



FIRST-TIER TRIBUNAL

HOUSING BENEFIT/COUNCIL TAX BENEFIT

Held at Liverpool on 06.12.2013

Before S R Jones

Appellant:	Tribunal Ref. SC068/13/10123
	NI No
Respondent:	Liverpool City Council

STATEMENT OF REASONS FOR DECISION

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

1. The Appellant attended the hearing with her representative. The Local authority was not represented.
2. The tribunal found as a fact the matters set out in paragraphs 3-6.
3. The appellant is the sole tenant of _____ (the property). She had lived there since about 1994. She has two daughters. One, X, is now age 31 and Y is aged 34. The property has two rooms and a kitchen on the ground floor. One is used as a sitting room and the other as a dining room. The kitchen is too small to eat in.
4. On the first floor are three rooms and a bathroom. One of those rooms is accepted to be a bedroom for the Appellant and one is accepted to be a bedroom for Y who has always lived at the property with the Appellant since 1994. The middle rate care component of Disability Living Allowance (DLA) for day time attention or supervision has been awarded to the Appellant and to Y. In addition Y has been awarded the lower rate mobility component. The Appellant occupied one bedroom and Y the other. The other daughter, X, lives elsewhere with her partner and two children.
5. There is a third room on the first floor which was at the centre of the dispute. Since 01.04.2013 the Local Authority had classified this room as a bedroom. As there were only two people occupying the property the amount of eligible housing benefit was reduced by 14% as this was a three-bedroom property according to the local authority but there were only two occupiers.
6. Historically that third room has been used by a bedroom by Y between 1994-6, then by her sister who, however, moved between her own partner's address and the appellant's but used the third room whenever she slept at the Appellant's address. The younger sister slept in this third room – a bed was put on the floor – twice a week in order to look after Y if Y got up in the night. When the room was not being used by the younger sister in this way it was used by Y as there was a desk with a computer on it and some shelving which held various items of lego which Y liked to use. Y does not work and does not now seem to engage with any outside services as the funding for this has been withdrawn. Her main illness is that she suffers from autism and she is highly dependant in a social sense on her mother.
7. The local authority decision was challenged in a number of ways.
8. The first argument is that the younger sister was in fact caring for the Appellant, the Appellant was herself on DLA and therefore the provision of Reg B13 (5) would apply as the claimant would be

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entitled to an additional bedroom as she was then “a person who requires overnight care”. The evidence from the Appellant, however, was clearly that the care was provided by the younger sister to her sibling and not to the Appellant. That relieved the Appellant from the requirement to care for Y. The tribunal did not, however, accept that care which had the consequence of relieving the Appellant from the requirement to care for another could amount to care for the Appellant.

9. The second argument is that the third room could not be a bedroom because it was too small. A diagram was produced which shows that the room is not a complete square or rectangle. There is an alcove which accommodates the desk and computer. The representative told the tribunal that by ignoring the alcove the room has an area of 54 sq ft which is below the area specified in the Housing Act 1985 as suitable for a room for an adult to sleep in. The alcove itself has an area of about 15 sq ft.
10. The reality, however, is that historically this third room was used as a third bedroom at a time when the appellant’s children were over the age of 10 and even now it was being used as a bedroom when the younger sister stayed overnight. The tribunal did not consider that a room which has been a bedroom in the past and is still being used as a bedroom could be said not to be a bedroom simply because it is quite small.
11. The Tribunal likewise did not believe that it could be said that the room changes description throughout the week depending on whether or not the younger sister was staying. The fact that the room is used as a computer and lego room did not mean that it ceased to be a bedroom when someone was not actually in bed.
12. It was said that there was a breach of the Appellant’s human rights. Article 1 of Protocol 1 was mentioned. The tribunal accepts that housing benefit counts as a possession for these purposes. Parliament has decreed, however, that the amount of housing benefit can depend on the number of bedrooms. The tribunal did not consider that it could be said that there was a direct breach of Article 1 where the reduction had complied with the rules Parliament had ordained. This was not such a disproportionate measure: the effect of the legislative change was to reduce the housing benefit entitlement by 14%. It was not completely removed.
13. Was there discrimination for the purposes of Article 14 taken with Article 1 of the First protocol? By discrimination the tribunal means different treatment on one of the grounds specified in Article 14 which cannot be justified. Disability can be an “other status” for the purposes of that Article.
14. The bedroom rule had been applied to the Appellant as it would to anyone else with a household of the same composition. Y is treated for housing benefit purposes as a non-dependant.
15. Normally where there is a non-dependant a deduction is applied. This did not apply here because the appellant herself receives DLA. In those circumstances, because the Appellant as claimant is in receipt of the care component of DLA, Regulation 74(6)(b)(ii) of the Housing Benefit Regulations 2006 decrees that the non-dependent deduction shall not apply. There is no separate requirement for the non-dependant to be disabled.
16. To that extent the Appellant is treated more favourably than a claimant who is not on DLA. The fact that the non-dependant is on DLA is not, on its own, a reason not to apply the non-dependant deduction. There is no specific rule in Reg B13 to cover the Appellant’s situation where a non-dependant is the person requiring overnight care. The amendments in SI 2013 No 2828 (HB and UC (Size Criteria)(Miscellaneous Amendments) Regulations 2013) which come into force on 04.12.2013 do not cover this situation nor does the issue decided by the first-tier tribunal in Glasgow in SC100/13/11351 (a copy of this was provided on the day of the hearing).
17. The argument is that a Non-dependant should be treated in the same way as the claimant or claimant’s partner who requires overnight care in accordance with Reg B13 (5) where a “person who requires overnight care” is defined in regulation 2.
18. The tribunal agreed that the comparison should be between a single claimant or couple one member of whom or both requires overnight care and the claimant appellant who has a non-dependant in her household (who also happens to be her daughter) who requires overnight care. The Tribunal considered

