

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## LF v United Kingdom

**European Court of Human Rights, Fourth Section, Gabriele Kucsko-Stadlmayr (President), Tim Eicke, Faris Vehabović, Iulia Antoanella Motoc, Yonko Grozev, Armen Harutyunyan, Ana Maria Guerra Martins (Judges), 16 June 2022**

An appeal to the European Court of Human Rights under Article 14 and Article 8 of the European Convention on Human Rights concerning alleged discrimination in housing policy.

**Key words: Human Rights, United Kingdom, Charity, Housing, Equality Act 2010, Discrimination, Race, Faith, Proportionality**

1. AIHA is a charitable housing association whose primary purpose is to house members of the Orthodox Jewish Community in London. It owns 470 properties in Hackney.
2. The properties owned by AIHA are designed specifically for Orthodox Jewish religious needs whereby the tenants are able to follow the tenets and rules of their faith. AIHA provides facilities such as kosher kitchens, an absence of television aerials, Shabbos locks on the estate, and mezuzahs on communal doors. The Orthodox Jewish community tend to have large families and so have a greater need, as a community, for larger properties, including those with four bedrooms.
3. Hackney London Borough Council (the Council) is a local housing authority with statutory functions in relation to the allocation of social housing. As well as allocating its own stock of social housing, it also discharges its functions by nominating applicants for social housing to properties owned by independent housing associations such as AIHA.
4. AIHA operates its own waiting list for its properties, but pursuant to an agreement with the Council, the Council has nomination rights in respect of a significant proportion of properties owned by AIHA which become available for occupation. AIHA's criteria for selection are similar to those used by the Council, and are likewise based on need. Applicants nominated by the Council for a property owned by AIHA also have to satisfy AIHA's own selection criteria that state: "Consideration only to the Orthodox Jewish community". However, if it had surplus property, this could be allocated outside the Orthodox Jewish community.

5. A family consisting of a mother, two sons with autism, aged nine and five, and two twin babies were assessed by the Council as falling within the group having the highest need for re-housing under its scheme for the allocation of social housing. The family were not members of the Orthodox Jewish community, but grew up and lived in Hackney and embraced the diversity of the local community.
6. During the same period, at least six four-bedroom properties owned by AIHA became available and were advertised by the Council. However, because of AIHA's practice of only letting its properties to members of the Orthodox Jewish community, the Council did not put the appellant forward for consideration. The appellant also did not apply directly to AIHA.
7. The family were put in temporary housing by the Council.
8. The family then brought a claim for unlawful direct discrimination on the grounds of religion and race, but was unsuccessful in the High Court and the Court of Appeal. On appeal to the Supreme Court of England and Wales, the appeal was dismissed.
9. Under s 193 of the [Equality Act 2010](#) (the Act), a charity is able to restrict its benefits to those who share a protected characteristic if: (i) it is doing so in accordance with its governing document, and (ii) it is 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.
10. The Supreme Court noted that members of the Orthodox Jewish community did suffer disadvantage particularly when it came to housing, as AIHA's properties were only 1% of the potentially available housing. Further, AIHA's allocation policy was not an illegitimate "blanket policy" as there was flexibility to allocate properties to non-members of the Community if AIHA has properties surplus to demand from that community (although, in practice, this was not the case). AIHA's allocation policy was found to be proportionate and lawful under the Act.
11. On appeal to the ECHR, the applicant complained under Article 14 in conjunction with Article 8 of the [European Convention on Human Rights](#) that the Council's arrangements with AIHA, and the relevant statutory framework, discriminated against her on the basis of her non-membership of the Orthodox Jewish community (OJC) without a reasonable or objective justification.
12. Article 8 of the Convention provides:
  1. Everyone has the right to respect for his private and family life, his home and his correspondence.
  2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

13. Article 14 of the Convention provides:

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

14. The ECHR said that while there is no right under Article 8 of the Convention to be provided with housing, where a Contracting State decides to provide such benefits, it must do so in a way that is compliant with Article 14.

15. The arrangement between the Council and AIHA in this case impacted upon the eligibility of the applicant and her family for assistance in finding suitable accommodation. The Court therefore accepted that the facts of this case fell within the ambit of Article 8 of the Convention.

16. It further considered that the applicant was treated differently from members of the OJC because of her non-membership of a religious community, insofar as she was denied access to accommodation which, pursuant to the arrangement between the Council and AIHA, was to be accorded to families belonging to the OJC. Furthermore, the applicant, having a large family, was in a comparable situation to members of the OJC who were likewise seeking accommodation capable of catering to larger family sizes.

17. Nonetheless, the ECHR considered that the difference in treatment flowing from the arrangement between the Council and AIHA was objectively and reasonably justified for the following reasons:

- a) Article 14 of the Convention does not prohibit a member State from treating groups differently in order to correct “factual inequalities” between them. This was clearly applicable in this case.
- b) The ECHR has repeatedly held that because national authorities are in principle better placed than an international judge to appreciate what is in the public interest on social or economic grounds, a wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. The scope of the margin of appreciation afforded to the Contracting State may be narrower where rights of central importance to the individual’s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community are concerned. However, while that may be so in the sphere of housing where the interference consists in the loss of a person’s only home, that was not the case here. On the contrary, the applicant, who was housed in temporary accommodation, complained about a restriction on the properties available to her for longer-term rehousing.
- c) The domestic courts had carefully considered whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised by the arrangement between the Council and AIHA, and at each level of jurisdiction (High Court, Court of Appeal, Supreme Court) they agreed that it was objectively and reasonably justified.

18. Therefore, the ECHR concluded that in the circumstances of the case the arrangement between the Council and AIHA did not exceed the wide margin of appreciation afforded to national authorities in such cases.

19. The application was rejected by the ECHR as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

## IMPLICATIONS



Even though the United Kingdom has now left the European Union, the UK is still a participant in the European Convention on Human Rights, and UK human rights cases can still be heard by the European Court of Human Rights.

This commitment was established in 2019 in a [political declaration](#) between the EU and the UK. The declaration highlights the UK's ongoing commitment to respect the framework of the Convention. The parties also declared that future arrangements should be underpinned by long-standing commitments to the fundamental rights of individuals, including giving effect to the Convention.

However, the [Brexit Trade Agreement](#) does not mention the ECHR or its Court, and the UK's ongoing commitment to the Convention is therefore uncertain. There is nothing to prevent the UK from withdrawing as a participant or limiting the application of the Convention e.g. by repealing or amending the [Human Rights Act 1998](#).

## VIEW THE CASE



This case may be viewed at <https://hudoc.echr.coe.int/eng?i=001-218076>

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**Date of creation:** June 2022

**Number of case:** 2022-92

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