



**FIRST-TIER TRIBUNAL**

**SOCIAL ENTITLEMENT CHAMBER**

Held at **Langstone**

on **04.02.2014**

Before Judge W J Rolt

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| <b>Appellant:</b> [REDACTED]                                      | <b>Tribunal Ref.</b> SC992/13/05323 |
|   | <b>NI No</b> [REDACTED]             |
| <b>Respondent: Local Authority - Monmouthshire County Council</b> |                                     |

**DECISION NOTICE**

1. The appeal is allowed.
2. The decision notified on 01.04.2013 is set aside. From 1.4.13 the appellant's eligible rent is to be calculated on the basis that the number of bedrooms in the dwelling does not exceed the number of bedrooms to which the appellant is entitled in accordance with paragraph B13(5) of the Housing Benefit Regulations 2006 (as inserted by the Housing Benefit (Amendment) Regulations 2012 SI 2012/3040).
3. The case is remitted to the respondent to recalculate the appellant's eligible rent from 1.4.13 in the light of the Tribunal's decision.

**Summary Reasons**

4. The Appellant lives at the property with his wife and his adult son. He has two other daughters who visit from time to time but who reside in their own homes.
5. The Council states that the landlord (Charter Housing) claim that the bedroom is considered to be a 4 bedroom property and therefore that in applying paragraph B13 of the 2012 Housing Benefit Regulations and in complying with the various codes of guidance the maximum 25% reduction applies.
6. The Appellant contends that this is not correct because 2 of the "bedrooms" are no more than box rooms and therefore suitable only for a child under the age of 10, that those rooms are not used in any event as bedrooms and that he has to sleep at times other than in the same room as his wife due to her disabilities. He has also produced evidence that suggests that for Council Tax purposes the Valuation Office Agency (VOA) has recorded that the property is considered to be a 3 bed property.

7. The Appellant attended the hearing. The presenting officer from the Council arrived late due to travel problems. It was explained to the presenting officer the sage reached and the evidence obtained as recorded in the record of proceedings. The officer confirmed that an adjournment was not required. The Council considered itself bound to follow the guidance in this case.
8. The property consists of a kitchen and living room on the ground floor. On the first floor are 4 rooms and a bathroom/WC. The size of the rooms was not in dispute. Measurements had been confirmed by the Monmouthshire Environmental Health Officer. Two of the rooms were only suitable for a child under 10 according to the overcrowding provisions (60.7 and 69.4 sq.ft). One room was 110.2 sq.ft and was occupied by the Appellant and his wife and was suitable for 2 persons. The 4<sup>th</sup> rooms (107.1 sq.ft) was occupied by the adult son.
9. One of the small rooms was used as an office for a computer and for storage. The other, smallest room, as the Appellant's room for painting and art work. Neither room was used for sleeping save that in the smallest room was a seat that could be pulled down and slept on if needed. It was occasionally used as such if both daughters visited at the same time.
10. [REDACTED] is disabled and has been in receipt of the Higher Rate mobility component of Disability Living Allowance for some years. She has also received the Lowest Rate Care Component for about 6 months or so. She has various medical issues and in particular at night is very restless to the extent that at time the Appellant will have to sleep downstairs on the settee or on rare occasions of the pull down chair. The property had been variously adapted following at OT assessment and a raised toilet e seat and various hand rails installed. All of these adaptations and aids could easily be moved to another property if the Appellant had to move. [REDACTED] does not need a carer at night nor another person to stay over. It is only on the minority of nights that the Appellant needs to sleep in another bed. He accepted that if a wardrobe in the main room was moved to one of the smallest rooms then there would be enough room for 2 beds in that room.
11. The Appellant sated that the tenancy agreement with his landlord suggested that the property was considered large enough for 6 people. It was difficult to see how this could possibly be the case. The Tribunal accepted that the Appellant had been informed that the VOA had assessed it as a 3 bedroom property. There were evidently issues that the parties may wish to discuss in this regard whatever the outcome of the appeal.
12. The issue for the Tribunal was whether or not the 2 smallest rooms were bedrooms for the purposes of the regulations.
13. "Bedroom" is not defined by the legislation. This has most recently been pointed out in the Upper Tribunal decision 2014 UKUT 48 AAC. A paragraph 19 of that decision the Tribunal helpfully refers to various definitions of a bedroom.

- 14 The Tribunal finds that neither of the two smallest rooms are bedrooms. They do not contain beds, they are not used for sleeping, they can only be occupied by a child under 10, a half person according to the overcrowding regulations. That on rare occasions the seat is pulled out so that it can be slept on does not make that room a bedroom and more that putting a sleeping bag on the floor of a living room would make that room a bedroom. The Appellant would not be able, due to the size of the room, to let the room to a lodger to assist with the reduction in Housing Benefit because it is not big enough. The property would in any event become overcrowded.
15. The tribunal therefore finds that for the purpose of the Regulations the property consists of 2 bedrooms and therefore the number of bedrooms in the dwelling does not exceed the number of bedrooms to which the appellant is entitled.

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| <i>W J Rolt</i>                  |                                  |
| Signed Tribunal Judge: W J Rolt  | Date: 04.02.2014                 |
| <i>Decision Notice issued to</i> | <i>Appellant on: 04.02.2014</i>  |
|                                  | <i>Respondent on: 04.02.2014</i> |