



FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at Middlesbrough

on 30 April 2015

Before Tribunal Judge A N Moss

Appellant:	<input type="text"/>	Tribunal Ref:	<input type="text"/>
		NI No:	<input type="text"/>
Respondent:	Local Authority		

DECISION

1. The appeal is allowed.
2. The decision of the Local Authority dated 28.4.14 is set aside and remade as follows.
3. is entitled to 2 bedrooms – one for himself and one for his son
4. There is therefore no restriction on his maximum rent.

STATEMENT OF REASONS FOR DECISION

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

1. On 28.4.14 the Local Authority decided was under occupying his property by one bedroom and therefore his maximum rent should be restricted by 14%.

Facts

2. which is a 2 bedroomed semi detached house with its own garden. He has lived there for about one year. The tenancy is in his name. He is a single man. Before then he lived at which is a 2 bedroomed flat. The tenancy was in his name. He was a single man there. It had a communal garden.
3. He has a son, date of birth His son has now commenced schooling.
4. had a relationship with mother. They were young when she unexpectedly got pregnant. When born wanted to see his son. For a variety of reasons this proved to be difficult which resulted, ultimately, in the matter going before the court. On 11 May a court order was

made, by agreement, following involvement of CAFCAS. The parents were encouraged to be adults and sensible and look at the interests of [] This resulted in the agreement that was made and which is in the papers. That has remained the basis of the arrangements. The parents are flexible and mature to allow alterations to meet the issues in their lives as they arise.

5. The arrangements are, and had been for sometime, as follows. It is split into two weeks. Week one [] has [] staying 3 nights which is a Tuesday, Friday and Saturday. Week 2 [] stays 2 nights which is a Friday and Saturday.
6. During school time [] collects [] from school on a Tuesday and takes him back to school the next day, Wednesday. When its not school time he collects him about lunch time returning him the same time the next day.
7. At weekends he collects [] about noon and returns him at noon the next day. [] mother has started university on what appears to be a full time degree course. She commenced that in September 2014. [] maternal grandmother looks after him as well and collects him from school. Occasionally [] mother's university commitments mean [] has to take [] for longer periods of time.
8. [] is not working. He has not had a job. He receives Employment and Support Allowance in the support group and lowest rate of care and lower rate of mobility from Disability Living Allowance. This was due to mental health issues. Medical evidence of this fact was not presented and was not needed as it was not a relevant issue. It does not impact on [] ability to care for his son. It is only relevant to show that he has a full entitlement to Housing Benefit as a consequence.
9. [] stated CAFCAS required him to have a separate room for [] for him to have staying arrangements. [] mother also requires [] to have his own room. [] understands that if there was not a separate room for [] the staying arrangements would not be possible.
10. Should [] sign on for Jobseeker's Allowance and possibly get a job then that would be a bridge that would have to be crossed.
11. The information given to the Tribunal is that [] has 2 of everything – his own clothes – school and out of school, toys, toiletries, play things, bed. Apart from his knick knacks which he carries around with him [] goes from one home to another without belongings having to follow him.
12. [] is able to play in the property's back garden. He has his own swing and trampoline.
13. [] mother gets Child Benefits and, presumably Tax Credits.
14. In effect, [] has 2 homes.
15. This is not in dispute.
16. Discretionary Housing Payment (DHP).
17. [] received DHP for his first property. Subsequent to awarding it the Local Authority backdated his Housing Benefit which created a credit on his rent account. The current DHP ended on 31 March 2015. A new claim has been made but is not yet decided. The Local Authority will take into account the previous award of DHP for a period. This is to prevent duplication of payment of DHP. DHP was therefore not in issue for the Tribunal. [] has no current rent arrears.

