



## FIRST-TIER TRIBUNAL

### HOUSING BENEFIT/COUNCIL TAX BENEFIT

Held at Oxford on 29/11/2013

Before Mr M Daly

Appellant: [REDACTED]	Tribunal Ref. [REDACTED]
Respondent: Cherwell District Council	NI No [REDACTED]

### STATEMENT OF REASONS FOR DECISION

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

1. [REDACTED] was "appealing against the reduction to her Housing Benefit as she lives in accommodation in the social rented sector and is considered to have one bedroom too many" (see page 1 of the appeal papers).
2. [REDACTED] and her husband gave oral evidence to the Tribunal and Mr [REDACTED] appeared for Cherwell District Council (CDC). The Respondent has requested this statement of reasons.
3. The parties agreed that the central issue before the tribunal was whether, given the need for a third bedroom to accommodate her daughter's regular overnight carers, the Appellant's eligible rent should be reduced by 14%.

#### Facts of the case

4. [REDACTED], the Housing Benefit (HB) claimant, has lived with her husband and their 18-year old daughter [REDACTED] at [REDACTED] a three-bedroom house, since November 2004.
5. As [REDACTED] explained in her letter to the Tribunal: "Cherwell District Council rehoused us here, 9 years ago, specifically to cater for (and ONLY because of) my daughter's needs. We were rehoused purely due to our previous property not meeting [REDACTED] needs. Many adaptations have been put in place here, including a safe area, the creation of a downstairs toilet, level exterior access both back & front & a level driveway for her motability car, and close board fencing to the entire parameters of the property. They have installed interior stable doors, with key locking at the bottom half of the doors for her safety, an advantage grab-rail in the bathroom, a bidet for [REDACTED] personal hygiene, amongst other things" (p. 29).



6. Writing in August 2013, [REDACTED], the family's GP, reports that [REDACTED] "suffers with learning difficulties and physical disability due to syringomyelia and Smith-Magenis syndrome. She has a scoliosis and a spinal brace. She has behavioural problems associated with her problems and is very hard to cope with on a day to day basis. She tends to be overactive and needs constant supervision to prevent injury to herself or damage to any room that she is in" (p. 32).
7. These disabilities are acknowledged by the benefits system: [REDACTED] is in receipt of the higher rate of the mobility component and the highest rate of the care component of Disability Living Allowance (DLA), while her mother is paid a Carer's Allowance.
8. Dr [REDACTED], a Consultant Paediatrician who also cares for [REDACTED], comments: "as she is now an adult, she is no longer able to attend overnight respite care at children's provision. She has been recommended to have 41 nights of respite care per year and currently this is being provided by a carer within the home. The carer obviously needs a bedroom herself for the brief periods of time to get rest when possible, and also for them to be in a separate room when trying to monitor [REDACTED] but not actually be in her room" (p. 33).
9. The crucial role of these carers was emphasised by the Appellant in her letter to the Tribunal: "Both my husband and I are [REDACTED] main carers, as she very often requires 2 to 1 care & support, and always needs continual supervision to keep her safe and happy. We care for [REDACTED] both day & night. She does not sleep, only for very short periods, with extreme behaviours – screaming, self mutilation and damaging clothing, and other things, in between. Consequently she needs constant support to keep her safe & the house and its contents in one piece! The only true rest & sleep my husband & I get is during respite periods, when we have carers in to look after [REDACTED] and to give us a very much needed break. Without this respite, there is just no way we could cope – what with minimal sleep and being on the go & in 'watchful' mode constantly" (p. 29).
10. Dr [REDACTED] reports "[REDACTED] parents cope admirably with the situation but are reliant on respite care" (p. 32); a view endorsed by the Consultant Paediatrician who acknowledges that "the family have done an amazing job caring for (a) severely disabled young person." In Dr [REDACTED] opinion "it is vital for this family's well-being that respite continues for [REDACTED]" (p. 33). In her evidence to the Tribunal, [REDACTED] reiterated the concerns expressed on paper: without the support of overnight respite care, her health and that of her husband would suffer even more; they would find it impossible to cope and her daughter would have to go into residential care (p. 29).

