



**FIRST-TIER TRIBUNAL
SOCIAL ENTITLEMENT CHAMBER**

Held at **Liverpool** on **9/4/2014**

Before Judge **J R Watson**

Appellant: Mr J Carmichael	Tribunal Ref. SC068/13/12054
	NI No [REDACTED]
Respondent: Sefton MBC	

DECISION NOTICE

1. The Housing Benefit appeal is allowed.
2. The decision made on 5/3/2013 is set aside by virtue of S.3(1) Human Rights Act, the provisions of Reg. B13(5)(a) Housing Benefit Regs. can and should be read as follows:-
'(a) A couple (within the meaning of Part 7 of the Act) or one member of a couple who is unable to share a bedroom because of his or her disability or the disability of the other member of that couple.'
Accordingly the Appellant is entitled to two bedrooms under the provision of Reg.B13(5) and no under-occupancy reduction of 14% should be made in his Housing Benefit entitlement.

The Tribunal will be issuing a full statement of facts and reasons which will be issued to the parties as requested at the hearing by the Respondent.

Signed Tribunal Judge: J R Watson	Date: 9/4/2014
<i>Decision Notice issued to</i>	<i>Appellant on:</i> 9/4/2014
	<i>Respondent on:</i> 9/4/2014



FIRST-TIER TRIBUNAL

HOUSING BENEFIT

Held at LIVERPOOL on 9th April 2014

Before TRIBUNAL JUDGE: MR JR WATSON

Appellant: CARMICHAEL J (MR)	Tribunal Ref. SC068/13/12054
	NI No [REDACTED]
Respondent: Secretary of State for Work and Pensions	
Second Respondent:	

STATEMENT OF REASONS FOR DECISION

This statement is to be read together with the decision notice issued by the tribunal

Facts Found

1. The appellant and his wife are tenants of a two bed-roomed flat at [REDACTED] [REDACTED] which they rent from a Registered Social Landlord, being 1 Vision Housing Association. At all material times, the appellant's have been in receipt of Housing Benefit to assist them in paying the rent for the flat.
2. It is common ground that the appellant's wife, Mrs Carmichael, is very disabled and that she needs one bedroom for her sole occupation owing to the nature of her disability and the hospital bed and other equipment that she requires in the room to assist her in dealing with her disability, which bed and equipment take up a lot of space. Her husband, the appellant, occupies the other bedroom.
3. By virtue of Regulation B13 Housing Benefit Regulations, the Local Authority had deemed the property to be under-occupied to the extent of one bedroom. This is because of the operation of Regulation B13(5)(a), which prescribes that a couple, as defined in the Regulations, only require one bedroom. Regulation goes on to prescribe that where there is under occupation of one bedroom, the limited rent upon which Housing Benefit awards are founded comprised the

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eligible rent less a reduction of 14%. This is the calculation which has been used by Sefton Council in assessing the Housing Benefit Claim of the appellant and the appellant is now appealing this decision.

4. Welfare Benefit Cases (and Housing Benefit is a Welfare Benefit) fall within the ambit of Article 1 Protocol 1 of the European Convention on Human Rights as confirmed in *Burnip v Birmingham*, and *Gorry v Wiltshire*.

5. Disability is a status for the purposes of Article 14 see *AM (Somalia) v Entry Clearance Officer*.

6. The Tribunal is satisfied that there has been indirect discrimination against a discrete group of persons such as Mrs Carmichael who, because of their physical disabilities, reasonably require the sole use of a bedroom. This discrimination arises from the operation of Regulation B13(5)(a) Housing Benefit Regulations, which results in Housing Benefit being reduced because for benefit purposes a couple are deemed to only require one bedroom, which they should share and which takes no account of the need for two bedrooms for the couple.

7. Persons with such severe disability as causes them to need sole use of a bedroom will form a comparatively small discrete group, which can easily be identified by the Local Authority.

8. Such discrimination has no objective or reasonable justification and is, therefore, in breach of Article 14.

9. To address matter, the terms of Regulation B13(5)(a) should be read as set out in the Decision Notice issued in this case.