18. Law.
19. The Tribunal gave consideration as to whether it is bound by decision CH/1059/2014 and decided it was not because it did not deal with the legal test the Tribunal has to consider. It was a short judgment and there does not appear to have been the result of significant legal discussion.
20. In essence, the decision concentrated on the term "household" rather than the legal test in regulations B13- 'occupies the claimant's dwelling as their home'.
21. "Household" and "home" are fundamentally different concepts.
22. The correct legal test has to be applied. This is crucial.
23. In DG -v- Her Majesty's Revenue and Customs (TC) [2013] UKUT 0631(AAC) – DG – the Upper Tribunal set aside the decision because the First Tier Tribunal had applied the wrong legal test.
24. It stated at paragraph 19 'the starting point must be the relevant statutory test'.
25. Regulation B13 determines the maximum rent social sector (MRSS).
26. The number of bedrooms a claimant is entitled to is determined accordance with the criteria laid down in that regulation. Paragraph B13(5)(9) sets out the categories of people who will be entitled to a room.
27. For the purposes of this case B13(5) is relevant.
28. It states 'the claimant is entitled to one bedroom for each of the following categories a person whom the relevant authority is satisfied occupies the claimant's dwelling as their home' (*my underlining*).
29. It is the responsibility of the Local Authority to make that decision and, on appeal, the Tribunal.
30. Nowhere within B13 is the word "household" used.
31. "Household" is a term which appears in many pieces of legislation and has been the subject of much case law. The case of DG considered this term to decide whether a couple are stated to be members of the same household.
32. It made it perfectly clear that the characteristics of a household are defined in the case law and can be distinguished from mere joint occupation of the same property.
33. It is accepted and widely known case law, and it is not proposed to cite it, a married couple can live under the same roof but be in separate households. It was also made clear in that case the term "household" does appear in a lot of Social Security legislation.
34. The case of DG concerned itself with Tax Credits.
35. Section 137 Social Security Contribution and Benefits Act 1992 refers to couples as people in the same household.

36. In the DG case the legal test for determining whether a joint or single claim should be made was set out in the legislation. The relevant test was whether the husband and wife were 'separated in circumstances in which the separation is likely to be permanent'.
37. The full legal test is set out at paragraph 19 and defines a couple. No mention at all is made of the word household.
38. The First Tier Tribunal based its decision on the couple living together in the same household.
39. At paragraph 21 of DG, in commenting upon this the Upper Tribunal Judge stated 'one must surely start from the position that this difference in the statutory definitions of married couple for the purposes of Social Security law and Tax Credit law respectively carries some significance. Those responsible for drafting the Tax Credits Act 2002 could simply have borrowed and recycled the standard Social Security definition of a married couple but they did not... They adopted the revenue law's definition and in particular that used in the income tax code'.
40. The Upper Tribunal Judge went on to state the statutory definition of a married couple in Section 3(5A)(a) makes no reference whatsoever to 'household' as being a necessary element of the test. Parliament has chosen not to use the Social Security definition in this context. Household is an essential part of the Social Security definition.
41. The same principles must apply to Regulation B13(5). Therefore, reference to household as the determining factor is wrong.
42. The correct statutory test is whether a category of person in B13(5) "occupies the claimant's dwelling as their home".
43. For reasons referred to below the Tribunal is satisfied that this test does not import any element of their having to be a family connection between the parties.
44. Terms within the Housing Benefit Regulations such as 'living with' 'responsible for' 'couple' 'household' necessarily import a familial, emotional, relationship connection as opposed to relationships based on friendship or practical need or acquaintanceship. There has to be an element of being a unit.
45. 'Occupies' and 'dwelling' and 'home' are not defined.
46. They are ordinary English words.
47. The concise Oxford English Dictionary, for example, defines "occupies" as residing in or being a tenant of or taking up or filling up space or time or place.
48. "Dwelling" incorporates the following definition – residence abode, not an office.
49. "Home" is defined as including a place where one lives, the fixed residence of a family or household or a dwelling house, the native land of a person or person's ancestors.
50. All of the above incorporate concepts of relationships broader and deeper than those based simply on ties linked to families in the broadest sense or 2 people being in a committed relationship. The concepts include relationships between friends and strangers.

