

CASE STUDIES

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CASE STUDY 1 – ANNETTE

The facts in this case study were derived from the real case of *Archibald v Fife Council* [2004] 4 All ER 303 (House of Lords) and the relevant statute is the Disability Discrimination Act 1995 (UK).

Annette worked as a road sweeper for a public authority. In 2009, she developed a problem with her feet and following a complication that occurred during surgery, became virtually unable to walk. She was thus no longer able to carry out the main functions of her job. She was off work continuously for some 18 months but, in accordance with the authority's standard policy, only received 'sick pay' for six months of that period.

Annette was able to carry out general clerical work. The authority placed her on its list of 're-deployees' and interviewed her for a number of administrative roles, including some that would have amounted to a promotion in terms of pay and benefits, but in each case a better qualified candidate was appointed.

In 2011, taking the view that there was no realistic prospect of a return to work, the authority dismissed Annette. She brings a claim in the labour court.

1. Would the authority have been justified in terminating Annette's employment any earlier, given that she was incapable of performing the main functions of her job? If so, at what point would it have been so justified?
 - **At the point where all reasonable accommodation had been explored by the employer and discounted. This might have been earlier than 18 months: depends on what was reasonable in all the circumstances e.g. who was doing her job while she was off sick, how often suitable administrative roles came up etc.**

2. Was the Authority obliged to provide reasonable accommodation in circumstances where nothing could be done to enable Annette to perform the main functions of her job?

- **Obligated to provide reasonable accommodation but this might not extend to offering her a different job.**

3. Was it appropriate to require Annette to go through a competitive interview process for the alternative administrative roles or should she have simply been put into one of those jobs, even though there were better qualified candidates?

- **Depends what is reasonable in all the circumstances of the case e.g. how much better qualified the candidates for the administrative roles were and whether in reality she could have performed these roles to a standard similar to that of the other candidates (note para 70 of the case and Baroness Hale's comment that the roles in question were not very high grade at all – hence could well have been done by Annette).**

4. Would it have been appropriate to give her a role even if that would have amounted to a promotion?

- **Again depends what is reasonable but possibly yes.**

5. Was the authority obliged to train Annette so that she became better qualified to carry out an administrative role?

- **No obligation to retrain a disabled employee but reasonable accommodation may include retraining if not an excessive financial burden and will allow disabled employee to be redeployed.**

6. Should the authority have paid Annette throughout the period of her sickness absence (i.e. over and above what would be paid through its standard policy)?

- **Not required under UK case law.**

CASE STUDY 2 - JOHN

The facts in this case study were derived from the real case of *Ross v Ryan Air and Another* [2004] EWCA Civ 1751 and the relevant statute is the Disability Discrimination Act 1995 (UK).

The claimant, John, suffers from cerebral palsy and arthritis, is unable to walk for long distances and has difficulties in standing. He is not a permanent wheelchair user but does require use of a wheelchair to travel any significant distance. However he does not own a wheelchair.

John owns a property abroad and is a regular visitor to it. To get there he uses a state-owned and run airport near to his home and usually travels with the same commercial airline, obviously to the same destination.

At the airport, after check-in there is a very long walk, through the duty-free shops, via various bars and restaurants, to the departure gate. John says that he cannot travel this distance without the use of a wheelchair. The airport authority will allow wheelchair users to take their own wheelchairs from the point of check-in to the door of the plane they are travelling on. It also makes available a small number of wheelchairs for others to use, but charges a fee of €20 for doing so. It also points out that there are numerous benches along the route to the departure gates so that John is able to make frequent stops and does not have to make the journey in a single go.

When John has travelled in the past he has regularly found that there is no wheelchair available for him to use. Even when one is available, he resents having to pay the fee to use it pointing out that non-disabled passengers are not charged to negotiate their way around the airport.

The airline provides no help or assistance at all, taking the view that how John negotiates his way around the airport is a matter solely for the airport authority. It allows up to four passengers per flight to be accompanied by a wheelchair. On one occasion when John flies he is not seated next to his wife who usually helps him when he has problems with mobility e.g. getting him out of his seat and to the toilet.

John sues the airport authority and the airline.

