years. She had been supervising the building work at 76. She had regularly been seen going in and out of the house and in the garden. There had been disputes between him and her over the extension and boundary wall. She referred to it as “her wall”. When the dispute between the neighbours went to mediation, it was Ms Khan who represented 76. In addition, Mr Gerrish said that Ms Khan is “forever parking across my drive”.
75. Returning to the chronology, Mr Lovegrove was satisfied that Ms Khan was living at 76. He asked Spelthorne Council to conduct its own investigation (not least into whether Mr McNeill was, as he had claimed to that council, living alone). Enquiries were also made of Surrey Police who responded with details of a number of incidents reported by Ms Khan from number 76 in respect of one of which it had been referred to as the “family home” (p633) at a date on which Ms Khan was being provided with accommodation by Kingston because of her assertion that she was “homeless”.
76. For its part, Spelthorne commissioned Mr Morbey to make enquiries about residency at 76. He too ordered a credit check report. It covered the more recent period July 2020 to July 2022 and showed 58 searches by companies that had been given Ms Khan’s address as number 76. Mr Morbey also discovered that an application in relation to an aspect of planning permission had been submitted to Spelthorne by or for a person described as “Sarah McNeill” which can only have been Ms Khan (p423).
77. Subsequent enquiries established that Ms Khan (or Mr McNeill) had applied for some form of special grant or permission for an adaptation or extension based on the fact that Ms Khan was disabled and lived at the property for at least 2 days every week.
78. On 28 April 2021, as I have already recounted, Ms Khan was interviewed under caution. Her responses to questions about 76 were as evasive and unhelpful as her responses relating to 14c had been. In relation to the disability-related grant application, she

confirmed that it had been made on the basis that she would be staying there at least two days a week for “therapeutic” reasons.

79. For his part, Mr McNeill was interviewed under caution on 1 November 2022 by Mr Morbey and a colleague in relation to his claim for single person discount on his council tax. I have read the transcript (p518-557). In contrast to the interview with Ms Khan, it gives a candid and open account, albeit stopping short of full disclosure.
80. Mr McNeill said that he was born on 17 March 1962, so he is now in his early sixties. He is still working. He stated that he owned 76 outright having bought it in 1995. Ms Khan and Rashad had both lived there. Rashad was his son. Ms Khan had lived with him as his partner in the past but they now “live our own lives” and have an amicable relationship. He had bought a car for her. He confirmed he had been claiming a single person’s council tax discount since 2012.
81. He knew of Ms Khan’s flat at 14c and thought she was planning to buy it under the ‘Right to Buy’.
82. He accepted that recent works to his own home had enlarged it from three to five bedrooms and that Ms Khan had supervised the works. He said she had applied for the planning permission and paid for the building works by cash and cheque from her own savings. This was consistent with significant drawings she had made on her bank accounts in 2019/2020 (p628). She had done so because she was “looking to move back into the house”. Later, he said she has been “starting to move back [to 76] the last couple or 2/3 years” and that “she has her own bedroom there”. As to when Ms Khan currently lived at 76, he said “sometimes all week, sometimes two or three days”.
83. Asked again about 14c he said: “The whole idea was for that flat to be either purchased or maybe her son has it, you know. That’s the issue. And then she moves into *our*, into my, house permanently.” (emphasis added). He repeated that she wanted to “give it to her son at some point” and also buy it. When put to him that Rashad had moved into 14c and asked how Ms Khan could be living there with him in a one-bedroom flat he replied: “Well she’s been living with me now, because he’s moved in” and that she only stays there “when he’s been away”.
84. On being asked again about his current relationship with Ms Khan he said we “just have a dwelling together, simple as that”. Later, he said he felt he had been “sucked into a mess” not of his making.
85. Following the interview and based on all the other material it had been provided-with (largely summarised above), Spelthorne concluded in February 2023 that not only had Mr McNeill not been entitled to a single person’s discount since 2020, but that it was satisfied Ms Khan had been occupying 76 back as far as 2012. It sent him revised council tax bills for the eight years 2012-2020 with the single persons discount removed (it already having been removed for 2020-22). Mr McNeill did not challenge that decision. After negotiations, he persuaded the council to only seek to actually recover amounts equating to 2016-2022 and he has been paying off the debt by instalments (pp787-788).

