



FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at **Liverpool**

on **08/09/2014**

Before **Judge DJ McMahon**

Appellant:	Tribunal Ref. SC068/14/01068
	NI No. _____
Respondent: Sefton MBC	

DECISION NOTICE

1. The Housing Benefit appeal is allowed.
2. The decision made on 05/11/2013 is set aside.
3. The Appellant's entitlement to Housing Benefit on his maximum eligible rent is not subject to reduction from 01/04/13. The Appellant and her partner, a couple, occupy a two bedroom property but, for the reasons that appear below, the Appellant is entitled to an additional bedroom.
4. The Appellant, together with her husband, attended the hearing and gave oral evidence. The Appellant was represented as was the Respondent. The representatives for both parties made oral submissions to complement their detailed written submissions.
5. Two grounds of appeal had been advanced by the Appellant, namely, that the disputed bedroom was too small to be classified as a bedroom and, secondly, and more significantly, that the Appellant required a second bedroom in which to sleep due to the nature of the disabilities, both physical and mental, of both the Appellant and her husband. At the hearing, the Appellant's representative confirmed that the Appellant was not pursuing the 'room size' issue but did wish to pursue the disability issue as a basis for submitting that the Housing Benefit Regulations 2006, as amended ('the Regulations'), should be read to accommodate a need for a couple in the circumstances of the Appellant and her husband being permitted an additional bedroom for the purposes of the Regulations.
6. The Tribunal did not find any substance or merit in the 'bedroom size' submission in this appeal. The fact was that, following the Appellant's marriage, when her husband moved into the property, he always slept in the disputed bedroom. There could be no doubt that the disputed room was a bedroom and was used for that purpose. Further, by reference to the

tenancy agreement, the Appellant had accepted that the property had two bedrooms. She also confirmed this to be the case in her oral evidence.

7. The issue in this appeal, to all intents and purposes, came down to the second ground of appeal: whether the Appellant was entitled to a second bedroom due to the disabilities of both herself and her husband.
8. The Presenting Officer submitted that there was no discretion permitted in the Regulations in relation to disabled adults. He did not dispute the existence of the disabilities claimed, although he commented that the letter, and subsequent note from the Appellant's GP was somewhat vague. This was a fact that also troubled the Tribunal. The Presenting Officer also submitted, at the conclusion of the hearing, that this appeal could be distinguished from the Carmichael appeal in that the disabilities at issue in this appeal were a combination of the disabilities of both the Appellant and her husband, that is, both persons comprising a couple and the fact that there was a lack of physical space in the Carmichael appeal that did not exist in this appeal.
9. The Appellant, in her oral evidence, stated that she suffered from depression and agoraphobia, and had suffered two nervous breakdowns. She described how, before she was married, her sister spent every day with her to help her, due to both her physical and mental health difficulties, and that her daughter came in to help her each day before her sister arrived. She accepted that she had good and bad days and that her daughter would stay overnight if she was having a bad night, although, generally, she was on her own at night in the property. She described how she sometimes experienced nocturnal enuresis, but accepted that she had not discussed this problem with her GP. She confirmed that her medication helped somewhat. The Appellant confirmed that she had been in receipt of the higher rate of the mobility component and the middle rate of the care component of Disability Living Allowance since 2007 and was also in receipt of Employment and Support Allowance until she became entitled to her state pension. She confirmed that no-one was in receipt of Carers' Allowance in respect of caring for her. The Appellant confirmed that since she got married, she and her husband cared for each other but that they had always slept in separate bedrooms due to their respective disabilities. The Appellant denied the apparent suggestion in her GP letter dated 08/04/2014 that it was her husband, and not herself, who was unsettled at night.
10. The Tribunal accepted that the Appellant suffered from significant disability. The question for the Tribunal was whether this was to the extent that she and her husband, despite being a couple in law, required to have separate bedrooms and, if so, whether that had any relevance for the purposes of the Regulations.
11. The Appellant's husband, in his oral evidence confirmed that he suffered from various cardiac related illnesses and depression, in respect of which he took medication and had received counselling for many years. He confirmed he was in receipt of Employment and Support Allowance and was awaiting a decision on an application for Personal Independence Payment. He stated that, due to his disabilities, he struggled to sleep and that his sleep was irregular.

