



HM Courts & Tribunals Service

HM Courts & Tribunals Service
Social Security & Child Support Appeals
Manorview House
Kings Manor
NEWCASTLE UPON TYNE. NE1 6PA
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<http://www.tribunals.gov.uk/>



National Insurance number: [REDACTED]
Reference number: SC236/13/02942
Date: 01/05/2014

Dear [REDACTED]

About the HOUSING BENEFIT appeal for [REDACTED]

A tribunal heard the appeal on 05/03/2014 at Sunderland. I enclose the decision notice.

I also enclose notes about the decision which explains:

- * what happens now that you have a decision; and
- * what you can do if you are not satisfied with the decision.

If you need to contact me, please quote the appeal reference number which is at the top of this letter.

Yours sincerely

Lynn Wilson
Clerk to the Tribunal



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Information about the Decision on the Appeal

This information concerns the decision made on the appeal. It applies whether the decision has been made by the Tribunal after a hearing, or whether the decision has been made on the papers alone, without a hearing.

This leaflet contains a summary only of the relevant rules. It is not an exhaustive statement of the law. You may wish to seek advice about your rights from a welfare rights organization, a citizens' advice bureau, law centre or similar source of expert help.

1 Implementing the Decision

A copy of the Tribunal's decision is automatically issued to the other side in the appeal, usually on the same day the Tribunal makes the decision, or within a day or two later.

Unlike the courts, the Tribunal has no legal powers to enforce its decisions. If a decision requires the department or council to pay benefit to a person (or in a child support case changes the amount of maintenance payable), the Tribunal will not be able to assist that person to compel payment. If, on the other hand, the decision is that the department or council is entitled to recover overpaid benefit from a person (or if a person has to pay child support maintenance), again the Tribunal will play no part in enforcing that decision against that person.

The department or council is entitled to suspend payment of any benefit awarded by the Tribunal, if a person is appealing against the Tribunal's decision. The Tribunal can also suspend the effect of its decision.

2 Corrections

If you think the decision notice contains an accidental error (for example, the Tribunal may have written '2009' instead of '2008' for the starting-date of an award), you may write to us, asking for a correction to be made. This rule only applies to what might be called "slips of the pen".

3 Setting aside

If you think there has been a mistake in the arrangements for dealing with the appeal, you may write to us to apply to have the decision of the Tribunal set aside (that is, cancelled).

By a mistake in the arrangements, we mean such things as a document relating to the appeal going astray, or you or your representative being unable to be present at the hearing, or some other procedural irregularity. The Tribunal will set aside the decision if it is in the interests of justice to do so. The Tribunal may then substitute a fresh decision or arrange a new hearing.

4 Appeal to the Upper Tribunal

If you think the Tribunal has made an error of law, you may apply for permission to appeal to the Upper Tribunal against the decision. The following are examples of what is meant by "error of law".

- The Tribunal applied the law incorrectly
- The Tribunal conducted the proceedings in breach of the proper procedures
- The Tribunal failed to give adequate reasons for its decision.

The first step in applying for permission to appeal is to apply to us for a statement of reasons for the Tribunal's decision. The statement will be written by the Judge on the Tribunal that decided the case.

If, having considered the statement of reasons, you believe that the decision of the Tribunal was based on an error of law, you may then apply to us for permission to appeal against the decision.

An application for permission to appeal will be considered by a senior Judge of the First-tier Tribunal. The Judge may:

- First of all consider whether to review the decision and, if there is an error of law, make a fresh decision or arrange for the case to be re-decided
- Grant permission, in which case you can forward the case to the Upper Tribunal
- Refuse permission, in which case you then have the option of applying directly to the Upper Tribunal for permission.

If the appeal proceeds to the Upper Tribunal, that Tribunal has power to set aside the First-tier Tribunal's decision and give a fresh decision or refer the case to the First-tier Tribunal for re-hearing.

5 Please bear in mind

The above rights to apply for a correction, setting aside, statement of reasons and further appeal are also available to the other side in the appeal.

There is a time-limit of 1 month from the date of the decision in which to apply for a statement of reasons or setting aside, and 1 month from the issue of a statement of reasons (or refusal of setting aside) in which to apply for permission to appeal. If you are outside a time-limit, you may apply for an extension of time, explaining why your application is late.