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51. The terms within B13 'occupies the dwelling as his home' are not interchangeable and are, at times fundamentally inconsistent with, concepts such as household. As was indicated in the case of DG if Parliament had meant the Tribunal to use the term household it would have said so but it did not.
52. When it used the phrase 'occupies the claimant's dwelling as their home' it was deliberate because of one of the purposes behind the legislation.
53. One of the purposes of MRSS was to reduce the burden on the tax payer by reducing the amount of rent payable to people who are living in properties that were too big for them. Tenants were expected to move to smaller properties or rent out spare rooms. There is no limit to whom the spare rooms could be rented out to. Consequently, it was highly likely complete strangers could be filling up the spare room.
54. There is nothing within Regulation B13 which limits the category of person to those the claimant is in a relationship with.
55. For example, Regulation B13(5)(b) has a category of person as 'a person who is not a child'. That could be any adult. Further, there is nothing within the provisions relating to children that they have to be the claimant's children.
56. For example, a woman who occupies a 3 bedroomed property on her own is subject to a 25% deduction under MRSS. In accordance with Government policy she advertises in the local press she has 2 spare rooms. A single mother with her child applies for the accommodation and are given it. It may very well be the single mother and her child were also subject to MRSS in another part of the country (eg London) and because of the application of the policy were required to look for alternative accommodation they could afford and this required them to move out of the area they had lived in for many years.
57. As a consequence of taking this action the claimant is no longer subject to any deduction because as the claimant she is entitled to a room. The single mother as an adult is entitled to a room. The child is entitled to a room. Therefore, the claimant is entitled to 3 bedrooms.
58. There is no relationship whatsoever between a single mother and her child on the one hand and and the claimant.
59. There is nothing which requires the claimant to provide locked rooms for the single mother and her child or to provide separate cooking or washing or cleaning facilities. The claimant could give the single mother and her child free reign of the house enabling them to use the normal facilities within the property. It is left up to them to determine how they pay for various bills.
60. The single mother and her child would be one household. The claimant would be another household. They live within the same dwelling. Both regard that house as their home.
61. The concept of household plays absolutely no part in that set up. Therefore as to who gets the Child Benefit and who is in the household are irrelevant to determining the issue as far as Regulation B13 is concerned.
62. Further, the situation has to be looked at from the perspective of the category of person in Regulation B13 and not the claimant.

63. The way the regulation is phrased means it is that category a person who is occupying the claimant's dwelling as their home.
64. Further, there is absolutely no reason why somebody cannot have more than one home. Wealthy people have homes all over the place and in different countries. Many people have 'holiday homes'. Therefore, there is absolutely no legal reason why the category of person in Regulation B13 cannot have more than one home.
65. The Human Rights Act 1998 requires the Government and courts to interpret legislation in accordance with the principles of the Human Rights Act.
66. Article 8 concerns the definition of family life. The articles under the European Convention of Human Rights are living creatures and develop as time goes by and as society alters. The European Convention of Human Rights has been described as a living document. This means it has to take account of what is actually going on at that time.
67. It is now a normal part of our society that children split their time between their parents. The reasons for this are numerous and well known and need not be gone into. What is accepted is that a child should, unless there are very good reasons in the interests of the child, have as much contact with each parent as possible. A child is entitled to see their parents. The relationship between the parents cannot justify preventing a child from being given that opportunity. Parents are encouraged, in the family courts, to be sensible and mature, accept that it is the interests of the child that is paramount and agree contact and staying arrangements.
68. That is what has happened in this case. The parents have agreed that should spend regular stable time with both parents admittedly one more than the other but that is for practical reasons.
69. has 2 lots of everything. He just moves himself from one property to another at the appropriate time.
70. The reality is, as far as he is concerned, that he has 2 parents who he sees and 2 homes.
71. has been informed by CAFCAS, and the Tribunal can see no reason not to accept this, that he needs a room for in order to maintain staying arrangements. The mother has also stated she wants to have his own room or does not get staying arrangements. The Tribunal could see no reason not to accept that.
72. In order to maintain his established relationship with his son and for to gain the advantage of that stable relationship with his father regular staying arrangements are a necessity.
73. The facts clearly show needs his own room at his father's dwelling.
74. If the definition of occupying the claimant's dwelling as his home was not interpreted in the way that the Tribunal has done then the family life of and his father would be damaged.
75. Therefore, the Tribunal used Article 8 to bolster its interpretation of the phrase 'occupies the claimant's dwelling as their home' so as to mean that has 2 homes.
76. Therefore, falls within Regulation B13(5). He is entitled to a room of his own. is entitled to a room on his own. Therefore, is entitled to 2 bedrooms and consequently no deduction applies.

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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: 12.5.15

Statement issued to

Appellant on:

Respondent on:

Typist (EW): 11/5/15

} 12/5/15