



119

**FIRST-TIER TRIBUNAL****SOCIAL SECURITY**

Held at **TAYLOR HOUSE** on **18/11/13**

Before **Judge L K Gibbs**

Appellant: Ms [REDACTED]	Tribunal Ref. [REDACTED]
Respondent: Local Authority	NI No [REDACTED]
Second Respondent:	

**STATEMENT OF REASONS FOR DECISION**

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

1. This is an appeal against a decision made by Islington Local Authority on 3 March 2013. The decision was to reduce [REDACTED]'s eligible rent by 25% with effect from 1 April 2013 because she was under occupied by 2 bedrooms.
2. The Local Authority informed the Tribunal that it would not attend the appeal hearing but was content for the appeal to proceed in their absence. I considered Rule 2 and Rule 31 of the Tribunal Procedure (First-tier Tribunal) (SEC) Rules 2008 and found that in the circumstances of the case it was appropriate to proceed in the respondent's absence. The appellant attended with her representative.
3. I had before me a bundle of 105 pages.

Findings of fact

4. The appellant lives at [REDACTED] This has been her home for 24 years.
5. This is a property with 3 rooms upstairs, 2 of which are used as bedrooms.
6. The third upstairs room measures 42 square feet and is used as a storage room.
7. The appellant is the mother of [REDACTED] (D.O.B. [REDACTED]/81). She has two other children who do not live at the property.
8. [REDACTED] has severe learning disabilities, epilepsy and behavioural problems including being without speech and doubly incontinent.

9. Since he was 8 years of age the appellant has been unable to offer her son the level of care that he requires on a day to day basis and consequently he has been cared for outside of his family home.

10. [REDACTED] has always regularly returned to his family home.

11. He has been cared for at his current address of [REDACTED] for 8 years.

12. The appellant visits him two days a week.

13. He returns to his family home every Wednesday and stays for 2 nights, returning to [REDACTED] on Friday.

14. His bedroom is specifically adapted for his needs.

15. His behaviour at home is markedly improved.

#### Reasons and conclusions

16. The respondent's position is that because the appellant's son is in a residential care home ([REDACTED]) he is not part of her household and consequently her Housing Benefit should be reduced by 25%. Following an amendment to the Housing Benefit Regulations 2006 the respondent must determine the maximum rent by reference to the number of bedrooms in a property and the amount of bedrooms to which a person is entitled. Regulation B13 (5) sets out:

*(5) The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home (and each person shall come within the first category only which is applicable) –*

*(a) a couple (within the meaning of Part 7 of the Act);*

*(b) a person who is not a child;*

*(c) two children of the same sex;*

*(d) two children who are less than 10 years old;*

*(e) a child,*

*and one additional bedroom in any case where the claimant or the claimant's partner is a person who requires overnight care (or in any case where each of them is)."*

17. [REDACTED] is not a child (Regulation B13 (5)(b)), and the question for me is whether I am satisfied that he occupies the appellant's dwelling as his home. Although Regulation 7 of The Housing Benefit Regulations 2006 defines the circumstances in which a person is or is not to be treated as occupying a dwelling as his home this is in specific reference to a person's entitlement to Housing Benefit. In this situation I must consider [REDACTED]'s position although it is not *his* entitlement to Housing Benefit that is in issue, and given that the 2012 Amendment Regulations could have but did not either refer to this or provide its own definition I do not consider that it is appropriate to place weight on the definitions in Regulation 7 of The Housing Benefit Regulations 2006.



