

FIRST-TIER TRIBUNAL
SOCIAL ENTITLEMENT CHAMBER

Held at LIVERPOOL

on 26/02/2014

Before Judge D J McMahon

Appellant: [REDACTED]	Tribunal Ref. SC068/13/12831
	NI No [REDACTED]
Respondent: Liverpool City Council	

DECISION NOTICE

1. The Housing Benefit appeal is allowed.
2. The decision made on 11/03/2013 is set aside.
3. The Appellant's property at [REDACTED] a 3 - bedroomed property is not under-occupied. Accordingly, the Appellant is not liable to a reduction in his entitlement to Housing Benefit from 01/04/2013.
4. 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, the 'third bedroom' should not have been classified as a bedroom. This was because, since one of the Appellant's sons, aged 14, moved out of the property in July 2012, the room was no longer used as a bedroom but, instead, was used as a playroom for the Appellant's grandchild and general storage. While that usage may well have changed again since November 2013, the Tribunal had to consider the usage of the room at the date of the decision. The House of Lords 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 the Upper Tribunal Decision (Reference CH140/2013), applied by the First Tier Tribunal in Monmouth (Reference SC992/13/05323). This of course means that it is open to the Respondent to make a fresh decision based on a subsequent change of usage.
5. It was also submitted, on behalf of the Appellant, that this 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 issue.

6. While certain other grounds of appeal had been advanced by the Appellant, it was agreed at the hearing that the net issue was the usage and size of the disputed room.

Signed Tribunal Judge:
D J McMahon

Date: 26/02/2014

Decision Notice issued to

Appellant on: 26/02/2014

Respondent on: 26/02/2014