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that the two were sufficiently analogous to require justification for the different treatment because the difference in treatment impacts on the amount of the reduction in housing benefit that the claimant receives and both comparators require overnight care, as defined. The reason for the reduction is the number of bedrooms. If the non-dependant requires overnight care the tribunal did not see how this was significantly different to a claimant or partner requiring overnight care because the impact is on the claimant's housing benefit even though it is not the claimant's disability which is at issue.

19. What seems to be at issue is the correct treatment of the requirements of a member of the household of the claimant who receives overnight care on grounds of disability. The Tribunal accepts that the Appellant's daughter is such a person but as a non-dependant she is currently excluded by the regulations. A non-dependant is, by definition in Reg 3 of the Housing Benefit Regulations, a person who normally resides with the claimant or with whom the claimant normally resides. A need to make an allowance for the disability of a claimant when it comes to a non-dependant is a matter which has already been recognised by the legislation as Reg 74 (6) (b) demonstrates.
20. The local authority has not argued that the younger sister does not perform the service claimed and has not offered any justification for the difference in treatment between a single claimant or member of a couple who requires overnight and a non-dependant in the household of the claimant who requires such overnight care.
21. Section 7 of the Local Authority's response to the appeal shows that the Local Authority is sympathetic to the Appellant's plight but that section does not contain any justification for the different treatment other than to say that it reflects current policy.
22. This tribunal could have adjourned proceedings to request that the Secretary of State should be joined as a party and produce a justification for the different treatment. The Tribunal decided not to do so because the tribunal did not wish to delay matters unduly and there is a possibility that the Secretary of State would not wish to be involved at the level of the First-tier tribunal whose decisions are of no precedent value.
23. The tribunal was satisfied that there was, therefore, discrimination under Article 14 taken with Article 1 of the First protocol on the grounds of disability, even though the disability was that of the non-dependant. The difference in treatment was not justified. A member of the claimant's household who requires overnight care is treated differently depending on whether the disabled person is the claimant or claimant's partner who is the person requiring the care or someone else. The impact is, however, on the appellant's housing benefit. The tribunal therefore reads into Regulation B13 (5) the words "or a non-dependant" after the word "partner".
24. There was a further argument that the local authority decision involved a breach of *Y* right to family life under Article 8. The Tribunal did not believe that this had been made out. In the first place this was not *Y's* appeal: it was not her housing benefit which was at stake. In the second the tribunal did not consider that the imposition of a 14% reduction in housing benefit imposed a realistic prospect that the Appellant would require her daughter to leave the house: this simply would not happen. In the event the tribunal has allowed the appeal on other grounds.

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: S R Jones <i>R</i>	Date: 10.12.2013
<i>Statement issued to</i>	<i>Appellant on:</i>
<i>Typist:</i>	<i>Respondent on: 10.12.13</i>