

Diversity in practice: Diversity and beneficiaries



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When is it lawful to restrict who can benefit from your charity's services?

A recent Supreme Court judgment clarifies when you can restrict your services in line with the Equality Act 2010 (EA).

The case of *R v Hackney London Borough Council and Agudas Israel Housing Association [2020]* concerns the provision of social housing in the London borough of Hackney, home to one of the largest Orthodox Jewish communities outside of New York and Israel. Agudas Israel Housing Association (AIHA) is a charitable housing association established to provide social housing primarily for members of the Orthodox Jewish community (the Community). AIHA works with Hackney London Borough Council, with its properties making up around 1% of the council's total social housing stock.

The council has a right to nominate tenants to AIHA properties, but AIHA has its own selection criteria in line with its charitable objects – to primarily house members of the Community. As the demand for social housing in Hackney far outstrips supply, this meant that, in practice, AIHA exclusively allocated its properties to members of the Community.

A single mother with four children had been on the council's waiting list for social

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housing. As she wasn't a member of the Community, the council didn't nominate her for any of the available AIHA properties, meaning that she had to wait longer to be allocated to a property. She brought a claim against the council and AIHA under the EA, complaining that there had been unlawful direct discrimination against her on the grounds of both religion and race.

Fortunately, suitable housing has now been found for the family, but the points of law involved were ultimately considered by the Supreme Court in autumn 2020.

Exceptions under the EA

The EA allows a charity to confine its services to a particular group if one of the exceptions set out in the EA apply.

The Supreme Court considered three possible exceptions:

- AIHA's actions were proportionate to compensate for the disadvantages/ needs of the Community;
- AIHA restricted benefits to the Community as a 'proportionate means of achieving a legitimate aim';
- AIHA restricted benefits to the Community to prevent or compensate for a disadvantage linked to being a member of the Community.

They also considered other factors. Members of the Community have particular needs due to their protected characteristic (their religion), such as larger families needing larger houses. They are disadvantaged by anti-Semitic prejudice in the private rental sector. And, notably, AIHA's policy wasn't a blanket exemption –

should there be surplus properties, these would be allocated outside the Community.

The court decided that AIHA could demonstrate that it met all three exceptions. Its policy promoted a legitimate aim (minimising disadvantages the Community faced in the private housing sector), was proportionate (the policy's blanket effect was due to scarcity of housing), and addressed needs linked to being a member of the Community.

Charities that support a restricted class of beneficiaries in line with their governing document can take comfort. It would be discriminatory to restrict a benefit at will, but it's possible for charities to justify such restrictions by demonstrating that they meet one of the exceptions of the EA.