86. Ms Khan can give no sensible account as to why McNeill would have said these things about himself and her and 76 unless they were true. I consider that what he said was true to the extent it went. But, in reality, he recognised that she had been living with him for much longer than he conceded in interview which is why he did not take issue with the cancellation of his single person's discount back to 2012.

Drawing the material together

87. The picture painted by this material is not simply persuasive, it is overwhelming. From it, I find as a fact that Ms Khan has not lived at 14c for many years. She had certainly ceased to occupy it as a home long before June 2021 when the notice to quit expired. That is because in 2018 or 2019 she had brought together a plan to extend 76 to provide a more comfortable home for herself and Mr McNeill and to meanwhile keep her council flat and instal in it her adult son Rashad. Initially, he would benefit from the fact that it was available to him rent free. She would suffer no loss because housing benefit would pay the rent. And, if her plans came to fruition, she would buy 14c at discount, under the right to buy, based on her own alleged period of residence.

88. Nothing in my determination of this issue (as to whether Ms Khan was occupying 14c as her only or principal home) turns on any questions of where the burden of proof starts or ends. The evidence led by Kingston establishes not simply on the balance of probabilities but also beyond any reasonable doubt that by June 2021 Ms Khan was not living at 14c either as her only home or as the principal home of two homes. She had only *one* home. It was at 76.

89. Certainly, she visited and sometimes stayed over at 14c when Rashad was not there, but from no later than October 2019 it was *his* home not hers. I note that after these Court proceedings were underway, Ms Khan tellingly wrote to Kingston that "My son agrees to get bank loan to clear *his* rent arrears. Will this be acceptable by council to withdraw your possession claim in court..." (emphasis added) (p637).

90. In retrospect, it is difficult to understand how this issue has been disputed down to trial. The case advanced by the council is, on any view, quite overwhelming. It seems that Ms Khan must have thought that there was at least some last vestige of a chance that she could 'pull it off' i.e., keep the flat as a free home for Rashad and/or buy it cheaply. How those advising her thought that she might have a prospect of success on this issue in the absence of any evidence from Rashad and/or Mr McNeill, I cannot imagine. Yet more surprising is that the Legal Aid Agency agreed to fund the defence on this point.

91. The conclusions I have reached are such that I need not deal at all with the council's alternative grounds for possession based on arrears of rent or breach of the terms of the tenancy.

The public law defence

92. In the light of the above findings, the making of an outright possession order is inevitable unless Ms Khan can make out her pleaded case that Kingston has been guilty of some 'wrong' in its capacity as a public authority, such that the Court must refuse to make a possession order (because to do so in such circumstances would be to give effect

to such wrongdoing). All the points advanced in this regard turn on the fact that Ms Khan is a 'disabled' person. It is in respect of this part of the case that I have drawn on the assistance of my specialist assessor, to which I again pay tribute.

