



FIRST TIER TRIBUNAL

Held at: Rochdale
Before: District Tribunal Judge O'Hara

On: 6 May 2014

Appellant: Mr [REDACTED]	Tribunal Ref: SC947/13/02895 [REDACTED]
Respondent: Rochdale MBC	

STATEMENT OF REASONS FOR DECISION

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

1. This Statement concerns a decision that the appellant's entitlement to housing benefit should be reduced with effect from 1 April 2013 because of what is known as the bedroom tax. He was living in a three bedroomed house registered with a social landlord. He is a single man albeit his teenage daughters sometimes visit him. He asserted that one of the rooms was not used as a bedroom and that he needed the other one for his daughters to stay in when they visited. He also said that he was disabled and that the change in the law was discrimination on the grounds of his disability, single parent status and gender. He submitted that his human rights to family life and gender equality had been breached, the latter on the basis that the change in the law indirectly discriminated against men who are the minority of lone parent carers.
2. The decision which I made on 6 May 2014 was to allow the appeal to the extent that I accepted that one of the rooms was not used as a bedroom and was, in any event too small to be used as such. RMBC had imposed a reduction of 25% which I said should be reduced to 14% for having one unoccupied bedroom. I did not accept his discrimination arguments and did not therefore allow the appeal concerning the reduction of the remaining 14 % for having one unoccupied bedroom. The appellant now seeks an explanation for that decision.
3. The hearing had been postponed from 29 September 2013 at the appellant's request pending the application for judicial review of the HB Amendment Regulations brought by Liberty on behalf of 3 lone parents and to give the appellant an opportunity to provide further evidence about the dimensions of the smallest bedroom. This challenge brought by Liberty is a judicial review of the Housing Benefit (Amendment) Regulations on the basis that they contravene the European Convention on Human Rights, Articles 8 and 14 where lone parents argue that they need a spare room for their children to stay in when visiting them.
4. By the time of the hearing in May 2014 I was aware that the Court of Appeal had decided in **MA and others v SSWP** [2014]EWCA Civ 13 that whilst the policy behind the change in the law in the 2012 Regulations did discriminate against disabled people contrary to Article 14 of the European Convention on Human Rights, the discrimination was not manifestly without reasonable foundation and therefore justified. This was because the Court found that the policy objective of the Coalition Government which came to power in 2010 was to 'control the cost of the social security budget'. To that end, the Secretary of State was entitled to take the view that it was not practicable to add an imprecise class of persons (those who need extra bedroom space by reason of disability) to whom the bedroom criteria would not apply. Other reasons are given at paragraphs 71 to 75 of the Judgement but for these purposes the preceding sentence is a summary.

5. The appellant in this case is in receipt of Employment Support Allowance indicating that he has passed the Work Capability Assessment and is incapable of work by reason of physical disablement. He says that he has spinal stenosis which is narrowing of the spinal canal. He has not produced any medical evidence. I decided that he was not disabled for the purposes of a claim of disability discrimination, as alleged by him.

6. The remaining aspects of his claim were considered. This included an application for a further postponement of the hearing in view of the fact that permission to bring the judicial review complaint as described at paragraph 3 above had been granted on 1 May 2014.

7. I made the following findings of fact:

7.1 The appellant has been separated from the mother of his two daughters since 2002. The girls are aged 14 and 16. They live with their mother in Rochdale and the 14 year old attends school halfway between Oldham and Royton. The 16 year old attends college in Rochdale. The appellant sees them for about 2 week ends per month and during the holidays as they choose. There is not a court order or agreement in place about the frequency of the visits. The appellant accepts that as they have grown older his daughters have their own lives and that he has seen less of them compared with when they were younger. He did not say that he was in receipt of child benefit and on the facts as he described them it is unlikely that he is. They do not keep possessions at his home.

7.2 When he applied for the property at [REDACTED] Rochdale he asked for a 2 bedroom property but was told that none was available and on that basis he accepted the 3 bedroom property. The smallest room has never been used as a bedroom. It has sufficient space for a single bed but only if the bed made contact with the storage heater in the room which would be a fire hazard. The appellant has used the room to store his desk and computer although the computer broke about 5 years earlier and he could not afford to repair it. The room was therefore empty. He could not have rented it out to a lodger because it was unsafe to have a bed in it. The appellant asked the landlord to remove the storage heater but they refused to do so.

7.3 The appellant asked to be rehoused some months before the change in the law was introduced in April 2013. He did not want to suffer a reduction in his housing benefit and be unable to afford to pay for his accommodation and living expenses. He was not offered a one bedroom place until October 2013 by which time he had built up arrears of rent of £888.30 because of the reduction made by RMBC for the bedroom tax. The appellant now lives in a one bedroom flat. When his daughters come to stay overnight, as they do, he has to sleep on the couch. The appellant is aware that the property at [REDACTED] is still empty.

Legal Principles

8. The European Convention on Human Rights provides in Article 8 that:

‘ Everyone has the right to respect for his private and family life, his home and his correspondence.’