18. In my view this is a question that can only be answered on a case by case basis with specific reference to the particular facts of the. In this appeal these are that [REDACTED] spends the majority of his time living at [REDACTED], not at the appellant's address. In such circumstances can he be said to occupy the appellant's address as his home? In my view he can. I find that Regulation B13 does not define occupation by way of the time spent at a property, and with the inclusion of the word "home" I find does not require that an individual has only one address, but that the claimant's address is the individual's home (which, taking the ordinary meaning of the word is "*the place where one lives permanently, especially as a member of a family or household*").
19. I consider that there is a distinction between a scenario in which an adult child chooses to move out of family home and establishes an alternative residence. In such circumstances, even if he visits home took place on a regular basis I would find that his decision to move out and take on alternative accommodation was evidence that he no longer occupied his previous family home notwithstanding any emotional attachment that he may continue to have to his family 'home'. In my view it was this type of scenario that the amendments to The Housing Benefit Regulations were intended to address regarding the issue of under occupancy.
20. I consider that the circumstances in the appeal before me are very different to the above scenario. I find that [REDACTED] did not choose to leave his family home (indeed he is unable to make such a decision) and the decision was reluctantly made by the appellant because of Steven's extensive care needs. However, in her view [REDACTED]'s home remained with her, and I find that [REDACTED] has been the only consistent place of residence for [REDACTED] since he was 8 years of age. It is to this address that he has always returned since he was 8 years of age, and is in which he has his own adapted bedroom.
21. Further, although [REDACTED] is unable to express any view about where he perceives his home to be I have placed significant weight on both the appellant's oral evidence and the medical evidence before me that his behaviour shows that he is most happy and relaxed at [REDACTED], in contrast to his behaviour at [REDACTED] where there have been incidents of [REDACTED] harming himself because he is stressed. I find that for [REDACTED] [REDACTED] is a familiar place and is where he comes home to, from [REDACTED] where he has to live because of his care needs.
22. Although I acknowledge that [REDACTED] does not "occupy" [REDACTED] for the majority of the time for the reasons set out above I do not consider that this means that he cannot occupy the property for the purposes of Regulation B13. I do not consider that "occupy" has the same meaning as "normally resident" and on the basis of the evidence before me I consider that [REDACTED]'s time at [REDACTED] can be considered respite care whilst his time at [REDACTED] [REDACTED] is the time that he occupies in his mother's house as his home.
23. For these reasons I therefore find that the appellant is entitled to the second bedroom in her property on the basis that [REDACTED]'s occupation satisfies Regulation B13 (5)(b).
24. I must now consider the third upstairs room. The appellant claims that this room is 42 sq.ft. and the respondent has not disputed this. The word "bedroom" is not defined in The Housing Benefit Regulations 2006 or the 2012 Amendment Regulations and this is a matter of fact to be determined by me based on the evidence.

122 25. Firstly, I place weight on the fact that the room is not used as a bedroom. Secondly I place weight on the fact that given the (undisputed) size of the room it falls below the size of 50 sq.ft. which is the minimum size of room taken into account when considering the overcrowding space standard. For these reasons I do not consider that this room is a bedroom which can or should be taken into account when assessing whether the number of bedrooms in the dwelling exceeds the number to which the claimant is entitled.

26. For these reasons I allow the appeal. I do not consider that the appellant should be subject to any reduction in her Housing Benefit.

27. 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: <b>MS L K GIBBS</b>	Date: 6 January 2014
Statement issued to	Appellant on: } 8 Jan 2014 Respondent on: } D. Stone



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**SUBMISSION ON BEHALF OF A**

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1. The Appellant has appealed against the decision of 03/03/13 to reduce her eligible rent by 25% following the application of Regulation B13 of the Housing Benefit (Amendment) Regulations 2012 because she is deemed to have 2 spare bedrooms.
2. The facts of the case are set out in our letter of appeal, with attached supporting evidence (bundle, p80).

**Grounds of appeal**

3. The second and third bedrooms in Mrs A's home have been wrongly classified as spare bedrooms. One bedroom is that of Mrs A's severely disabled adult son, B. The other, a boxroom, is used for storage of B's clothes and bulk deliveries of incontinence pads, and to dry laundry (of which there is more than in an average household due to B's incontinence).
4. Regulation B13 of the Housing Benefit (Amendment) Regulations 2012 is incompatible with Mrs A's and B's rights under Part I Article 8 and/or Article 14, and Protocol 1, Article 1 of the European Convention on Human Rights (ECHR), and thus unlawful under section 6 of the Human Rights Act 1998.
5. Article 8 of the European Convention on Human Rights (the right to family life), requires the existing level of Housing Benefit to be preserved in order to enable the family life to continue.
6. Regulation B13 of the Housing Benefit Regulations is discriminatory under Article 14, (in conjunction with Article 8) of the ECHR on the basis that it indirectly discriminates against Mrs A and her son, B, on the grounds of his disabilities.
7. The Local Authority's interpretation of Regulation B13 is a breach of Protocol I, Article I (the right to peaceful enjoyment of possessions).

