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SSHD v JCWI & National Residential Landlords Association & others

What was it about?

The “right to rent” (Immigration Acts 2014 and 2016)

- Landlords prohibited from letting residential property to someone without a right to rent (whether as tenant or other occupier)
- In broad terms, that means people unlawfully present in the UK
- Sanctions that can be imposed on landlords are
 - Criminal (up to 5 yrs imprisonment)
 - Civil (fixed penalty notice of up to £3,000 per contravention)
 - Regulatory (loss of landlord licence under Pts 2, 3, Housing Act 2004; Banning Order / Rogue Landlord Database under Housing and Planning Act 2016)
 - Market based (breach of buy to let mortgage terms)

What was the effect?

- PRS is an unsophisticated area of the market
 - 62% of landlords own only one property
 - The “lodger” market is growing at an enormous rate
- Landlords responded by
 - Preferring tenants with British passports
 - In the absence of that document, preferring people who were white and with anglo-saxon names

JCWI sought judicial review, alleging the 2014 and 2016 Acts *caused* discrimination by landlords so as to infringe Arts.8 and 14

Decisions

High Court [2019] EWHC 452 (Admin)

- Right to seek a home falls within Art.8 and therefore Art.14 prohibits discrimination
- Where the state interferes with your right to seek a home it must do so in a way that does not cause unlawful discrimination
- The legislation (and in particular the sanctions) caused landlords to discriminate where they would not otherwise wish to do so (“safety first”)

Court of Appeal [2020] EWCA Civ 542

- Prepared to assume that Arts.8 and 14 are engaged
- Accepts that the scheme causes discrimination
- But it is justified

Implications

Two points

- 1) JCWI seeking permission to appeal to the Supreme Court
 - Number of interesting points, not least State responsibility for discrimination by third party actors (LL) in response to legislation

- 2) Ambit of Art.8 includes right to seek a home (and then Art.14 protection within that)
 - Relevance for allocation schemes under Part 6, Housing Act 1996
 - Court of Appeal trying to avoid deciding whether Arts.8 and 14 can be used to challenge allocation schemes in that way (see *R (H) v Ealing LBC*; *R (Ward) v Hillingdon LBC*; *R (Gullu) v Hillingdon LBC*)