



## FIRST-TIER TRIBUNAL

### SOCIAL ENTITLEMENT CHAMBER

Held at **Fox Court**

on **26/03/2014**

Before Judge A F Damazer

<b>Appellant:</b> Miss [redacted]	<b>Tribunal Ref.</b> SC242/13/14074
	<b>NI No</b> [redacted]
<b>Respondent: Local Authority : L B of Camden</b>	

### DECISION NOTICE

1. The Housing Benefit appeal is allowed in part.
2. The decision made on 4.03.13 is set aside.

Miss Campbell lives on her own at [redacted] Road, London [redacted]

The property is designated by the London Borough of Camden (the respondent) as a 5 bedroom house. On 1.04.13 the appellant's housing benefit entitlement was reduced by 25% on the basis that she was a single person and her home was under occupied by two or more rooms. The appellant appealed the decision on the basis that she only had 2 bedrooms in the property and that the 2<sup>nd</sup> bedroom is required for an overnight carer.

The Tribunal find that the appellant is in receipt of the middle rate of the care component of the disability living allowance and the lower rate of the mobility component and the Tribunal is satisfied on a balance of probabilities that the appellant requires and has in fact arranged that one or more people who do not occupy as their home the dwelling are engaged in providing overnight care for the appellant on a regular basis. The Tribunal find that Mr R [redacted], who lives in Watford regularly stays over to provide support to the appellant at night. The appellant is therefore a person who requires overnight care.

The Tribunal has to determine on a balance of probabilities the number of bedrooms in the house. The tribunal find that alterations have been made to the first floor of the house where there were originally 3 bedrooms. It is not alleged that the appellant made any of alterations. The Tribunal find that there were originally 3 bedrooms on the first floor of the house with a further bedroom on the landing above the first floor. The Tribunal find that the room in the attic cannot be designated/used as a bedroom in the ordinary meaning of the word. Pictures have been seen of this room where the water tank is exposed (document 63) and wires exposed. The area next to the attic has no outside light and has not been referred to as a bedroom by the Housing Department. It is also accepted that there is damp in the ceiling; the respondent states that the meter readings show this to be light but the pictures would appear to show the ceiling is quite heavily marked by water. The tribunal find on a balance of probabilities that this is not a bedroom. The appellant initially moved

into the property with her 4 children. At least 5 people were living in the property. On the 1<sup>st</sup> floor it is evident and it is accepted that there were 3 bedrooms. Ms C... sleeps in one of the bedrooms on the first floor and Mr R... sleeps in the other adjoining bedroom. There is a small opening between Ms C...'s bedroom and the room where Mr R... sleeps. There is no door or curtain covering the opening but at one stage it is assumed there was a curtain as there is a curtain rail above the opening. The tribunal find that on a balance of probabilities there are 2 bedrooms on the first floor. Ms C... chooses to have the opening uncovered between herself and Mr R... as she is deaf and it was stated on her behalf that Mr R... likes to be able to see the appellant from his bed as he is also deaf. There are clearly two bedrooms on the first floor. It is the appellant's choice to sleep with an opening uncovered. The Tribunal find that the room Mr R... sleeps in was at one stage smaller but a wall/ partition was removed between that and another room making his room into one large room. At some stage the appellant lived in the property with 4 other people. Although the appellant has herself referred to the property as a 5 bedroom property this indication appears on forms which have been completed on her behalf as she struggles to read forms or any written words other than very simple ones. The appellant has been deaf since birth and English is her second language after BSL. All forms were completed in the absence of a sign language interpreter. It was obvious to the Tribunal today that the appellant can become very confused.

It is also alleged that the appellant's right to freedom from discrimination has been breached by the respondent. It is argued that if there is a reduction in her housing benefit as a result of applying the under occupancy rules the appellant will be forced to move and for this particular appellant this is discriminatory as she has a network of support in the area as a result of her condition and to move would have a devastating impact on her health and lifestyle far greater than on any other person without a disability. However the appellant is assuming that she would have to leave the area. The appellant seeks to distinguish her claim from that of MA (The Queen on the application of MA & others and the Secretary of State for work and pensions 21.01.2014 c1/2013/2452). However the appellant is not arguing that there are any adaptations in the house due to her disability. It is not the leaving of the actual house that will cause her problems. In any event the Tribunal find that there is no discrimination against the appellant if the housing benefit is reduced. The appellant is in receipt of disability living allowance and discretionary housing allowance and even if she was not she will not be prejudiced by living in a 2 bedroom house. The Tribunal find that there is no reason why she would not continue to be supported by Mr R... and her friends and she has been awarded lower rate mobility so has an allowance to pay for someone to accompany her along unfamiliar routes and the middle rate of care is to assist with her bodily functions which include communication with other people.

The Tribunal find that the appellant is a person who requires overnight care and therefore under the regulations her benefit is to be assessed as requiring a second bedroom. Her disability has been fully taken in to account by the Tribunal in setting aside the original decision. As the Tribunal has found that there are 3 bedrooms in the property the appellant's entitlement is to be reduced by 14% as there is an under occupancy of one bedroom. It was stated quite clearly on behalf of the appellant that if she moved would not require more than 2 bedrooms. The thrust of the appeal on the basis that the Tribunal finds that there are more than 2 bedrooms is that she will have to leave her property due to the reduction in housing benefit. Due to her disability she receives disability living allowance and the Tribunal find that she is not discriminated against when compared with other people with no disabilities by the application of the "bedroom tax" for the reasons set out above. Accordingly the appeal succeeds in that the Tribunal find that she is entitled to 2 bedrooms and must be assessed on that basis and that there is an under occupancy of one room.

Signed Tribunal Judge:

A F Damazer

Date: 26/03/2014

*Decision Notice issued to*

*Appellant on: 26/03/2014*

*Respondent on: 26/03/2014*