**Regulation B13 of the Housing Benefit (Amendment) Regulations 2012  
Part I, Article 8 and Article 14 of the European Convention on Human Rights (ECHR)  
Part II, Article 1 of the ECHR  
Section 6 of the Human Rights Act 1998**

8. Reg B13, s5, of the HB Regs provides:

*The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home (and each person shall come within the first category only which is applicable)—*

- (a) a couple (within the meaning of Part 7 of the Act);
- (b) a person who is not a child;
- (c) two children of the same sex;
- (d) two children who are less than 10 years old;
- (e) a child,

*and one additional bedroom in any case where the claimant or the claimant's partner is a person who requires overnight care (or in any case where each of them is)."*

9. Part I, Article 8 (*Right to respect for private and family life*) provides:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

10. Part I, Article 14 (Prohibition of discrimination ) provides:

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

Article 14 of ECHR prohibits that which:

- a) *treats a person less favourably than others in similar situations on the basis of a particular characteristic;*
- b) *fails to treat people differently when they are in significantly different situations; or*
- c) *applies apparently neutral policies in a way that has a disproportionate impact on individuals or groups.*

11. Part II, Article 1 (Protection of property) provides:

*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

12. Section 6 of the Human Rights Act 1998 (Acts of public authorities) provides:

- (1) *It is unlawful for a public authority to act in a way which is incompatible with a Convention right.*
- (2) *Subsection (1) does not apply to an act if—*
  - (a) *as the result of one or more provisions of primary legislation, the authority could not have acted differently; or*
  - (b) *in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.*
- (3) *In this section "public authority" includes—*
  - (a) *a court or tribunal, and*
  - (b) *any person certain of whose functions are functions of a public nature,*

*but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.*

**B's bedroom**

13. The LA have determined that B's bedroom is a 'spare' bedroom. They rely on Reg 3 of the HB regulations, which defines a non-dependant as anyone who 'normally resides with' a claimant. It is submitted that the LA have not applied the correct legal test, and that they should have considered the wording of Reg B13, where the test is whether a person occupies a dwelling as their home.

14. It is submitted that the Housing Benefit regulations do not define the meanings of 'occupy' and 'home'.



15. The letter from the manager of the care home where B resides for part of the week states '*B has considered [home address] home for 24 years*'.
16. B's bedroom has been specially adapted for his needs, specifically by installing a split 'stable' door, to enable Mrs A to get into the room if B is lying down behind the door. This is particularly important if he has a fit and needs urgent attention.
17. It is not possible for B to live at home all the time due to the extent of his 24-hour care and supervision needs, but it is important for his and Mrs A's well-being that he spend as much time as possible at home.
18. Mrs A has had reason to be concerned about the quality of care B receives at Wray Court. For example, recently he has come home with multiple unexplained saucer-sized bruises, despite no events or incidents that could have given rise to such bruises being recorded by staff.
19. In *AM v SSWP (IS)* [2011] UKUT 387 (AAC) it was accepted that '*it is possible for a person to be resident in more than one place at the same time*' and held that '*It is a question of fact whether the quality of a person's stay in a particular dwelling constitutes it as a home for the person concerned; or alternatively is only a place where that person transiently or temporarily lives.*'
20. It is submitted that B does occupy [home address] as a home, even though he would not be defined as a non-dependant under Reg 3.