### The Respondent's decision

11. While sympathetic to the family's needs, Mr [REDACTED] explained in an email to the Appellant "until such time that the legislation is amended the authority must apply the legislation as it stands" (p. 26).
12. "Therefore from April 2013 [REDACTED] was affected by the social sector size criteria, as she was considered to be under-occupying her property by one bedroom. This in turn meant that her Housing Benefit was reduced by 14%.... the regulations only allowed for an extra room for a carer for the customer and/or partner. Although an extra bedroom was needed for her daughter's carer, the Council could not take any account of this in calculating the Housing Benefit entitlement from April" (Authority's submission, p. 8).



## The legislation

13. The rules for "determination of a maximum rent (social sector)" [MRSS] came into force on 1<sup>st</sup> April 2013. Entitlement to an additional bedroom is acknowledged "in any case where the claimant or the claimant's partner is a person who requires overnight care" (Regulation B13(5) HB Regulations 2006). [Subsequent amendments, also coming into force at the beginning of April 2013, re-numbered this provision as B13(6)(a)].
14. [REDACTED] drew the Tribunal's attention to further amendments to regulation B13 – the phrase "a relevant person" is substituted for "the claimant or the claimant's partner" (HB (Miscellaneous Amendments) Regulations 2013). She suggested that her daughter might be viewed as "a relevant person" within the definition of B13(9)(c), given that some of her daughter's personal budget from Social Services contributes to the "payments in respect of the dwelling occupied as the claimant's home."
15. Whatever the merits of this argument, the Tribunal pointed out that its jurisdiction was limited to taking account of the circumstances that obtained "at the time when the decision appealed against was made" (Section 12(8)(b) Social Security Act 1998). Since these further amendments did not come into force until 04/12/2013, they did not govern the appealed decision, although they do provide evidence that the rules governing HB claimants' bedroom entitlement have been successfully challenged before the courts.

## The Tribunal's decision

16. The Disability Team that liaises with the [REDACTED] family confirms that the regular provision of respite carers is crucially important and will be continued (see p. 40). This report, together with the level of DLA payments to [REDACTED], prompted the Tribunal to find that she is a "person who requires overnight care" (Regulation 2 HB Regulations 2006). But, since she is not the HB "claimant or the claimant's partner", the terms of regulation B13(6)(a) of the HB Regulations are not satisfied.
17. However, Section 3(1) of the Human Rights Act 1998 requires that legislation "be read and given effect in a way which is compatible with the Convention rights." The courts have acknowledged that the rules which govern a HB claimant's bedroom entitlement, in both the private and the social sector, engage at least two of these rights – non-discrimination and protection of property (Article 14 & Article 1 of the First Protocol of the ECHR) – see *Burnip & others v SSWP* [2012] EWCA Civ 629 and *R(MA & others) v SSWP* [2013] EWHC 2213.
18. Having considered the courts' reasoning, the Tribunal found that the MRSS rules violate the Appellant's rights under Article 14 of the ECHR read with Article 1 of the First Protocol of the ECHR. Because of her daughter's profound disabilities, the Appellant requires a third bedroom to accommodate overnight respite carers. The criteria in regulation B13 fail to take into account the difference between a family with a severely disabled member and an able bodied family and, thereby, discriminate against the Appellant.
19. Of course, Article 14 will only be breached if there is no objective or reasonable justification for the discrimination. The Respondent, accepting the Appellant's need for a third bedroom, and acknowledging that an application of the MRSS rules would lead to a significant shortfall in her HB entitlement, prompted [REDACTED] to apply for a discretionary housing payment (DHP). Her application was successful. However, as the Respondent noted, the award of a DHP "is normally considered only a temporary measure" (p. 13).

20. Contrary to the case in *R(MA & others)*, where there was no discrete group of claimants, the Tribunal was dealing with a single family whose circumstances are very particular. The Tribunal adopted the Court of Appeal's reasoning in *Burnip* that, since DHPs are discretionary, of unpredictable duration and payable from a capped fund, "they cannot come anywhere near providing an adequate justification for the discrimination in cases of the present type" (paragraph 46).
21. It was for these reasons that the Tribunal concluded that no reduction should be imposed on the Appellant's eligible rent and directed that the Local Authority should reassess entitlement to HB based on reading Regulation B13(6)(a) as "the claimant or a member of the claimant's family is a person who requires overnight care."

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 Tribunal Judge: M Daly

Date: 23/12/2013

Statement issued to

Appellant on:

Respondent on:

31/12/13