93. I have carefully considered the expert report of Professor G C Fox dated 5 May 2023 (p210). He assessed Ms Khan in a single meeting conducted by video link. He accepts that his assessment is based solely on the information she provided in that assessment. He reports that she was previously sectioned under the Mental Health Acts but gives no detail. He states that she has a diagnosis of borderline personality disorder but there is no confirmation of this from the medical records. He opines that she has PTSD and mild cognitive impairment, dating back some years. She also has physical health and mobility issues. In short, on that material, I accept that she has the protected characteristic of being a 'disabled person' for the purposes of the Equality Act 2010 section 6. As I have already set out, she receives Personal Independence Payment in respect of her being a disabled person.
94. I find that Ms Khan has exaggerated the nature and extent of her disabilities. For example, in her oral evidence, Ms Khan sought to suggest that she had Seasonal Affective Disorder and was prevented by this from leaving 14c between March and May each year - hence the need for Rashad to live with her as a carer. This was not a matter referred to in any medical evidence, not advanced at any previous point, and, in any event, is contradicted by the voluminous documents before the Court, none of which suggested any such restriction.
95. I reject her evidence that her disabilities are such that she has the services of a carer, let alone that Rashad is her live-in carer. She does not live with him. He is not her carer. She lives with Mr McNeill. He is not her carer either. She is independent, well able to drive, manage building works, instruct lawyers, engage with the ombudsman and complaints procedures, press separate tribunal appeals, and otherwise to attend to her own needs. Her evidence that Rashad helps her with her day-to-day activities was simply not credible on the other facts I have found. I reject it. The account she gave to Professor Fox that her son does her cleaning for her and that she pays him to do it was not confirmed by her son or supported by any other evidence. Given the other facts I have found, I consider that it was simply untrue. Likewise, her account that she relies on her son - or upon taxis - to pick her up and take her around. She drives her own car, regularly.
96. None of the foregoing, however, diminishes the fact that she is a disabled person for the purposes of the 2010 Act.
97. Mr McLeish takes a public law point that the council has failed to have regard to its public sector equality duty under section 149 of the 2010 Act in taking decisions to serve notice on Ms Khan and thereafter to prosecute these proceedings. The pleaded case is that the council should have given "much more serious consideration to alternatives to eviction" (p147 at [15]). No particulars were given of any such alternatives.
98. Mr McLeish did not press this point in his oral submissions. He was right not to do so. The council well knew, certainly by the date of the final decision to press this case to trial, that Ms Khan was disabled. It had offered to refer her to support services. She had

not responded. It considered that she would suffer no difficulty by reason of an eviction because she had a home in the newly enlarged house at 76 where she had commissioned the extension and the owner, Mr McNeill, accepted that she was living and intended to continue living in the future. She would face no disadvantage in losing social housing accommodation in which she was not living. In contrast, if it recovered possession, the council could re-let the flat to a person who really did need ground floor accommodation with a garden. Given the shortage of such accommodation, the offer of it was likely to be made to a person who had priority because of their own disability or other special vulnerability. To suggest that, in taking this course, the council was in breach of the section 149 duty, is simply unarguable.

99. As noted above, the only other points taken by way of public law defence rest on Ms Khan establishing, on her counterclaim, that the council had been guilty of discrimination towards her.

The counterclaim

100. The counterclaim invokes the Equality Act 2010 through the medium of section 35(1) which deals with management of premises. That section prohibits a property manager, such as the council, from discriminating against an occupier, such as Ms Khan, by evicting them or subjecting them to any other detriment. By giving notice and pursuing these proceedings, Kingston is plainly subjecting Ms Khan to a detriment. Sensibly, Ms Rowlands raised no technical issue – for these purposes – as to whether Ms Khan was or was not a person who “occupies” any council premises.
101. The case for Ms Khan was advanced on the basis that the council had discriminated against her in three ways. First, the council had directly discriminated against Ms Khan, a disabled person, contrary to section 13 of the 2010 Act precisely because of her protected characteristic of disability. Second, the council had been guilty of discrimination “arising from” disability contrary to section 15 of the 2010 Act. Thirdly, the council had been guilty of indirect discrimination contrary to section 19.
102. The particulars given in respect of the first two matters – direct discrimination and disability discrimination - are sparse. What is pleaded (p147 at [14(c)]) is that by the council:
- (i) referring to a response made of a question to Ms Khan, as to where her furniture was stored, as “quite challenging”;
 - (ii) referring to a response made by Ms Khan, as to whether she had any other property, as being given in “an abrupt manner”; and
 - (iii) relying on the incident in which Ms Khan failed to identify herself on an unannounced visit to 76 and had turned the officers away;
- it was acting unlawfully because, as pleaded, “the conduct described is likely to arise from the Defendant’s disability”.
103. Success on any of these contentions must rely on medical or other evidence to the effect that such language and behaviour on the part of Ms Khan were manifestations of her disability or in some way are relatable to her disability. There was no such

medical evidence. Professor Fox's report lists Ms Khan's symptoms (p217 at [2.12]). None of these behaviours is among them. That is an end of the point. But it is an unsurprising outcome. As I have already mentioned, the assessor and I observed Ms Khan in Court over two full days and in giving her own evidence over a full two hours. She was amply able to marshal and control her language and behaviours and well able to follow the proceedings and instruct her lawyers.