### **Boxroom**

21. The Housing Benefit Regulations do not define the meaning of the 'bedroom'.
22. The LA have included in their submissions the space standard regulations as set out in the Housing Act 1985 (bundle, printed page no 12) but make no reference to this particular legislation.
23. Please find attached confirmation from Islington Council that it applies the standard 50 square feet to define a room as a bedroom. Mrs A is a council tenant. It is submitted that if the LA does not accept the measurements supplied by Mrs A, as set out in our letter of appeal, they should make arrangements for the property to be inspected by an appropriate officer. We note that a number of Local Authorities have made it a policy not to take 'box rooms' into account when considering Reg B13. It is inconsistent that Islington Council's Housing Department adopts the space standard regulations in defining the number of bedroom, but they appear not to have been accepted or applied by the Housing Benefit department.
24. For the past 20 years or so the boxroom has been used for storage of B's belongings and the bulk deliveries of continence aids, and to dry laundry. His accommodation at Wray Court does not have sufficient space to store more than the clothes he needs for the particular season of the year.
25. The Tribunal is respectfully referred to the recent decisions of Tribunal Chair Simon Collins QC in which he held that it is '*relevant to have regard to statutory space standards*'.
26. With regard to the description of rooms as bedrooms, Mr Collins held that although the council was entitled to rely on the landlord's description of the property in line with government guidance, it was not 'determinative'. On this basis an appeal regarding usage of rooms was allowed. It is submitted that the same reasoning applies to the size of rooms.
27. In a case relating to a blind Housing Association tenant in the London Borough of Westminster, the Tribunal Judge held that 'The term 'bedroom' is nowhere defined [in the relevant regulations]. I apply the ordinary English meaning. The room in question cannot be so defined'. The appeal was allowed on the basis that a room classified as a second



bedroom had never been used as one and had always been where equipment helping the tenant to lead a normal life was kept.

28. It is submitted that on the grounds of its small size and its use the boxroom does not constitute a bedroom within the meaning of Reg B13.

#### **Article 8 of ECHR – right to family life**

29. It is submitted that Reg B13 para (5) can be interpreted so as to include the nature of B's occupancy within the meaning of the regulations. Not to do so would be incompatible with Mrs A's and B's rights under Article 8 of the ECHR.
30. The medical evidence provided with our appeal indicates that Mrs A's has a special understanding of her son's needs, and ability to manage his behaviour, based on her lifelong experience of looking after him. There are suggestions that her techniques be adopted by the professional carers (eg serving meals on a tray).
31. B's inability to cope with changes to his environment is such that he would not cope if his mother had to move to a new property. If Mrs A had to move out of the borough to find cheaper appropriately-sized accommodation, there would be difficulties providing suitable and affordable transport to enable B to travel there safely. Equally it would be more difficult for Mrs A to travel to see B, and for her to get there quickly in the event of an emergency.
32. Moreover, if Mrs A did not have a bedroom for B he would not be able stay 'at home' with his mother, and would become wholly institutionalised, which would be detrimental to his quality of life and that of his mother.
33. The Tribunal are also asked to take into account that Mrs A herself has health problems, including psoriasis, panic attacks and depression, in addition to having very limited literacy skills. She instructs that her psoriasis, which normally affects her scalp, is exacerbated by stress, spreading to other parts of her body. She says that she has to use cabs because of the panic attacks. It is submitted that her physical and mental health would inevitably deteriorate if she were deprived of her caring role at the long-term family home, as B's mother. It is submitted that the adverse impact of the reduction to Housing Benefit entitlement, by virtue of the LA's interpretation of Reg B13 is of such a nature and to such an extent, that Article 8 is clearly engaged. The effect of the bedroom tax will be to cumulatively, and disproportionately, impact on the quality of life enjoyed by Mrs A and B for whom she is a carer. Article 8 of the European Convention on Human Rights (the right to family life), requires the existing level of Housing Benefit to be preserved in order to enable the family life to continue.
34. Whilst a Discretionary Housing Payment (DHP) may be available to Mrs A, any award is discretionary in nature and not guaranteed. A DHP may be available for a limited period only, as the amount available to local authorities is significantly less than the amount deducted from the Housing benefit budget through Regulation B13.

#### **Article 14 (& Art 8) ECHR – without discrimination**

35. It is submitted that Regulation B13 of the Housing Benefit (Amendment) Regulations 2012 indirectly discriminates against a disabled person and their carers, as the failure to allow a bedroom for a disabled person with split residency arrangements has a disproportionate impact on disabled people.
36. It is further submitted that this discrimination has no objective or reasonable justification, and the effect on B and Mrs A, and similar individual cases, has a disproportionate impact on their right not to be discriminated against and their right to family life.
37. The Tribunal is referred to Stec v United Kingdom (2006) 43 EHRR 1017. In that case women suffered a reduction in certain state benefits earlier than men because



they reached state pension at 60, and men at 65. The Court repeated the general principle that "A difference of treatment is, however, discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised."

