



[REDACTED]

**FIRST-TIER TRIBUNAL
SOCIAL ENTITLEMENT CHAMBER**

Held at **Liverpool** on **25/07/2014**

Before **Judge H Broughton**

[REDACTED]

114/1262 H

Appellant: Mr D Lloyd	Tribunal Ref. SC068/06/2014
	NI No. [REDACTED]
Respondent: Liverpool City Council	

DECISION NOTICE

1. The Housing Benefit appeal is allowed
2. The decision made on 11.3.13 is set aside. From 1/4/2013 the Appellants eligible rent is the full amount of his rent and no reduction applies.
3. The 14% reduction should not be made as the decision to impose this reduction is discriminatory as against the Appellant under the Human Rights Legislation and this should be remedied by reading into Regulation B13(5)(6)

“ a relevant person is in receipt of High Rate Care or/and High Rate Mobility disability living Allowance or the enhanced rate of PIP(Personal Independence Payment) for ether daily living or mobility, lives alone and is in accommodation in a property which has been specifically adapted by the Landlord by reference to his needs for mobility or care by way of kitchen , bathroom or stair adaptation which makes it feasible for him to live alone and with no overnight carer.”

STATEMENT OF REASONS

4. Regulation (B13) of the housing benefit Regulation 2006 as amended obliges the respondent to determine the maximum rent for a property rented from a Social Housing Landlord. This involves the comparison between the number of bedrooms in the property and the number of bedrooms the Appellant is entitled to terms of Regulation B13(5). In summary that provides that the Appellant is entitled to one bedroom for each of a specified category of persons who occupy the property as their home. In terms of the legislation he is therefore entitled to one room
5. The Tribunal found the following facts
 - a. [REDACTED] lives alone in a property with a kitchen. lounge, two upstairs room and a bathroom.
 - b. He moved into the property in 1999
 - c. There has never been a bed in the second room upstairs
 - d. The room is a large room in context of the ~Appeals currently before the Tribunal at 117 sq feet.

- e. The room contains belongings that could be described colloquially as "junk " and the room is a "dumping ground "
- f. [REDACTED] has only been in the room 3 times in the last 5 years
- g. The room could be used as a bedroom if it was cleared
- h. He is in receipt of Disability Living Allowance for mobility at the High Rate.
- i. He has limited mobility and has to sleep downstairs when he cannot get up the stairs which would mean it was not possible to take in a lodger who could not be expected to share accommodation with a landlord who had to sleep downstairs.
- j. The Property has been adapted by the by the Landlord for use by the Appellant who is disabled by putting in a wet room shower, adapted toilet and banisters on the stairs and hand rails through the house.
- k. The Landlords categorise the disputed room as a bedroom
- l. The Original tenancy agreement describes the property as having 2 bedrooms
- m. [REDACTED] is currently in arrears and therefore a very low priority F for moving to a different property. Tribunal accepted his evidence that he has been told there are very few adapted properties for one person available.
- n. He has received some payments of Discretionary Housing Payment but currently [REDACTED] is not receiving any such pament. In order to apply he has to visit the Housing [REDACTED] due to his limited mobility it causes him great difficulty.

6. The appellant had appealed on the basis that he should not have a 14% reduction his Housing Benefit as he considered the extra bedroom he is deemed to have under the maximum rent social housing is not a bedroom on the grounds that he had never used the disputed room as a bedroom since he moved into the premises. However the Representative on the day of the hearing submitted the recent DWP research in to the efficacy of the Discretionary Housing Benefit published recently namely the Evaluation of Removal of the Spare Room Subsidy was relevant and therefore asked the Tribunal to consider that issue in the context that the safety net envisaged in the case of R (on the Application of MA and Ors)v Secretary of State for Work and Pensions and Equality and Human Rights Commission [2014] EWCA Civ 13 was not protecting the vulnerable.

7. That research was published on the 15th July 2014 and in relation to Discretionary housing payments (DHPs) states in terms that

"DHPs have helped some households to meet their rental shortfall. Some local authorities struggle to make long-term plans for this resource and suggested that this was because of uncertainties around both future demand and the size/availability of the fund. The 2014- 15 allocation was only announced in January 2014, after the fieldwork for this phase of the research had taken place. There was some variation in who was assisted, even within a local authority, in this early phase of implementation.

A key concern raised by landlords and local agencies is that disabled people in adapted homes have not always been awarded DHP because disability benefits, which are intended to help with some of the extra costs of having a long-term disability or health condition, can cause them to fail means tests based on their income."

The Tribunal also had regard to the Guidance issued originally in ration to thie discretionary payment and its subsequent amendments which reads

"Support for disabled people living in significantly adapted accommodation

2.4 The Government has committed additional funding to the DHP fund to continue to support disabled people living in significantly adapted accommodation, including any adaptations made for disabled children.

2.5 For claimants living in specially adapted accommodation, it will sometimes be more cost-effective for them to remain in their current accommodation rather than moving them into smaller accommodation which needs to be adapted. We therefore recommend that local authorities identify people who fall into this group and invite an application for DHP.

2.6 There is no definition of significantly adapted accommodation. It is up to LAs to decide what constitutes significantly adapted accommodation, based on local knowledge and individual circumstances."

