



## **Race Discrimination and Housing in post-Brexit Britain**

Reported racist incidents have surged since the EU referendum: a 50 percent increase in London and a fivefold increase on the UK weekly average according to police figures.<sup>1</sup> Meanwhile, the government has introduced 'right to rent' checks: it is now a criminal offence for private landlords to provide housing to people with insufficient immigration status. This article considers race discrimination in housing and, in particular, the obligations that landlords have not to discriminate themselves and to take action when their tenants are experiencing discrimination and harassment by other tenants.

### **The Legislation**

The legislation governing discrimination in housing is the Equality Act 2010 ("the Act"). This sets out obligations on landlords not to discriminate against tenants and prospective tenants. It also contains obligations on those carrying out public functions – which will include not only local authorities in respect of their housing functions but may also include social landlords – to comply with what is known as the public sector equality duty<sup>2</sup> - an important obligation to consider equality in everything that they do, including their housing functions.

### **What does 'discrimination' mean?**

The term 'discrimination' is used broadly in everyday language, but here it refers to three different types of conduct which are prohibited by the Act: race discrimination; harassment related to race; and victimisation.

In a housing context, race discrimination is where a landlord treats a tenant less favourably than another because of her race ("her" is used to refer to any or no gender).

Harassment is conduct by a landlord which a tenant does not want, which relates to a tenant's or prospective tenant's race and which has the purpose or effect of either violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

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<sup>1</sup> <http://www.independent.co.uk/news/uk/crime/brexit-race-hate-crime-eu-referendum-met-police-a7121401.html>

<sup>2</sup> S.149 of the Act

Victimisation means subjecting a tenant to a detriment either because she has done, or because a landlord believes she has or may do, the following:

- made an allegation or brought legal proceedings under the Act; or
- given evidence or information in connection with proceedings under the Act; or
- undertaken any other thing 'for the purposes of or in connection with' the Act.

'Detriment' means something which a tenant reasonably feels puts her at a disadvantage; it does not have to amount to financial or physical damage.

There are some exceptions to the Act's protection against race discrimination in respect of private properties – for example, the Act does not apply to short term private rentals, such as holiday lettings. It should be noted, however, that lodgers (those living in the same premises as the owner-occupier) do benefit from the protections of the Act against race discrimination, even though they do not have a tenancy agreement.

### **Obligations towards tenants**

Landlords will have terms in their tenancy agreement requiring tenants not to participate in anti-social behaviour; they should ensure that this includes a prohibition on discriminating against or harassing other tenants.

Landlords who exercise a public function – such as local authorities and housing associations in respect of certain of their housing functions<sup>3</sup> – are required by the public sector equality duty to have due regard to the need to eliminate discrimination, promote equality of opportunity and foster good race relations between persons from different racial groups. At a time of increasing racial tension, public-sector landlords should take this opportunity to re-iterate that racism and harassment will not be tolerated and that terms of the tenancy agreement prohibiting discriminatory conduct will be enforced.

### **Finding Rented Accommodation**

A landlord – and this term is used to cover a private landlord of a local council, housing association or ALMO<sup>4</sup> – must not discriminate against prospective tenants because of their race or nationality. This means that a landlord must not treat a tenant less favourably than another because of their race or nationality:

- when they are looking for accommodation;

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<sup>3</sup> London and Quadrant Trust v Weaver [2009] EWCA Civ 587

<sup>4</sup> An arm's-length management organisation (ALMO) is a not-for-profit company that provides housing services on behalf of a local authority

- by refusing to grant a tenancy to them.

The Act also prohibits harassment and victimisation against tenants.

A contractual term in a tenancy agreement is unenforceable against a tenant if it is discriminatory, including on grounds of race. Also, any term in a tenancy agreement which seeks to exclude or limit a tenant's rights under the Act cannot be enforced against the tenant.

### **The Right to Rent: Immigration Checks**

Since February 2016, private landlords have been legally obliged to check that occupiers of their properties have the 'right to rent': sufficient immigration status to be allowed to rent a property in the UK as their main home. (Note that the 'right to rent' does not apply to long leases of 7 years or more, nor does it apply to social landlords providing social housing.) The Government's *Code of practice on illegal immigrants and private rental accommodation*<sup>5</sup> gives guidance on how landlords should implement the 'right to rent'. Para 5.1 of the Code states that whether a person has a 'right to rent' is a matter of fact that can and should be verified only by use of the documents listed in the Code. The Code advises that checks should be performed "without regard to race, religion or other protected characteristics or equality grounds as specified in the Equality Act 2010 or the Race Relations (Northern Ireland) Order 1997". The guidance further suggests that landlords should apply checks to all occupiers, even if they may already believe occupiers to be living in the UK legally. Landlords should also note paragraph 16.66 of the statutory Code to the Equality Act 2010, which suggests (with regard to similar checks in an employment context) that "many people from ethnic minorities in this country are British citizens or are otherwise entitled to work here. Employers should not make assumptions about a person's right to work in the UK based on race, colour or national origin, because all applicants should be treated equally under the Act".<sup>6</sup> This means that if a landlord refuses to accept a tenant who shows them a non-British passport with a right of abode as proof of the ability to reside they may be vulnerable to a claim of race discrimination.

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<sup>5</sup><https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation-for-tenancies-starting-on-or-after-1-february-2016>

<sup>6</sup> <https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>

## **Tenants**

A landlord must not discriminate against a tenant once they are living in the property by not allowing them to use a facility or benefit; by evicting them (or taking steps to do so) or by subjecting them to any other detriment.

It is also unlawful for a landlord to harass tenants related to their race when they occupy accommodation. If tenants make an allegation against a landlord that it has breached the Act, or if they take legal action against a landlord for any breach, the landlord must not victimise them.

Landlords should also be aware that if a tenant discriminates against or harasses another tenant, and the landlord does not take any action, the landlord may itself be liable for the discrimination. This is based on a case in the employment context called *Sheffield City Council v Norouzi* IRLR [2011] 897, where the Employment Appeal Tribunal held that under the EU Race Equality Directive, where an employer is an emanation of the state, it may be liable for racial harassment and indirect discrimination if it fails to protect its employees from racial harassment and discrimination by a third party, such as a supplier or customer. A similar principle could well apply in the housing context where a landlord could be held liable for the racial conduct of one of its tenants if it has failed to take appropriate action to prevent such conduct (for example, where the landlord was made aware of the conduct and still failed to do anything about it). The Race Equality Directive prohibits discrimination in housing, as well as employment, and is therefore the root of the housing provisions in the Act.

## **Consequences of Breach**

If a landlord discriminates, harasses or victimises a tenant in contravention of his obligations under the Equality Act, a tenant can initiate proceedings in the County Court for:

- damages, including for injury to feelings;
- an injunction against the landlord, providing the injunction does not prejudice any criminal matter;
- a declaration of the tenant's rights;
- modification or removal of discriminatory tenancy terms.

If the landlord is exercising a public function (a public authority or potentially a housing association), a tenant can also initiate proceedings in the High Court (Administrative Division) for Judicial Review of the public body's decision on the grounds that it breaches the

landlord's obligations under the Equality Act's Public Sector Equality Duty or the Human Rights Act 1998.