Reasons for the Decision

10. The Tribunal carefully read the Scheduled Papers and the submission from counsel for the appellant.

11. The submission from the Local Authority set out the relevant Regulations including in particular Regulation B13 Housing Benefit Regulations. Whilst the Local Authority had great sympathy for the appellant and his severely disabled wife, they said that they were unable to avoid making the 14% deduction for a "surplus" bedroom when calculating the maximum rent (Social Sector) for Housing Benefit purposes. In other words, that what is commonly known as the "Bedroom Tax" should be applied here.

12. Counsel for the appellant in her written submission made particular reference to two leading cases regarding this issue, namely the case of *Gorry v Wiltshire* and also the case of *MA and Others v SSWP*, both of which were Court of Appeal Decisions.

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13. Counsel strongly proposed that the Gorry case was almost on all fours with the instant case before the Tribunal. This had been a Statutory Appeal which reached the Court of Appeal via the First Tier Tribunal and the Upper Tribunal. It concerned the issue as to whether the provisions in Regulation B13(5) as they related to two children, one of whom was unable for disability reasons to share a bedroom with another was subject to indirect discrimination under Article 14 and Article 1 Protocol 1 European Convention of Human Rights, which was not justified in connection with an application for Housing Benefit, because under that Regulation as it then stood, the rented property must be assessed for maximum rent (Social Sector) as if both children would share a bedroom when, in fact, this was not possible. The Court had allowed the appeal and declared that such discrimination was not objectively and reasonably justified in the case of the discrete group of which disabled children of this type formed. Under Section 3(1) Human Rights Act the Court ordered that Regulation B13 be read with words that caused such discrimination to be avoided for this discrete group. Counsel strongly suggested that the case before the Tribunal was a similar case with Gorry and that a similar remedy should be given by the Tribunal.

14. The case of MA and Others referred to above involved an application for Judicial Review of the whole of the Regulations underpinning the bedroom tax regime on the grounds that it caused indirect discrimination over the award of Housing Benefit against all disabled people (not merely a discrete group of persons with certain disabilities) when assessing their Housing Benefit entitlement, thus breaching their rights under Article 1 Protocol 1 and Article 14 of the European Convention. Court were asked to strike out the whole of the relevant Regulations underpinning the Bedroom Tax as being non-convention compliant. Court of Appeal declined to do this. Mrs Carmichael, the wife of the appellant before the Tribunal today, was one of the appellants in that case. The Court was not prepared to find that the indirect discrimination suffered by some disabled adults under the bedroom tax scheme was unjustifiable when the need to rectify the under-occupation of some social sector housing was the legitimate aim of the scheme. Mrs Carmichael's Counsel, Mr Drabble QC, at para 78 of the decision did suggest to the Court that there was no rational reason for excluding severely disabled adults, such as Mrs Carmichael, (who needed sole use of a bedroom) from the scheme provided under Regulation B13(5) but the Court did not deal with this specific suggestion in its decision, and declined to strike out the whole of the relevant Regulations as non-convention compliant. It considered the discrimination justifiable in seeking to put an end to the under-occupation of publically funded housing. The Court was unhappy that the claim was made on behalf of all disabled people, which were not an easily identifiable discrete group.

15. The Tribunal did not find the case of MA and Others particularly helpful in dealing with the case it had before it and preferred to follow Gorry, which was a very similar set of circumstances to the instant case. The Tribunal was satisfied that Housing Benefit was a possession under Article 1, that disability is a status under Article 14 and that the regime under Regulation B13(5)(a) unfairly discriminated against disabled persons such as Mrs Carmichael, who because


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of their disability and the equipment they need in their bedroom to cope with a disability reasonably need the sole use of their bedroom. There was no objective and reasonable justification for such discrimination in dealing with such seriously disabled person regarding their Housing Benefit. Accordingly, the appealed decision is Set Aside and under Section 3(1) Human Rights Act, Regulation 13(b)(5)(a) should be read as set out in the Decision Notice so as to avoid discrimination in the matter of Housing Benefit to this discrete group of disabled persons. The Tribunal were satisfied that the change in wording of the Regulation mentioned above did not import a meaning inconsistent with the underlying thrust of the Legislation, and the words implied go with the grain of the Legislation as mentioned by Lord Nicholls in Ghaidan v Godin-Mendoza. The Tribunal's decision is as set out in the Decision Notice.

The above is a statement of reasons for the Tribunal's decision, under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Signed Tribunal Judge:  JR WATSON

Date: 16th April 2014

Statement issued to

Appellant on:

Respondent on:

15/5/14

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