8. In that regard It was the Appellants contention that the decision under appeal was wrong and in particular breached his Human Rights in that as a disabled person he had been discriminated against in contravention of Article 14 read in conjunction with Article 1 of the First Protocol of the European Convention of Human Rights and as such it should be remedied by a different interpretation of the legislation under Article 3 of the Human Rights Act.
9. The Tribunal accepted that there may be discrimination against a disabled person. Tribunal aware that such discrimination (if any) was found in the above case of re MA as being justified as the State has a reasonable justification in the discriminatory effect of the Policy and the Tribunal reviewed on the analysis contained in that case as to the Evolution of the Executives Policy relating to the Maximum Rent Social Sector legislation. Tribunal also aware of the Court of Appeals Decision in Burnip & Ors v Birmingham City council and Ors [2012]EWCA 629. Both these cases emphasised that the Scheme involves reading together the housing Benefit Regulations and the discretionary Housing Payments as a whole and the role of DHP's in the scheme was critical.
10. The Tribunal accepted the submission that the Appellants convention rights had been breached in that as a disabled person he had been discriminated against as he has been treated less favourably as an able bodied person. This is in relation to both the ease or otherwise in moving and his need of a specially adapted house. He is also discriminated against in that the ease of him applying for the DHP is compromised. He has to venture out and considering he is in receipt of High Rate mobility that is more difficult for him than for others without that disability. He is further discriminated in that he was not in a position to take in a lodger because of his need to sleep downstairs from time to time and that as a disabled person his likelihood of getting work high. Both these last factors compromised his ability by those methods to supplement his income so the reduction in his eligible rent for housing benefit could be remedied An able bodied person would not have those restrictions.. The Tribunal had in accordance with the above cases previously accepted that such discrimination (if any) was justified as the State has a reasonable justification in the discriminatory effect of the Policy but found as a fact that in this case the appellant had been placed in a less favourable situation. He was not receiving the DHP so reading the scheme as a whole he was being discriminated against and so none of the devices suggested by the Executive in helping this disabled person were applicable and so a further remedy was required.
11. The Tribunal would not have accepted the argument over usage since it was effectively the Appellants choice not to use the room as a bedroom – he preferred to use it as a storage room but it could be used as a bedroom.
12. The Tribunal was also referred to the Bolton case (CH/140/2013 or *Bolton Metropolitan Borough Council v BF (HB)* [2014] UKUT 48 (AAC) as persuasive authority that the use a room is put to is determinative as to whether it is a bedroom
13. That case decided that a carer who had to sleep in the lounge was being provided with a bedroom. The argument in the submission is that it follows if a room is not been used as a bedroom for sleeping in it is not a bedroom. The case refers to the

dictionary definitions of a bedroom. However it does not give a closed definition of what is a bedroom. What is a bedroom is a matter for the Tribunal and this tribunal does not interpret this case as a proposition for saying that a bedroom to be called a bedroom must have a bed in it nor does it say a bedroom must be used for sleeping in. It also seems to say that a room can be a lounge and a bedroom so a bedroom can have another use.

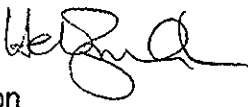
14. This Tribunal does consider that there may be occasions where a room usage has historically in the terms of the tenancy had to change because of the particular needs of the Appellant. But in this case the Tribunal is satisfied on the evidence that the alternative use for this disputed room is not essential but a matter of choice for the Appellant and prefers the Landlords indication that they are charging rent for the purposes of housing Benefit as a bedroom and so is a bedroom.
15. The Tribunal was referred to the Case of *Uretemps Ventures Ltd v Collins* [2001] UKHL 43 for the authority that the usage of the room at the time should be the determinative factor as to whether it can be called a bedroom. Paragraph 11 of the supporting judgment of Lord Bingham does state in terms that the

"Time at which it has to be judged whether premises are entitled to protection is when the action is brought. At that stage it is necessary to consider the terms of the letting, the premises let, and in my opinion, the use made of them by the tenant: see section 1(1) b of the 1988 act, which recognizes that circumstances may change during the currency of a tenancy"

16. This Tribunal rejects the argument that this case is authority for saying that as the room has another current use it is not a bedroom. *Uretemps* was dealing with the use put by a tenant to the room or rooms the subject of the tenancy and why it could be considered a dwelling in the context as to whether the tenant has the protection of the law in relation to his security of tenure. The Tribunal takes the words "the use made of them by the tenant" to refer to the whole premises and of the use made by a single room or part of the dwelling.
17. The tribunal takes the ordinary meaning of a bedroom to mean a room that is generally designated as a bedroom by the Landlord and unless there are really cogent reasons for historically changing the use of the room it continues to be available as a bedroom notwithstanding it may have another current use through the choice of the Appellant.
18. Tribunal therefore allowed the appeal on the grounds stated.

This Statement of Reasons is given under Rule 34 of the Tribunal Procedure (First Tier Tribunal)(Social Entitlement Chamber)Rules 2008

This Statement of Reasons is given under Rule 34 of the Tribunal Procedure (First Tier Tribunal)
(Social Entitlement Chamber) Rules 2008

Signed:  H Broughton Tribunal Judge	Date: 04/08/2014
<i>Decision Notice issued to all parties on 6/8/14</i>	