104. These two aspects of the counterclaim ought never to have been pursued. In fairness to Mr McLeish, when asked in opening whether he was pursuing them, he replied that he simply did not abandon them. In closing he said that his case was put no higher in respect of them than the pleaded matters which I have set out.

105. That leaves only *indirect* discrimination. This was the main plank of the counterclaim. It relies on Equality Act 2010 section 19 which 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.

106. Mr McLeish cast his client as "B" and the council as "A" for the purposes of the section.

107. The first step is for Ms Khan to identify and establish a "provision, criterion or practice" (or 'PCP') applied to her by the council. No PCP was set out in her pleaded case. Strictly, that might have been treated as the end of the matter, but I instead permitted Mr McLeish to seek to identify the PCP in his submissions. In so far as I could discern one from his submissions, it came to this: that the council had adopted and applied a practice of investigating and seeking to evict tenants not by reference to the statutory question whether they were occupying as their "only or principal home" but rather by reference to whether their social housing was "their only and principal home". This, he submitted, triggered a lower bar or threshold for seeking eviction than the statutory wording and led to an "unusually enthusiastic approach".

108. His 'evidence' in support of the existence and application of this practice was the repeated use of language phrased as "only and principal" (emphasis added) home in the accounts, statements, and notes of Kingston's two witnesses Ms Shodiya and Mr Lovegrove.

109. Was this actual evidence of some additional or more onerous practice adopted by the council? I am amply satisfied it was not. First, this careless use of language produces the tautology that a person can both have only one home and the same time it be their main or principal home (i.e., because they have another home). It simply makes no sense and is nothing more than garbled phrasing used by non-lawyers taken from a statutory source. Second, and in any event, I am not satisfied that any such practice was applied in determining that steps should be taken to evict Ms Khan. The tenancy agreement that she had signed contained the right language reflecting the statute and, more importantly, so did the letter given with the Notice to Quit (p297) and the terms of the Notice Seeking Possession (p295). Third, neither Mr Lovegrove nor Ms Shodiya took the decision to recover possession of 14c. Their task was limited to obtaining the evidence. Whoever took the decision was not called and there is no evidence as to what PCP they applied, if any. Indeed, it was not put to either of Ms Shodiya or Mr Lovegrove that they were working to a practice that fixed a threshold or bar lower than one that the words of the statute might trigger
110. Even if some PCP of the type described had existed and been applied, Mr McLeish had not pleaded, and did not identify in argument, any class of comparators for section 19 purposes i.e., other persons, non-disabled, to whom the same PCP had been applied. In exchanges with the Court, he proposed a hypothetical comparator being a “robust person upset by eviction proceedings”. This simply will not do. It represented a clutching at straws.
111. Even if there had been a PCP and it had been applied to others, how did the proposed PCP put Ms Khan at any ‘disadvantage’ in her avoiding eviction? She had ample opportunity in the investigatory process and in these proceedings to put her own case forward and to rely on any evidence she wanted to present. Setting a low bar for triggering an investigation (if any such thing happened) simply gave her *more* not less time to get advice, marshal her evidence and satisfy Kingston that she was indeed living at 14c.
112. Had the final stage of section 19 been reached, Kingston would have amply established that the eviction was a proportionate means of achieving a legitimate aim i.e., of recovering social housing from a person not living it in to give to a more necessitous person who would live in it.
113. Accordingly, none of the alleged instances of discrimination is made out. In those circumstances, I need not trouble with Kingston’s limitation defence to them i.e., that some or all of them are brought ‘out of time’. I simply record a considerable degree of surprise that Ms Khan was able to attract public funding to advance any of these contentions. The counterclaim will be dismissed with costs.

The money claim

114. The council is entitled to judgment for mesne profits from the date the tenancy of 14c terminated, 13 June 2021, to the date of delivery-up of possession. Such judgment will be entered against both defendants. First, and most obviously against Rashad because he is occupying the flat. Second, against Ms Khan who installed her

son, did not remove him, and has defended these proceedings precisely to prevent the flat going back to the council. They are jointly and severally liable.