38. The bedroom criteria measure introduced through Regulation B13 was announced by the government in the June 2010 budget. This HB reform and other welfare reforms were part of the government's deficit reduction strategy. However, Reg B13 impacts on certain groups of the poorest individuals in society, and the affect of the reduction to their Housing Benefit is severe on a personal level, and is disproportionate to the aims sought to be realised by the government.
39. It is submitted that Regulation B13 of the Housing Benefit (Amendment) Regulations 2012 is also discriminatory on the grounds of age, social origin, other status and sex, and therefore violates Article 14 of the ECHR. Regulation B13 applies only to tenants in social housing, (who by definition are from a low socio-economic group) and not to those in the private rented sector or indeed those who rely upon housing costs to meet the responsibility of mortgage payments. It also applies only to those of working age, and not those of pension age or over.
40. The application of Regulation B13 places a disproportionate burden on a relatively small group of people, with often drastic outcomes, including having to move home and subsequent interference with the ability to accommodate family members, or suffer unacceptable hardship.
41. Whilst protection of the public purse may be a legitimate community concern, the excessive additional financial burden placed on the appellant by this reduction to Housing Benefit, cannot be justified and is disproportionate. This reduction has been implemented at the same time as other reductions in welfare benefits affecting Mrs A, including an 8.5% reduction in the amount of support received towards Council Tax, through the localisation of the Council Tax Support Scheme, and limits on the uprating of welfare benefits to 1%, which is below projected inflation, and amounts to a 4% cut in benefit income in real terms.
42. It is submitted that protection of the public purse is not satisfied via the determination of the Maximum Rent (Social Sector) as the Discretionary Housing Payment fund has been increased proportionately, Local Authorities, including Islington Council, have pledged not to recover tenancies where rent arrears are wholly attributable to the "bedroom tax", and to renew automatically Discretionary Housing Payments awarded for a 12-month period. Therefore the desire for greater mobility within the social rented sector cannot be achieved in any real sense as a result of the tax.
43. Article 14 of ECHR prohibits that which: b) fails to treat people differently when they are in significantly different situations; and/or c) applies apparently neutral policies in a way that has a disproportionate impact on individuals and groups. It is submitted that Mrs A's and B's situations are significantly different, and that the LA's interpretation of Reg B13 has a disproportionate impact on them.

#### **Protocol 1, Article 1**

44. It is submitted that the reduction of Mrs A's Housing Benefit through invoking Reg B13, violates her right to peaceful enjoyment of possessions. Article 1, Protocol 1, the right to peaceful enjoyment of possessions, is engaged in conjunction with Articles 8 & 14. Mrs A's entitlement to Housing Benefit amounts to a proprietary interest and falls within the interpretation of the concept of 'possessions'.
45. The Tribunal are referred to the Kjartan Asmundsson v. Iceland, judgement of 12 October 2004 which held that the withdrawal of a disability pension due to a change in the law was a violation of Article 1 of Protocol No1, and was of discriminatory character.

46. Were Mrs A to move to a smaller property, she would not have space to store B's belongings and continence aids. It is submitted that this would constitute a violation of Stephen's right to peaceful enjoyment of possessions.

### **The Human Rights Act**

47. Section 6 of the Human Rights Act 1998 provides: (1) It is unlawful for a public authority to act in a way which is incompatible with Convention rights.
48. Application of Reg B13 in the individual circumstances of Mrs A's case is clearly incompatible with her rights under the European Convention on Human Rights.

### **Conclusion**

49. We invite the Tribunal to find that Regulation B13, and the reduction in payments of Housing Benefit to Mrs A do not apply in this case. She has no spare bedrooms as her disabled adult son occupies a bedroom as his home, and the other 'spare bedroom' does not satisfy the definition of a bedroom by virtue of its size and usage.
50. If the Tribunal is unable to uphold our client's appeal on the law as it stands we ask that the Tribunal grant permission for the Appellant to appeal to the Upper Tribunal to seek a declaration of incompatibility with Convention rights.

**Islington Law Centre**

**12 November 2013**