

The Right to Rent litigation

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What is the Right to Rent?

Immigration Acts 2014 and 2016

- Three categories of person
 - those with a Right to Rent (UK nationals and others lawfully present)
 - those with a time-limited Right to Rent (time-limited permissions)
 - those with no right to rent (not lawfully present)

How does it work?

What happens if you let to someone who does not have a R2R?

- Not just letting! Any authorised occupier
 - Civil Penalty of up to £3000 per contravention
 - Criminal Offence with up to 5 years imprisonment
 - Need to bring possession proceedings (to avoid conviction)
- Wider regulatory consequences, *e.g.* Rogue Landlord database, banning order, revoke HMO licence
- Wider financial consequences, *e.g.* breach of mortgage terms



So what do you do?

Need to check that someone has a R2R

- See one or more of a list of prescribed documents
- Retain a copy
- Check it is genuine
- Carry out renewal checks if time limited R2R

Note – cannot charge a fee for this as it is not a Sch.1, Tenant Fees Act 2019 permitted payment

The litigation

R (JCWI) v Secretary of State

- Liberty, EHRC and RLA intervened

JCWI – the effect of the scheme is to cause landlords to prefer people who have a British Passport and, if not, to prefer white people who seem anglo-saxon.

RLA – seeking to *explain* why that might be:

- (a) unsophisticated nature of the PRS (62% own one property; growth in lodger landlords)
- (b) Scheme presents a regulatory and financial risk
- (c) hence landlords adopt a low risk approach

High Court



High Court finds for claimants

- Scheme *causes* landlords to discriminate where they would not otherwise do so
- That discrimination is a rational response to the scheme; the sanctions are draconian and the delays in the scheme risk leading to void periods
- The government is *responsible* for that discrimination because it has produced legislation that is having this effect
- The scheme violates the rights of prospective tenants and is incompatible with the Human Rights Act 1998.

Court of Appeal



Reversed the High Court

- The HC was correct to find that the scheme *does* cause discrimination

But

- This was a question of immigration policy. The government should be given a wide degree of deference. Any discrimination is justified.

What does it mean?

On the one hand, nothing has changed

- Right to Rent was still the law even after the High Ct
- Remains the law
- Do your checks. Keep records. Keep up-to-date with the guidance (both on discrimination and substantively – *e.g.* egates and Covid-19)
- Do not discriminate! Or you will get sued!

On the other, the case seems very likely to go to the Supreme Court

- Gives rise to a huge number of important points, including State responsibility for discrimination it is *causing*.