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FLASH REPORT

Country:	United Kingdom
Title:	Discrimination against tenants on the basis of their actual or perceived nationality
Date:	14 May 2020
Expert:	Lucy Vickers
<u>Context</u>	
Issue at stake:	Discrimination against tenants on the basis of their actual or perceived nationality
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Housing
Source:	National court decision, R (Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department [2020] EWCA Civ 542 Decision of 21/4/20
Applicable law:	Equality Act 2010

Content

Case development: Under the Immigration Act 2014 private landlords in England are required to check the immigration status of tenants and potential tenants. Knowingly leasing a property to a disqualified person is a criminal offence, punishable by up to 5 years' imprisonment, an unlimited fine, or both. In 2018, The Joint Council for the Welfare of Immigrants (JCWI) sought judicial review of the policy, on the basis that fear of criminal sanctions would indirectly cause landlords to discriminate those without British passports, even if they were lawful potential tenants. This was particularly the case if the potential tenants did not have traditionally British-sounding names or did not appear ethnically British. The claim was not brought by any individual claiming to have been the victim of discrimination as a result of the operation of the scheme, but was a challenge to the validity of the statutory provisions themselves on the basis that its provisions are incompatible with Article 14 when read with Article 8 of the European Convention on Human Rights (ECHR). In addition, the decision to extend the scheme beyond England to Scotland, Wales and Northern Ireland without further evaluation of its efficacy and discriminatory effect was a breach of the Public Sector Equality Duty (PSED) in Section 149 of the Equality Act 2010.

The High Court held¹ that the policy as it applies in England had a disproportionately discriminatory effect, was incompatible with Articles 8 and 14 of the ECHR and that to extend the scheme without further evaluation of its efficacy and discriminatory impact would constitute a breach of Section 149 Equality Act 2010. The case was appealed to the Court of Appeal.

Decision of the court: The Court of Appeal allowed the appeal by the Government.

¹ Decision of 1/3/19 <https://www.bailii.org/ew/cases/EWHC/Admin/2019/452.html>.

Key points of analysis: The Court of Appeal agreed that those who had a right to rent, but did not have British passports or, had neither such passports nor ethnically-British attributes, were the subject of discrimination on the basis of their actual or perceived nationality; and that that discrimination was caused by the scheme. However, the Court of Appeal found that this discriminatory effect was justified, because the scheme was capable of being implemented in a proportionate way, and so the threshold for finding legislation incompatible with the ECHR was not met. On the basis that the substantive claim failed, the Court agreed that it would be premature to declare that any future extension of the scheme was incompatible with the PSED.

Internet link source: <https://www.bailii.org/ew/cases/EWCA/Civ/2020/542.html>.