



FIRST-TIER TRIBUNAL
SOCIAL ENTITLEMENT CHAMBER

Held at Hereford

on 07/10/2013


Before **D Jackson**

Appellant: [REDACTED]	Tribunal Ref. SC184/12/00862
	NI No [REDACTED]
Respondent: Herefordshire Council	

DECISION NOTICE

1. The Housing Benefit appeal is allowed
2. The decision of the Local Authority made on 07/08/2012 is set aside.
3. The Appellant is entitled to Housing Benefit based on the two bedroom rate of the Local Housing Allowance (LHA) Scheme.
4. I accept the concession made by the Local Authority (page 269) and find as fact that by reason of [REDACTED]'s disability that he and his wife need the use of two separate bedrooms. The concession made by the Local Authority is supported by the witness statements prepared on behalf of the Appellant and the written evidence of [REDACTED]'s GP and Social Worker.
5. I follow the decision of the Court of Appeal in **Gorry -v- Wiltshire Council and others** rather than the decision of the Divisional Court in **R(MA) -v- Birmingham City Council and others**. I do because **Gorry** is a decision of the Court of Appeal and relates to the LHA scheme (private landlord) whereas **R(MA)** is a decision of the Divisional Court relating to Housing Benefit paid by way of rent rebate to a Local Authority landlord. These cases turn on justification. The consideration of justification is different under both schemes. The Public Sector scheme is driven by the social policy need to free up larger accommodation which is under occupied. The driver for the LHA scheme is to control rent in the private sector in so far as it is met from the public purse.
6. I find that the provisions of Regulation 13D(3)(a) violate Article 14 within the ambit of Article 1 Protocol 1. There is indirect discrimination here. The Regulations fail to treat differently persons whose situations are significantly different (*Thlimmenos*).

7. [REDACTED] require separate bedrooms because of his disability. Regulation 13D fails to take account of the differences between an able bodied couple and a couple one of whom has a disability. The objectively assessed housing needs of an able bodied couple are met. It is accepted by the Local Authority that there is an objective need for two bedrooms in this case but the Housing Benefit Regulations fail to meet that need.
8. **R(MA)** at paras 53 and 88 refers to the absence of a precise class of persons as a very powerful factor in relation to justification. I have had the advantage of hearing from an experienced Local Authority Officer. On her evidence I find that there is a precise class that can be identified in practical and objective terms. The Local Authority requires a claimant for DHP to prove that medically they need an extra bedroom. This is routinely done by means of a letter from a GP or health worker and an award of at least middle rate of the care component of Disability Living Allowance. Assessed against those criteria there is clearly a precise class of person whom it can be readily and objectively assessed as needing an extra bedroom by reason of the disability of at least one member of the couple.
9. In **Gorry**, a case in relation to the LHA scheme, the Court of Appeal was unable to find any objective justification. At para 46 the Court of Appeal makes it clear that DHP "cannot come anywhere near providing an adequate justification for the discrimination in cases of this precise type". In **R(MA)** the Divisional Court at para 88 found that it cannot be said that DHP was a "disproportionate approach". In the context of the LHA scheme I find that the discretionary and short term nature of DHP cannot provide adequate justification particularly as there is no right of appeal against a refusal of DHP to the FTT.
10. Section 3(1) of the Human Rights Act requires legislation to be read and given effect in a way which is compatible with Convention Rights. A Tribunal does not have the powers of the courts to grant declaratory relief or to accept assurances from the Secretary of State. I am mindful of **Francis v SSWP**. My ability to "read in" should not extend to include a new category. However I note the frustration of Laws LJ at para 90 of **R(MA)** at the failure of the Secretary of State to comply with the judgement of the Court of Appeal. I am also aware of the continuing uncertainty and hardship suffered by [REDACTED]. Accordingly I DIRECT that the Local Authority shall, in relation to the decision under appeal reassess entitlement to HB based on reading Regulation 13D(3)(a) as "a couple or one member of a couple who cannot share a bedroom because of his/her disability or the disability of the other member of that couple".

Signed Tribunal Judge:  D Jackson	Date: 07/10/2013
<i>Decision Notice issued to</i>	<i>Appellant on: 07/10/2013</i> <i>Respondent on: 07/10/2013</i>