There is also a provision that this right shall not be interfered with by a public authority except in accordance with law and as necessary in a democratic society in the interests of, amongst

other things, the economic well-being of the country, for the protection of the rights and freedoms of others.

9. Article 14 provides that the enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any grounds such as sex, race, religion political or other opinion, property, birth of other status. The Thlimmenos principle (from the case of **Thlimmenos v Greece** (2001) 31 EHRR 411) provides that there is an obligation on a State to take steps to prevent any discrimination prohibited by the article. As explained by Lord Justice Maurice Kay in **Burnip v Birmingham City Council and others** [2012] EWCA Civ 629

‘The submission here is that, whilst the statutory criteria provided for an able-bodied person to be given HB which would be an adequate contribution towards his accommodation needs, they failed to make equivalent provision in relation to the severely disabled, whose needs are more costly. Although neither group was provided with a benefit which would amount to a complete subsidy, the shortfall in relation to those such as the appellants was significantly greater because their HB was geared to one room fewer than their objective needs.’ (see paragraph 11)

10. The argument as applied in this case (although not articulated as such by the appellant) is that the reduction of his entitlement to housing benefit breaches his Article 8 right to family life insofar as he finds it more difficult to accommodate his daughters without a bedroom for them to sleep in when they visit him. This may have the consequence of reducing the frequency of their visits to him which may in turn undermine his relationship with him. Secondly, that the reduction of his entitlement indirectly discriminates against him on the grounds of his gender as a secondary carer of his children who is a man. The majority of resident parents are women.

11. The relevant provisions in the Housing Benefit (Amendment) Regulations 2012 are set out and explained in the Court of Appeal Judgment in **MA v SSWP and others**.

Conclusion

12. The appellant referred me to a decision which he knew only as ‘the Bolton case.’ He sought to rely on this to show that neither of the two spare bedrooms were used as bedrooms and that none of his benefit should be reduced under these provisions.

13. This is a decision of the Upper Tribunal reported as **Bolton MBC v BF (HB)** [2014] UKUT 48. The Upper Tribunal decided that where the overnight carer slept in the lounge as there was no bedroom for her to use, the lounge could still be classified as a bedroom and did not preclude a decision because of the wording in regulation 2(1) about an overnight carer needing a bedroom. The claimant was living with his wife in a 2 bedroom property but they needed separate bedrooms because of health problems. The issue on the appeal was whether the housing benefit should be reduced to the one bedroom rate because of the under occupancy charge which restricted it to one bedroom for a couple. The decision of the Upper Tribunal was that the 2 bedroom rate should apply because the couple needed a room for the overnight carer to stay in and even though she slept in the lounge.

14. This decision is not relevant to the issues in the case before me.

15. The appellant also referred to decisions made in Liverpool by the First Tier Tribunal. He handed in copies of extracts from a decision made by the FTT in Liverpool which he had

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downloaded from the internet. I have established that this refers to the case under reference SC068/13/12820 in which the Tribunal found that the Housing Benefit Regulations must be read subject to:

'...imperatives dictated by Article 1, Protocol 1, Article 8 and Article 14 of the ECHR, to the effect that, in the circumstances of this appeal, the Appellant was entitled to an additional bedroom to accommodate his daughter staying overnight with him.'

The facts of that case were significantly different from the claimant in this case. The daughter's mother, with whom she lived had moved to East Yorkshire and the child was visiting her father in Liverpool on a regular basis with the need for a room. She stored many personal possessions at his home. The Judge in that case found that the child had two homes one of which was with the appellant.

16. I decided that it would not be consistent with the Overriding Objective to further adjourn this case pending the decision of the High Court in the judicial review application referred to in paragraph 3 above.

17. In this case the appellant's daughters live with their mother and sometimes visit him. They cannot be said to have two homes. He accepted that their visits had become less frequent as they got older. They did not keep their possessions at his home.

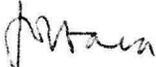
18. Although it is not binding on me I agree with the Liverpool Tribunal decision that UK legislation must be read subject to the principles in the ECHR and the Human Rights Act 1998. I make no finding on the principle that a male lone parent's right to family life is breached by the implementation of the under occupancy charge or whether he is indirectly discriminated against. I do not have the jurisdiction to do so. I cannot pre judge the decision of the High Court in the judicial review claim but even if it is successful section 3(2) of the HRA makes it clear that the primary legislation remain valid and that secondary legislation continues to operate even where a declaration of incompatibility is made.

19. I have considerable sympathy for the appellant who took action before the introduction of the bedroom tax to be rehoused. I have not been told whether he applied for or received a discretionary housing payment. Given that the arrears have built up entirely because of the delay by the respondent to find him a one bedroom property, there is a strong argument that he should receive a DHP to cover the remaining arrears.

20. For these reasons I allowed the appeal in part.

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
District Tribunal Judge O'Hara



Date: 6 June 2014

Statement issued to

Appellant on:

10.6.14

Respondent on: