



**FIRST-TIER TRIBUNAL
SOCIAL ENTITLEMENT CHAMBER**

Held at **Birkenhead**

on **28.2.2014**

Before Judge C P Anderson

Appellant:	Tribunal Ref. SC062/13/0342B
	NI No
Respondent: Local Authority	

DECISION NOTICE

The Housing Benefit appeal allowed.

The decision made on 7.03.2013 is set aside.

The property at is not under occupied. Accordingly the appellant is not liable to a reduction in his entitlement to Housing Benefit from 1. 4. 2013.

SUMMARY OF REASONS.

Mr. moved into his home in 2005, on marriage to his wife. She had always occupied the property as a single person, from 1997. Although, her children visited occasionally. The property was let as a 3 bedroom property. Mrs. has never used one of the upstairs rooms as a bedroom, it has always been used as a storage room, as she considered it too small to be used as a bedroom. It was 7' 8" by 9' 5". She did however, use a second upstairs room as a bedroom as well as her own bedroom, this was so her children could stay over when they visited.

Mrs. unfortunately died. When this happened Mr. emptied the room of the bed. He then had disability issues of his own, and changed the room to a gym in order to be able to try to maintain his fitness. The room has not been used as a bedroom since before the date of the decision, although a blow up bed has been put in there on rare occasions, when someone has stayed overnight.

The tribunal was satisfied, on balance of probabilities, on both the written and oral evidence of the appellant and the written and oral submissions of his representative, that, at the date of the decision under appeal, two of the upstairs rooms should not be classed as bedrooms. This was because one of the rooms had never been used as a bedroom, and at the date of decision, the other room had been changed into a gym. Whilst, the usage may have been

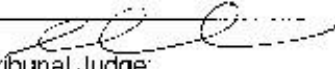
changed shortly before the date of the decision. The House of Lords in *Uratemp Ventures v Collins* (albeit in a context of different legislation) held that the usage of a room defines what it is and that this depended on the facts at the time the decision was made. The court also recognised that the housing provisions with which it was concerned in that case, recognised that circumstances might change during the currency of a tenancy. The tribunal also relied, in arriving at this conclusion, on Upper Tribunal Decision (Reference CH140/2013) applied by the First Tier Tribunal in Monmouth (Reference SC922/13/05323). This of course means that it is open to the Respondent to make a fresh decision based on a subsequent change of use.

The Presenting Officer from the local authority, asked the tribunal to consider the other houses in the locality, and whether they were occupied by other family members and used all the upstairs rooms as bedrooms. The tribunal did not accept this argument, as the property was originally let to Mrs. Steer as a single person, without any children or partner. She was allocated a house which had 3 upstairs rooms. Therefore did not accept it relevant how other houses were occupied. Or, how they had been allocated.

It was also submitted, on behalf of the appellant, that one disputed bedroom was of insufficient floor area to be classified as a bedroom. In light of the tribunal's decision based on usage, it was unnecessary to make finding in relation to that issued.

While other grounds of appeal had been advanced by the appellant it was agreed at the hearing the net issue was the usage and size of the disputed rooms.

This decision should be accepted as a full statement of reasons for the purposes of any appeal to the upper tribunal.

 Signed Tribunal Judge: C.P. ANDERSON.	Date: 28. 2. 2014
Decision Notice issued to	Appellant on: 28.2. 2014. Respondent on 28. 2. 2014.