1. Should those who need a wheelchair to negotiate around the airport provide their own?

- **No!**

2. If a wheelchair ought to be provided, who should be responsible for doing so the airport authority, the airline or both?

- **This case said both - the airline by providing the passenger with a boarding pass gives them access to the airport and requires them to move through the airport in order to reach the aeroplane but the airport authority designs the airport and is therefore responsible for the ease / difficulty of access e.g. length of walk from check-in to aeroplane.**

3. And how do you determine the number that ought to be provided?

- **Using the average number of disabled passengers who need wheelchair assistance.**

4. Alternatively, is it enough that there are numerous benches along the route so that it is not strictly necessary for John to have use of wheelchair?

- **No, this would put the disabled passenger in a worse position than an able bodied passenger.**

5. Is it appropriate to charge for use of a wheelchair where one is provided? Is John's ability to pay relevant?

- **It was held that it is not appropriate to charge, again because this puts the disabled passenger in a worse position than an able bodied passenger. Ability to pay is irrelevant.**

6. Once on board, does the airline have a duty to provide a seat for John's wife next to John?

- **This refers to the case of *Stott v Thomas Cook Tour Operators Ltd and Hook v British Airways plc* [2012] EWCA Civ 66, Court of Appeal (Civil Division) which was decided by the Court of Appeal in the UK earlier this year. The CA upheld the exclusivity of the Montreal Convention 1999 in respect of claims brought under Regulation (EC) 1107/06 by disabled passengers and passengers with reduced mobility. Under the Montreal Convention there can be no compensation for injury to feelings if a disabled passenger suffers discrimination (such as failure to provide an adjacent seat for their carer) while on board a flight.**

CASE STUDY 3 – MARY

The facts in this case study were derived from the real case of *Barnsley Metropolitan Borough Council v (1) Darren Norton (2) Louise Norton (3) Samantha Norton* [2011] EWCA Civ 834 and the relevant statute is the Disability Discrimination Act 1995 (UK).

Mary and her family had a tenancy of a school caretaker's house where Mary was employed. Her employer was the local education authority. Mary's daughter, Sara, suffers from cerebral palsy and has severely restricted mobility and as a result, the property had been specially adapted for her. In November 2009, Mary's employment came to an end on the grounds of her misconduct and the authority sought possession of the property. The county court granted the authority possession and Mary sought to appeal its decision to bring and to continue the possession proceedings.

Section 49A of the Disability Discrimination Act imposed a duty upon the authority, relevantly, as follows:

"(1) Every public authority shall in carrying out its functions have due regard to;

(d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons."

1. Is the fact that Sara is a disabled person relevant to Mary's case?

Yes, the provisions of s 49A were engaged because Mary's daughter is disabled.

2. What could the fact of Sara's disability add to Mary's appeal against the possession proceedings?

The wording of the DDA imposes a general duty on public bodies. The Council was under a duty to consider the daughter's position before issuing possession proceedings.

3. Does the fact that the house has been specially adapted for Sara add anything to the case?

No.

4. How, if at all, can the UNCRPD or EU disability law be relied upon by Mary to undermine the authority's decision?

There is no equivalent duty under EU law.

Article 4(3) of CRPD requires that " In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations."

5. What would the authority have to do to demonstrate compliance with any obligations under the UNCRPD / EU disability law?

Consult closely with and actively involve Sara (or her representative organisation if applicable).

6. How might an appeal judge deal with this case having regard on one hand to the need of the school to urgently replace its caretaker and on the other hand to Sara's needs as a disabled person?

In this case the appeal judges found that the duty under s 49A had been breached, however, the Council was saved by the practicalities of the situation. It was able to remedy its breach by applying the DDA considerations to the provision of suitable alternative accommodation (the next step after getting a possession order). As landlord of the property, the Council could control when the possession order was executed. Granting of

the possession order did not, in any practical sense, debar the Council from considering the disability of the caretaker's daughter when assessing priority and the timing of transfer of possession. Setting aside the possession order was therefore not necessary. There was still time for practical measures to be put in place to accommodate the caretaker's daughter and her family. It was left up to the Council to undertake these measures.