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FLASH REPORT

Country:	United Kingdom
Title:	Positive action on grounds of religion or belief
Date:	9 July 2019
Expert:	Lucy Vickers
<u>Context</u>	
Issue at stake:	Was a policy of restricting housing to one religious community a proportionate form of positive action?
Grounds of discrimination:	Religion or belief, Racial or ethnic origin
Field of application:	Housing
Source:	National court decision, Z & A v another, R (on the application of) v London Borough of Hackney and Agudas Israel Housing Association Ltd [2019] EWCA Civ 1099
Applicable law:	Equality Act 2010

Content

Case development: The Agudas Israel Housing Association Ltd provides social housing to members of the Orthodox Jewish community. Z was a single mother who required social housing. Her name was not put forward to the housing association by Hackney council as she was not from the Orthodox Jewish community. It was not disputed that this was direct discrimination on religious grounds, and on grounds of race or ethnic origin, but the question arose as to whether the discrimination was lawful positive action, on the basis that it was a proportionate means to compensate a disadvantaged community. The Divisional Court¹ accepted that there was a correlation between poverty and deprivation in the Haredi community and their religion and found that the discrimination was lawful as a proportionate means of compensating for that disadvantage. Z appealed.

Decision of the court: The Court of Appeal held that the Divisional Court was entitled to find that the policy was proportionate to the aim of compensating disadvantage.

Key points of analysis: In assessing proportionality the first instance court had considered a large amount of demographic and sociological evidence. The effect of the housing policy was that to reduce the amount of potential housing available by around 1%. Thus, the disadvantage to those who do not share the protected characteristic was minuscule. In contrast, the needs of the Orthodox Jewish community, linked to the protected characteristic, were many and compelling. Moreover, if the housing were to be open to those outside the Orthodox Jewish community, the charitable objects of the housing association would be entirely undermined. As a result, the practical effect of the policy was proportionate.

Internet link source: <https://www.bailii.org/ew/cases/EWCA/Civ/2019/1099.pdf>.

¹ [2019] EWHC 139 (Admin), <https://www.bailii.org/ew/cases/EWHC/Admin/2019/139.pdf>.