12. The Tribunal accepted that neither bedroom was of sufficient size to accommodate separate beds, although, in view of the nature of the disabilities of both the Appellant and her husband, this may not have been a relevant factor in any event.
13. The written evidence from the Appellant's GP was troubling in that it was clearly written in connection with a request for re-housing as opposed to addressing the issues of the disabilities of both the Appellant and her husband in the context that they might require separate bedrooms. Further, this evidence was a little vague and possibly confused. Nevertheless, when added to the evidence of both the Appellant and her husband, the Tribunal was satisfied that it did provide probative support to the case being made in this appeal.
14. The Tribunal was satisfied that the decisions in the Burnip case and in the Trengrove case did not apply in this appeal, while the decision in the Gorry case only related to the case of children. However, the Tribunal was satisfied that an analogy could be drawn in the context of this appeal with the facts in the Carmichael case (that was part of the decision of both the High Court and the Court of Appeal in the judicial review matter of MA and Others), as it involved two adults unable to share a bedroom due to issues of disability. The Court in MA and Others held that this was a case of discrimination on the grounds of disability but found that discrimination to be justified.
9. However, MA and Others was a judicial review matter, concerned with the policy issues behind the Regulations. This appeal, on the other hand, was a statutory appeal on the merits and required, therefore, to be approached and determined on its own facts. The Tribunal was satisfied, on the balance of probabilities, that there was no alternative but for the Appellant and her husband to sleep in separate bedrooms by reason of their respective disabilities.
10. The Tribunal concluded that the facts of this appeal were strongly similar to the facts in the Gorry case (save that Gorry involved two children, one of whom was disabled and unable to share a bedroom with their sibling). The court in Gorry found that, applying the Housing Benefit Regulations to deny an additional separate bedroom in those circumstances amounted to indirect discrimination on the grounds of disability pursuant to Article 1, Protocol 1 of the European Convention on Human Rights ('ECHR'), that could not be justified in relation to the discrete group that comprised disabled children. The Tribunal noted that the court in the judicial review matter of MA and Others, considering the compatibility with the ECHR of the Housing Benefit Regulations that were concerned with under-occupation of housing in respect of which public funds were expended in the form of Housing Benefit, had to consider the position of *all* disabled people on judicial review principles, as opposed to an easily identifiable discrete group of disabled people; indeed the Court of Appeal, in relation specifically to the Carmichael applicant in those proceedings, found that Mrs. Carmichael *"is in a small and easily identifiable group of disabled persons who plainly need an extra room directly as the result of their physical disability"*. The Tribunal concluded that the ultimate outcome of MA and Others did not mean that on the individual facts of an appeal before the Tribunal, in any given case, that the Tribunal could not find that the Appellant suffered from discrimination contrary to the ECHR and that

such discrimination in any given set of circumstances could not be justified. While there is a clear logic in maintaining that children have a greater need for protection than adults, this simply means that Gorry cannot be automatically applied in the case of adults but not that the principle in Gorry can never be applied to adults.

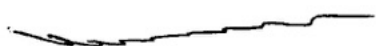
11. The Tribunal was satisfied, on the facts of this appeal, that the Appellant did suffer discrimination and that it could not be objectively and reasonably justified.

12. Accordingly, Regulation 13(b)(5)(a) should be read, in relation to the Appellant in this appeal, as follows in order to avoid discrimination, for the purposes of Housing Benefit, to a person such as the Appellant who is a member of a couple that includes a person in a discrete group of disabled persons:

"(a) A couple (within the meaning of Part 7 of the act) or one member of a couple who is unable to share a bedroom because of his or her disability or the disability of the other member of that couple"

14. Accordingly, this appeal is allowed.

It is intended that this Decision Notice contains the full Statement of Reasons for the Tribunal's decision, pursuant to Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Signed: 	Date: 15/09/14
DJ McMahon Tribunal Judge	
	Decision Notice issued to all parties on 15/09/14