If you want to take further action as set out in this leaflet, please get in touch with us in writing, quoting the appeal reference number. Our address is shown at the top of this leaflet.



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The Housing Benefit Manager (Appeals)
Sunderland Civic Centre
HB & Council Tax, Room 1.32
Benefit Section
Civic Centre
Sunderland
SR2 7DN

National Insurance number: [REDACTED]
Reference number: SC236/13/02942
Your Ref: 50271423
Date: 01/05/2014

About the HOUSING BENEFIT appeal for [REDACTED]

A tribunal heard the appeal on 05/03/2014 at Sunderland. I enclose the decision notice.

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Lynn Wilson
Clerk to the Tribunal

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FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at **Sunderland**

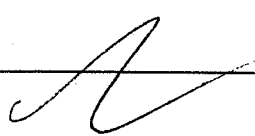
on 5 March 2014

Before **Judge A N Moss**

Appellant: [REDACTED]	Tribunal Ref: SC236/13/02942
	NI No: [REDACTED]
Respondent: Sunderland City Council	

DECISION NOTICE

1. The appeal is allowed.
2. The decision of the Local Authority dated 28 March 2013 is set aside.
3. Number [REDACTED] is, for the purposes of the Housing Benefit Regulations, a one bedroomed property.
4. [REDACTED] requires the use of one bedroom.
5. There is no reduction to the maximum rent payable for Housing Benefit purposes.

Signed Tribunal Judge: A N Moss 	Date: 5 March 2014
<i>Decision Notice issued to</i>	
<i>Appellant on:</i> 30/04/2014	
<i>Respondent on:</i> 30/04/2014	
<i>Typist (EW):</i> 29/4/14	



FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at **Sunderland**

on 5 March 2014

Before **Judge A N Moss**

Appellant: [REDACTED]	Tribunal Ref: SC236/13/02942
	NI No: [REDACTED]
Respondent: Sunderland County Council	

STATEMENT OF REASONS FOR DECISION

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

1. The Tribunal is satisfied the legal issues raised in the directions dated 18 March 2014 have been resolved.
2. It is clear from the submissions raised the Local Authority have calculated, correctly, the number of rooms required namely 1.
3. This statement deals with the substantive issues.
4. [REDACTED] and his wife are the joint tenants of [REDACTED] They have lived at this property continuously since 1997.
5. At the time the Local Authority was the landlord. In 2001 the property became part of what is now [REDACTED] – a private company unconnected with the Local Authority and, an housing association.
6. When [REDACTED] moved in it was classed as a 3 bedroomed property. By about 2006, as a consequence of [REDACTED] disability, significant alterations were made to the property.
7. [REDACTED] has a rare form of muscular dystrophy (MD). She was formally diagnosed with it when she was 24. [REDACTED] is now 47. MD is a slow progressive condition. As far as [REDACTED] is concerned it affected her mobility to the extent that some 14-15 years ago she became totally reliant on her wheelchair. She has both a manual and powered wheelchair. The manual one is used as a chair for all purposes when at home. The powered one outdoors. She no longer uses the sofa and has no other chairs of any type at the home.
8. Number [REDACTED] had a stair lift when they moved in in 1997. However, its use proved to be a problem for reasons that are not relevant today.

