



FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at **Liverpool**

on **12/08/14**

Before **Judge DJ McMahon**

Appellant:	Tribunal Ref. SC068/14/01608
	NI No.
Respondent: Sefton MBC	

DECISION NOTICE

1. The Housing Benefit appeal is allowed.
2. The decision made on 05/03/13 is set aside.
3. The Appellant's entitlement to Housing Benefit on his maximum eligible rent is not subject to reduction from 01/04/13. The Appellant and his partner, a couple, occupy a two bedroom property but, for the reasons that appear below, the Appellant is entitled to an additional bedroom.
4. The Appellant, together with his partner attended the hearing and gave oral evidence. The Appellant was represented as was the Respondent. The representatives for both parties made oral submissions to complement their detailed written submissions.
5. In essence, two grounds of appeal were advanced by the Appellant, namely, that both bedrooms were too small to be classified as bedrooms and, secondly, that the Appellant required a second bedroom in which to sleep due to the nature of his partner's disabilities. These grounds were mutually exclusive.
6. In relation to the 'bedroom size' submission, the Tribunal did not find any substance in that argument. The room in which the Appellant's partner slept was clearly properly classified as a bedroom and, indeed, it contained a double bed. This bedroom was allowed for the purposes of the Housing Benefit Regulations: The potential issue concerning size could only relate to the second bedroom in which the Appellant slept, and had slept, since he and his partner took up residence in the property in 2004. It was, therefore, clearly used, and was capable of being so used, as a bedroom for an adult. Further, in documentation before the Tribunal, the Appellant had accepted that the property had two bedrooms. The Tribunal rejected this ground of appeal as unsustainable. In any event, this ground was not pursued with any great conviction. The Appellant, in his oral evidence

stated that he was content with his current property, that he loved living there and would not want to move. This, too, further persuaded the Tribunal that there was no merit in the 'bedroom size' submission.

7. The issue in this appeal, to all intents and purposes, came down to the second ground of appeal: whether the Appellant was entitled to a second bedroom due to his partner's disabilities.
8. The Presenting Officer confirmed that the Respondent accepted that the Appellant and his partner could not share a bedroom due to his partner's disabilities and her need to accommodate medical equipment and supplies. The Presenting Officer also confirmed that the Respondent accepted that as his partner's primary carer, the Appellant had to be able to get a night's sleep. However, the Presenting Officer submitted that the Respondent had no discretion in this matter to accommodate the Appellant's needs. He submitted that the decisions in the Burnip case and in the Trengrove did not apply in this appeal (a submission accepted by the Appellant's representative), while the decision in the Gorry case only related to the case of children. He submitted that the Carmichael case (that was part of the decision of both the High Court and the Court of Appeal in the judicial review matter of MA and Others) was similar to the facts in this appeal, as it involved two adults unable to share a bedroom due to issues of disability but that while the court held that this was a case of discrimination on the grounds of disability, the said discrimination was justified.
9. The Appellant's representative submitted that since MA and Others was a judicial review matter, concerned with the policy issues behind the Regulations, this appeal should be approached and determined on its own facts, the reality being that there was no alternative but for the Appellant to sleep in the second bedroom.
10. The Tribunal accepted the disabilities from which the Appellant's partner suffered, as set out in the letter from her GP dated 14.03.2013. The GP further stated his opinion that due to these disabilities, the Appellant and his partner required separate bedrooms. The Tribunal accepted, on the balance of probabilities, in the absence of firm documentary evidence, that the Appellant's partner was in receipt of the higher rate of the Mobility component of Disability Living Allowance and the middle rate of the Care component for an indefinite period and that she was also in receipt of Employment and Support Allowance and had been placed in the Support Group for that purpose. The Tribunal also accepted that the Appellant was in receipt of Carers' Allowance.
11. The Tribunal concluded that the facts of this appeal were strongly similar to the facts in the Gorry case (save that Gorry involved two children, one of whom was disabled and unable to share a bedroom with their sibling). The court in Gorry found that, applying the Housing Benefit Regulations to deny an additional separate bedroom in those circumstances amounted to indirect discrimination on the grounds of disability pursuant to Article 1, Protocol 1 of the European Convention on Human Rights ('ECHR'), that could not be justified in relation to the discrete group that comprised disabled children. The Tribunal noted that the court in the judicial review matter of MA and Others, considering the compatibility with the ECHR of the Housing Benefit Regulations that were concerned with under-occupation of housing in respect of which public funds were expended in


the form of Housing Benefit, had to consider the position of *all* disabled people on judicial review principles, as opposed to an easily identifiable discrete group of disabled people; indeed the Court of Appeal, in relation specifically to the Carmichael applicant in those proceedings, found that Mrs. Carmichael "*is in a small and easily identifiable group of disabled persons who plainly need an extra room directly as the result of their physical disability*". The Tribunal concluded that the ultimate outcome of MA and Others did not mean that on the individual facts of an appeal before the Tribunal, in any given case, that the Tribunal could not find that the Appellant suffered from discrimination contrary to the ECHR and that such discrimination in any given set of circumstances could not be justified. While there is a clear logic in maintaining that children have a greater need for protection than adults, this simply means that Gorry cannot be automatically applied in the case of adults but not that the principle in Gorry can never be applied to adults.

12. The Tribunal was satisfied, on the facts of this appeal, that the Appellant did suffer discrimination and that it could not be objectively and reasonably justified as between a member of a couple with a disability and a member of a couple without a disability.
13. Accordingly, Regulation 13(b)(5)(a) should be read, in relation to the Appellant in this appeal, as follows In order to avoid discrimination, for the purposes of Housing Benefit, to a person such as the Appellant who is a member of a couple that includes a person in a discrete group of disabled persons:

"(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"

14. Accordingly, this appeal is allowed.

It is intended that this Decision Notice contains the full Statement of Reasons for the Tribunal's decision, pursuant to Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Signed: 	Date: 15/08/14
DJ McMahon Tribunal Judge	
	<i>Decision Notice issued to all parties on 15/8/14</i>