115. In addition, the council seeks to recover arrears of rent due down to the ending of the tenancy. They are the liability of Ms Khan alone. Mr McLeish invited me to adjourn-off this aspect of the money claim because the process of reconsidering Ms Khan's entitlement to housing benefits is incomplete. He submitted that it would be wrong in public law terms for the council to seek recovery in such circumstances. I refused the adjournment. No public law point about recovery of the arrears had been pleaded. Moreover, in opening Ms Khan's case, Mr McLeish had told the Court that the arrears were "agreed".

116. In any event, there is nothing to be served by awaiting the outcome of a housing benefit reconsideration. I have held that Ms Khan has not occupied 14c as a home since, at the latest, mid-October 2019. Although my judgment does not bind the housing benefit authorities to reach the same conclusion, it seems highly likely that they will do so based on the overwhelming evidence marshalled by Kingston and led before me. Occupation as 'a home' is a lynchpin of housing benefit entitlement. Without it there will be no housing benefit and Ms Khan is liable for the full rent down to 13 June 2021 and to mesne profits thereafter.

Outcome

117. For all the reasons given above, there will be an outright order for possession. That will take effect in no more than 14 days after hand-down of this judgment. That is the maximum time provided for by statute in the absence of exceptional circumstances: Housing Act 1980 section 89. There are no exceptional circumstances favouring any longer period. 14 days provides ample time for Rashad to move his belongings. There is certainly space for him at 76 to which he could move, even if temporarily, to live with his mother and Mr McNeill once again, should he choose to do so.

118. There will be a money judgment for arrears of rent against Ms Khan and a money judgment for mesne profits against both defendants.

119. Following distribution of this judgment to counsel in draft, Kingston and Ms Khan have been able to agree the figures. As a result, there will be judgment for Kingston against Ms Khan for arrears of rent to 13 June 2021 in the sum of £5,425.85. There will also be judgment for Kingston against Ms Khan and Mr Rashad Khan, jointly and severally, for mesne profits in the sum of £10,969.23 and continuing at the rate of £16.75 per day until possession is given up.

120. The parties were unable to agree *all* issues relating to costs. They were agreed that, subject to the usual costs protection available to persons assisted by legal aid, Ms Khan would pay the costs of the claim and the counterclaim. They were not agreed as to the costs liability (if any) of Rashad Khan, who was the Second Defendant to the claim. I agreed to deal with that issue having considered brief written submissions.

121. Mr McLeish for Ms Khan contended, on behalf of his client (as he does not act for Rashad) that Rashad should have no liability for costs even though, in form, he is an unsuccessful party. The submission was that he need never have been made a party, because any right of occupation he had was only ever contingent on such right as his mother might have. He had not taken any steps which had contributed to, or added to, the costs incurred, and he had not hindered the proceedings or the making of a possession order. His own client, Ms Khan, ought to be responsible for the whole costs.
122. Ms Rowlands sought a costs order against both defendants. She submitted that the presence of Rashad and the stance of Ms Khan had *together* been responsible for Kingston being kept out of possession.
123. I am satisfied that Rashad should be subject to an order for costs in the usual way. If he considered he was wrongly a party, he could have applied to be removed from the proceedings. He did not. If he considered he had an answer to the council's case, he could and should have advanced it. He did not. Faced with a possession claim in which he was a party, he remained in occupation of a valuable unit of social housing, with no right whatsoever to be there. Had he left the flat on receipt of the Court papers, a different view might have been taken. It was his presence – sustaining his mother's attempt to see off the claim against her – that prevented recovery of the flat much earlier and contributed to the costs, not least of a trial, being incurred. He could and should have made it clear that the reality was that his mother did *not* live in the flat with him, even though she was seeking to persuade Kingston and this Court to the contrary. In my judgment, the right and just order on costs is that he be jointly and severally liable for the costs of the claim with his mother.

HHJ Luba KC

14 July 2023