9. Consequently, Social Services and [REDACTED] carried out structural alterations to make the property user friendly for [REDACTED]. The alterations included removing the stair lift and replacing it with a lift, converting the separate bedroom/toilet upstairs to a single wet room; converting 2 bedrooms into one large bedroom. No other aids or appliances were provided. There has been no other needs assessment since the renovations occurred in about 2006.
10. The upstairs now has, according to [REDACTED] 2 bedrooms. If it was to be let to somebody else it would be classed as a 2 bedroom property.
11. [REDACTED] have been in receipt of various benefits as far as this appeal is concerned, since 1997 when they moved into the property.
12. [REDACTED] receives the higher rate mobility and highest rate care component of DLA. It appears to be an indefinite award plus, Employment and Support Allowance (ESA) at support group level and any additional Income Support payments she may be entitled to. [REDACTED] receives Carer's Allowance.
13. In addition they receive (or received) full Housing Benefit/Council Tax Benefit.
14. As a consequence of amendments to the Housing Benefit Regulations the Local Authority had to reassess [REDACTED] entitlement to Housing Benefit. The maximum rent (Social Sector) which can be paid is determined by the new regulations.
15. The regulations are contained within the Local Authority's response. It is not proposed to repeat the details here unless required.
16. In summary the maximum Housing Benefit payable is affected by the number of 'spare' bedrooms [REDACTED] and [REDACTED] are deemed to have according to the regulations.
17. As a consequence of applying the regulations the Local Authority decided [REDACTED] and [REDACTED] were entitled to one bedroom for Housing Benefit purposes. As the property is classed as having 2 it meant they had one extra bedroom and therefore a 14% reduction had to be applied to the maximum amount of Housing Benefit they were entitled to.
18. Originally the Local Authority made a decision on the grounds of 2 additional bedrooms and applied a 25% reduction. The decision was dated 7 March 2013.
19. As a consequence of correct information supplied by [REDACTED] the decision was revised. They were assessed as having one additional bedroom (a 2 bedroom property rather than a 3 bedroom property) and a 14% reduction applied. The decision is dated 28 March 2013.
20. An appeal was made against the decision.
21. The appeal is on the grounds the second bedroom is not and cannot be regarded as a bedroom for Housing Benefit purposes and therefore the property is to be classed as a one bedroom property. The effect of this would be there was no reduction in housing benefit paid.
22. The basis of the argument the second room is not a bedroom is it is an access to the lift [REDACTED] needs to get up and downstairs.
23. The Local Authority do not accept the argument put forward.

24. The Local Authority's main argument is [REDACTED] describe the property as having 2 bedrooms and therefore it is to be classed as having 2. Also, there is no reason why a bed could not be inserted into the room containing the lift.
25. The parties have produced further arguments as to why their respective views are correct. The arguments are within the papers and it is not proposed to repeat them unless it is required to do so.
26. It became clear to the Tribunal Judge who case managed the appeal what was missing from the evidence were details of what the property was like and the effect of the lift on the room in question. The only plan related to proposed works i.e. before 2006. Experience indicates the finished product can be significantly different to the proposed plans. Also there were some photographs but it is very difficult to determine from the information what the property is actually like.
27. The appellant's representative also raised substantial legal arguments to deal with discriminatory effects of the regulations on [REDACTED] and [REDACTED] and how it contravened the Human Rights Act.
28. Lengthy, well reasoned, clearly written submissions were made by the representatives.
29. The Tribunal decided the only way a decision could be made in this case was if a site visit occurred. It was also decided to turn the site visit into a Tribunal in order to prevent further unnecessary hearings or travelling.
30. It decided to split the appeal into 2 – factual and, if necessary, legal. Directions, with reasons, to this effect were given on 12 August 2013 (see page 634-635). In its bluntest form there is no point in having a complicated legal argument if, as a consequence of factual decisions made the number of bedrooms was determined.
31. The Tribunal adopted the overriding principle in Rule 2, took a flexible approach to the proceedings and, with the agreement of [REDACTED] and [REDACTED] arranged for a hearing and site visit to occur.
32. On 5 March 2013 the Tribunal assembled at number [REDACTED].
33. The site visit proved invaluable as it enabled everything to be put into context.
34. Number [REDACTED] is a terraced property with an upstairs and downstairs. There is a ramp to the front door. All doors have been widened to accommodate a wheelchair.
35. From the front door is a hallway. At the far end of the hallway is a living room. Half way along the hallway on the left is a kitchen/dining room – the kitchen is at one end and the dining room table at the other. As you go into this room through the door the kitchen is on the right and the dining room table is on the left. Opposite the dining room table – in the far corner is an electric lift. The lift is operated by a button on the wall outside the lift and by buttons within the lift itself. These open and close the door and raise the lift. The wheelchair drives into the lift area. The door closes. The lift ascends and raises the ceiling as it does so. The floor of the lift becomes the ceiling/floor of the room above.
36. In the hallway, almost opposite the door to the dining room/kitchen are the stairs leading to the upper floor. Also in the hallway, near the front door is a toilet. Further, underneath the stairs is a storage area which holds the motorised wheelchair.
37. Upstairs, to the right of the stairs is a double bedroom.

