



## FIRST-TIER TRIBUNAL

### SOCIAL ENTITLEMENT CHAMBER

Held at Newcastle on 21 January 2014

Before Judge D Gray

|                    |  |               |            |
|--------------------|--|---------------|------------|
| Appellant:         | Mr [REDACTED]                            | Tribunal Ref. | [REDACTED] |
|                    |  | NI No         | [REDACTED] |
| Respondent:        | Secretary of State for Work and Pensions |               |            |
| Second Respondent: |  |               |            |

### STATEMENT OF REASONS FOR DECISION

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

1. Mr [REDACTED] appealed against a decision by Northumberland County Council that with effect from the 1 April 2013 his eligible rent for Housing Benefit purposes should take into account a 25% reduction due to what is colloquially known as 'the bedroom tax'. Mr [REDACTED] attended the appeal hearing together with [REDACTED] on behalf of the County Council. The Tribunal is grateful for their contributions.
2. The domestic background to the case was not in dispute. Mr [REDACTED] told the Tribunal that he moved into local authority housing in about 2007 when the property was built at [REDACTED]. At that time he was married and this was the family home. He and his then wife had one [REDACTED] who is now [REDACTED] old. The house is a 3 bedroomed property. Mr [REDACTED] and his wife separated [REDACTED] years ago and are now divorced. There is no formal Court Order in respect of custody for [REDACTED] and it would appear that the arrangements for his care and support had been amicably agreed between his parents. The Tribunal understands that Mr [REDACTED]'s ex-wife also lives in [REDACTED] and relations between them are cordial.
3. In accordance with amendments to the Housing Benefit Regulations from 1 April 2013 Mr [REDACTED] is subject to a potential reduction in the amount of rental support he receives by way of Housing Benefit compared to the actual rent payable for his premises. The only issue in the appeal was whether or not the fact that he continued to occupy a 3 bedroomed property by himself meant that the local authority under the amended legislation was entitled to restrict the amount of Housing Benefit payable in respect of his rent by either 14% or 25%.
4. Mr [REDACTED] readily accepted that as the former matrimonial home now occupied solely by himself is a 3 bedroom property he is subject to the 14% reduction which is applicable for property which has what is deemed to be one spare bedroom. He strongly maintained however that he should not be subject to the 25% reduction which will be applicable to properties where there are 2 or more spare bedrooms as one of his bedrooms is in fact regularly occupied by his [REDACTED]

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5. The Tribunal noted the schedule of visits provided by Mr [REDACTED] at page 55 of the appeal papers. [REDACTED] on behalf of the local authority accepted that in practice [REDACTED] stays the majority of the time – 4 nights a week – on average at [REDACTED] father's property. Mr [REDACTED] told the Tribunal that his ex-wife works and therefore for convenience [REDACTED] will tend to stay for longer periods during the school holidays and in the summer, for example, may stay for 2 weeks or so at a time. The Tribunal accepts from Mr [REDACTED]'s evidence that [REDACTED] does spend the majority of time at Mr [REDACTED]'s though custody including accommodation can fairly be said to be on a 'shared' basis between both parents.
6. The Tribunal also accepts that one bedroom at [REDACTED] is exclusively available to [REDACTED]. It contains [REDACTED] bed and [REDACTED] personal possessions including TV, CD player, toys and clothes. In the Tribunal's view it is clearly not available for use by anyone else and would certainly not, for example, be available for use by a lodger. It is essentially [REDACTED]'s room as presumably is the case with one room at [REDACTED] mother's property.
7. The implication of these findings is that one bedroom clearly exists for [REDACTED] at both properties.
8. In the Tribunal's view, therefore, given these circumstances the Tribunal finds that Mr [REDACTED] is entitled to have one bedroom for his child [REDACTED]. It follows, therefore, that there is effectively only one spare room – the third bedroom – which Mr [REDACTED] did confirm was large enough to take a bed, a wardrobe and a chest of drawers. On that basis the appropriate reduction would be 14% rather than the 25% as maintained by the local authority.
9. [REDACTED] very fairly indicated that it was a difficult situation to assess but the guidance the local authority receive is that, in situations such as this where there is a "shared" provision of accommodation for a child, the parent who is in receipt of Child Benefit should also be the one who benefit from the so called bedroom tax and the other parent should be subject to the restricted rent. In other words both parents should not be able to benefit. As Mr [REDACTED] conceded that Child Benefit was in fact payable to his ex-wife this meant, in the local authority's view, that Mr [REDACTED] should be classified as having two spare bedrooms.
10. In the Tribunal's view this approach also failed to take into account any implications of the Human Rights Act and in particular Article 8 – the right to family life. In the present circumstances this right applies to all three parties ie father, mother and [REDACTED]. All three of them have both individual and collective rights to a family life.
11. In the present case the Tribunal accepts that Mr [REDACTED] has done his utmost to minimise for [REDACTED] the consequences of the breakup of the marriage and has – as no doubt has his ex-wife – done what he can to make life appear as normal as possible between the parents for their [REDACTED]. This effectively means that [REDACTED] has two homes. It also means that in respect of both homes [REDACTED] has his own room and this should be recognised by the authorities. The consequences of failing to do so would in practice mean that in the present case Mr [REDACTED] would be expected to move into a one bedroomed property. In addition to losing what has been his home for some [REDACTED] years and was the home where [REDACTED] also grew up it will in practice mean that there was nowhere for [REDACTED] to sleep if [REDACTED] visited [REDACTED] father with consequences which would affect all three individuals. In respect of father, mother and [REDACTED] the Tribunal considers that this will be a serious interference with each one's right to family life and the inevitable consequences of following the local authority's decision – certainly in this particular case – will be thoroughly disproportionate. The only way of respecting in this case Mr [REDACTED]'s right to family life and that of his [REDACTED] and his ex-wife is to recognise in the context of this appeal that [REDACTED] should be treated as a child within the household of Mr [REDACTED]. Mr [REDACTED] is therefore – under the amended legislation – entitled to have two bedrooms and should therefore only be subject to the 14% reduction in his rental assessment in respect of the third spare bedroom.
12. On that basis Mr [REDACTED]'s appeal is allowed and his eligible rent should be reassessed accordingly.

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|-----------------------------------|--------------------------|
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| Date of Hearing: 24 February 2014 |                          |

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.

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| Signed Tribunal Judge: David Gray | Date: 7.3.2014  |
| Statement issued to<br>[REDACTED] | Appellant on: } 7/3/14 CD.<br>Respondent on:<br>Date from typist (HET) 6.3.14 |