

Property: Access to Social Housing and Discrimination: R (on the application of Z and another) v Hackney London Borough Council and another [2020] UKSC 40, 16 October 2020

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The Supreme Court has unanimously dismissed a challenge under the Equality Act 2010 ('EqA') to the housing allocation policy of a charity providing benefits to a particular group of people.

The Equality Act 2010 ('EqA') prohibits discrimination in relation to a protected characteristic such as race and religion/belief. There are exemptions to this prohibition. A person is not prevented from taking positive action to alleviate disadvantage (S. 158 EqA) nor is a charity prevented from restricting the provision of benefits to particular groups of persons if it can be justified as a proportionate means of achieving a legitimate aim or is for the purpose of 'preventing or compensating for a disadvantage linked to the protected characteristic' (S. 193 EqA).

The Agudas Israel Housing Association ('AIHA') is a charitable housing association with properties in a part of Hackney in East London with a substantial Orthodox Jewish community. AIHA's primary object is to provide social housing for the benefit of the Orthodox Jewish community. The London Borough of LB Hackney ('Hackney') has nomination rights to properties owned by AIHA. Hackney nominates those on the housing list to AIHA who are not Orthodox Jewish, but in practice, given the dearth properties in the area, only members of the Orthodox Jewish community are allocated housing.

The First Appellant 'Z', a mother with four children who is not a member of the Orthodox Jewish Community and who, due to the health of two of her children, has priority need for housing, challenged the allocation policies of Hackney and AIHA and claimed direct discrimination on the grounds of race and religion.

Her challenge, having been dismissed by both the Divisional Court and the Court of Appeal (*see the July 2019 Lamb Chambers Round-Up*), was further and roundly dismissed by the Supreme Court. The Court held that the charity's allocation policy is proportionate and lawful under ss .158 and 193(2)(a) EqA. It was a legitimate aim for the charity to endeavour to minimise the disadvantages suffered by the Orthodox Jewish community in Hackney, and the measures taken to promote that aim, such as rules about who could apply for social housing provided by the charity, were proportionate. The Court of Appeal had been correct to say that the Divisional Court's proportionality assessment could only be set aside if it had misdirected itself or reached a decision that was wrong.

This case highlights an instance where a charity was able to take positive action to help a particular disadvantaged group and not fall foul of discrimination laws.