38. Turning left at the top of the stairs and immediately on the right is a wall which has a door to a storage cupboard and next to it is the wet room.
39. Opposite the main bedroom at the end of the short landing is the 'second bedroom'. Entering into the room looking to the right in the far left corner is the lift. Additionally this room contained shelving and computer equipment.
40. Measurements were taken of this room.
41. The overall length is approximately 4.5 metres. The overall width of the door is 2.8 metres. The lift is 1.4 metres long by about one metre wide. From the side of the lift to the far wall it is 3.5 metres.
42. The overall width between internal walls next to the door is 2.5 metres. The doorway is set back from the inside wall by about 300 millimetres. The doorway to the left hand wall is 750 millimetres.
43. A rough plan was drawn and measurements agreed.
44. What was clear from the layout of this room is a path would be needed from the door of the lift to the 'bedroom' door. To go downstairs [REDACTED] would come through the doorway, negotiate around the projecting wall before turning right, travel the length of the room, turn 90° to her left and position herself against the wall behind her whilst the door to the lift opened. She would then go forwards into the lift and close the door using the buttons. This pathway cannot be obstructed.
45. A shelving unit is perpendicular to the wall adjacent to the side of the lift. It obstructs the view of the lift but not access to it.
46. The side wall adjacent to the left of the entrance door has a lengthy desk arrangement on which computer and associated equipment is placed.
47. In practice what is left for a bed, should one be required, is a rectangular space between the side of the lift/shelving area and the wall at the other end. The overall distance – excluding the desk arrangement – is 3.5 metres by 1.4 metres. Including the desk arrangement the distance is 2.83 metres by 1.4 metres.
48. It is clear it would not be possible to have anything block access to the wheelchair to or from the lift.
49. The distance between the wall opposite the lift and the lift with its door closed is 1.1 metres (2.5 metres minus 1.4 metres).
50. 1.1 metres is enough to allow easy access to the lift from the room. The bedroom door is further 300 millimetres (0.3 metres) from the interior wall. Consequently the minimum distance needed from the entrance to the doorway into the room which would allow easy access to the lift is 1.4 metres (1.1 metres plus 0.3 metres).
51. It would not be possible to position a bed behind the door as 750 millimetres is not going to be enough to get a single bed in there.
52. It is unlikely a normal single bed would fit in room opposite the door along the wall on the left without it encroaching on the space needed for the wheelchair. The bed would block part of the path needed for the wheelchair.

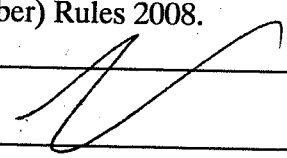
53. A normal single bed is going to be in the region of 6 feet by 3 feet or 1.8 metres by 0.9 metres.
54. The drawing in the Record of Proceedings is not to scale.
55. The only location a bed could go is alongside the wall opposite the door placed lengthways against that wall with the headboard against the projecting shelving unit.
56. It would be possible install (in built) wardrobes along the wall behind the door. But the desk would have to be removed.
57. Therefore it will be possible to get a bed in this area but virtually nothing else.
58. The issue for the Tribunal is the meaning of the word bedroom. It is not defined in the legislation. It is an ordinary English word. Consequently it is a question of fact for this Tribunal to decide whether the room in question is a bedroom or not.
59. The Tribunal has received submissions on this point and they are contained within the papers. The Tribunal find the submission from the appellants and respondents to be superbly reasoned, fair in their approach, informative and rational.
60. What they clearly both show is there is no one single point which is determinative of the definition. Each case will turn on its own facts. Consequently, guidance from other courts and Tribunals is going to be relevant for the facts of that case. Indeed, decisions from higher courts are going to be of very limited value.
61. The House of Lords (as it then was) case of Brutus -v- Cozens makes it very clear that the definition of ordinary English words and phrases is a question of fact for the Tribunal. It is not an issue of law. The senior courts cannot define the meaning of the word bedroom if Parliament has not placed a definition upon it. All the senior courts can do is decide, whether on the facts of this case the interpretation of the word by the first tier, fact finding Tribunal, was so unreasonable no reasonable Tribunal could have come to that conclusion. This is a very high hurdle to cross.
62. Approaches taken by other Tribunals are not and cannot be binding on this Tribunal. They are relevant only to the facts of those particular cases.
63. What is clear, is the Tribunal has to take into account several criteria and none of which is determinative.
64. In addition to the numerous criteria referred to in the submissions the Tribunal added the following.
65. The question is a mixture of objective and subjective criteria. By this the Tribunal means a property maybe described, factually and properly, as having so many bedrooms because it was built that way. However, that has to be considered in light of the personal circumstances of the case.
66. Further, the issue is determined as at the date of the decision. It is not, nor can it be, a once and for all decision. Circumstances may change which may mean at one stage a room is a bedroom and then it is not. The changes have to be relatively stable, reasonably justified and not the subject of a whim.
67. The question of whether a room is a bedroom or not is subject to the normal rules of notifying changes in circumstances.

