

## CASE STUDY 1 - ANNETTE

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?
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?
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?
4. Would it have been appropriate to give her a role even if that would have amounted to a promotion?
5. Was the authority obliged to train Annette so that she became better qualified to carry out an administrative role?

## CASE STUDY 2 – JOHN

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?
2. If a wheelchair ought to be provided, who should be responsible for doing so the airport authority, the airline or both?
3. And how do you determine the number that ought to be provided?

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?
5. Is it appropriate to charge for use of a wheelchair where one is provided? Is John's ability to pay relevant?
6. Once on board, does the airline have a duty to provide a seat for John's wife next to John?

### CASE STUDY 3 – MARY

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?
2. What could the fact of Sara's disability add to Mary's appeal against the possession proceedings?
3. Does the fact that the house has been specially adapted for Sara add anything to the case?
4. How, if at all, can the UNCRPD or EU disability law be relied upon by Mary to undermine the authority's decision?
5. What would the authority have to do to demonstrate compliance with any obligations under the UNCRPD / EU disability law?
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?