68. For example, the reason why an extra bedroom is allowed maybe because of someone's disability. If that person were to go into long term care or die then the issue as to whether that room remains allowed arises. Similarly a member of a couple may become significantly disabled due to a road traffic collision. What may not have been allowed as a room may become allowed.
69. The Tribunal also considered the definition of bedrooms contained within other legislation especially to do with square meterage.
70. That information is contained within specific legislation to do with specific technical issues. Parliament has chosen not to define the definition of bedroom for Housing Benefit purposes in a similar fashion. Parliament has not incorporated that legislation, as far as the definition of bedroom is concerned, into the Housing Benefit Regulations. If Parliament had intended that to be the case it would have said so.
71. The definition of bedroom in other legislation is nothing more than informative. It is not and cannot legally be determinative of the issue. Consequently, the Tribunal notes the existence of the other legislation and the first tier Tribunal cases in relation to it. It is for those Tribunals, on the facts of the case, to interpret the definition of bedroom in the way that it thinks appropriate.
72. The question is what is a bedroom. In its simplest form it is a room with a bed in it. A bed is something on which somebody sleeps. Beds come in all sorts of shapes and sizes. Some are on the floor eg futons, some fold up into sofas – hence the term sofa bed – some come out of the wall.
73. A commonsense practical approach has to be taken as to what is meant by bedroom.
74. Housing Benefit is paid to people so they can be pay the rent on the property where they live.
75. Section 130 of the Social Security Contributions and Benefits Act 1992 states (1) a person is entitled to Housing Benefit if (a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home.
76. A bedroom in a home, therefore, is qualitatively different from that in a hostel, hotel, bed and breakfast environment.
77. Homes are where people settle and from which they base their existence. The home is a core element of human existence. It is central to the stability and fabric of society.
78. It invokes the concepts of somewhere where you can be safe and protected and store your belongings and have privacy. The home is the centre where we exist. We eat, sleep and socialise there.
79. A bedroom in narrowest sense is somewhere where there is a bed on which you can sleep. The bed takes many forms.
80. However, a bedroom, in a home, is not just a place where you sleep.
81. A bedroom in a home connotes a degree of personal space and privacy.
82. In the very narrowest technical sense there is space in the upstairs room where the lift is for there to be a single bed and for somebody to be able to sleep in it. It would not impact on [REDACTED] ability to get to and from the lift during the day or night. But there would be no privacy. There is no space to for

example, put up a partition to separate off the area where the bed is to create a pathway to the lift. It would eat into the room and reduce the space available for easy access of the wheelchair to the lift.

83. [REDACTED] because of her care needs, has to get up during the night and occasionally has to go downstairs. This would inevitably mean having to go to the room where the person was sleeping and likely disturb them.
84. On the facts of this case at this time the Tribunal is satisfied the room where the lift is cannot be classed as a bedroom for the purposes of the Housing Benefit Regulations. It cannot be regarded as a bedroom as would be envisaged in a home. It lacks that degree of personal space and privacy integral to the definition of a bedroom.
85. The room is an access way to and from the lift. It is the need for the use of the lift which takes this room out of the definition of a bedroom in a home.
86. The Tribunal did not need to discuss questions of the Human Rights legislation nor the discriminatory effects of the legislation because, on the facts of this case the Tribunal has decided, quite simply, the room, as it is currently used solely for the purposes of [REDACTED] and [REDACTED] with their particular needs, is not a bedroom.
87. The Tribunal would have no difficulty in concluding otherwise if, for example, there was no requirement for the people in the house to use the lift even though it may still be there. Further, if [REDACTED] was, for whatever reason, no longer able to reside at number [REDACTED] nor with her husband, it is likely it would revert to being a bedroom because access to the lift was no longer a requirement.

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: A N Moss 	Date: 29.4.14
Statement issued to	Appellant on: 30/04/2014 Respondent on: 30/04/2014 Typist (EW): 29/4/14