

Housing Benefit

Urgent Bulletin

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<https://www.gov.uk/government/organisations/department-for-work-pensions>

HB U6/2014

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Who should read	All Housing Benefit (HB) staff
Action	For information

Upper Tribunal decisions CSH/41/14 and CSH/42/14

Introduction

1. HB Bulletin [U6/2013](#) provided details of two First-tier Tribunal (FtT) cases. The judge in both these cases determined that the rooms designated as bedrooms by the landlord were not to be treated as such for the purposes of the Removal of the Spare Room Subsidy (RSRS). This was because, in their opinion, the rooms in question did not satisfy the “space standards” as set out in section 137 of the Housing (Scotland) Act 1987. (Annex A sets out the facts of the two individual cases).
2. The Department for Work and Pensions (DWP) appealed these decisions to the Upper Tribunal (UT). The UT hearing was on 18 September 2014 before a three judge panel.
3. DWP has now received a favourable outcome in relation to these UT decisions, CSH/41/14 and CSH/42/14.

The Court decision

4. The UT found that the “space standards” set out in the Housing (Scotland) Act are not determinative as to whether a room is a bedroom for the purposes of the RSRS policy.
5. Their view was that the starting point for determining whether a room is a bedroom is the landlord’s description of the property. Floor space is not of itself a determinative factor and small rooms should not be precluded from being a bedroom unless they have physical features or drawbacks that prevent them from being used as a bedroom by any of the people listed in regulation B13(5) and (6) (i.e. a child, an overnight carer or an adult).
6. This means that it cannot be concluded a room is not a bedroom if it is less than 50 or 70 square feet without considering other factors as outlined below:
 - size, configuration and overall dimensions of the room
 - access
 - natural and electric lighting
 - ventilation
 - privacy.
7. In addition the judgment also stated that the assessment as to whether or not a room is a bedroom should ignore what it is actually being used for by the tenant. This means that rooms capable of being a bedroom should be classed as such.
8. Where there is a dispute as to whether a room is in fact a bedroom and a local authority (LA) decides that it is, it should provide the tenant with reasons for its decision. Where LAs decide that a room is not a bedroom (taking into account the factors listed at paragraph 6 above) they should consider whether it is appropriate to re-designate the tenant’s property and if so a corresponding reduction in rent should be applied.

Effect of the decision

9. The outcome of this decision is binding on all FtT decisions and all UT decisions made by a single judge across Great Britain.
10. LAs should ensure that any decisions made are consistent and follow the approach outlined in this bulletin.
11. **To note**, this decision only applies to cases in the social rented sector.

Case 1

The claimant is a disabled man who has a three bedroom property that he occupies with his wife. Their children have all left. He was originally deemed to be under occupying by two bedrooms but as he has an overnight carer this was revised so as to conclude that he was only under occupying by one bedroom. At the FtT it was argued that:

- under the overcrowding provisions in the Scottish Housing Act this was not a bedroom and was only suitable to be used by children which, under that legislation meant it was categorised as half a bedroom. It went on to say that DWP guidance on RSRS, circular [A4/2012](#), pre-supposes that the spare room will be a full (as opposed to a half) room as it is contemplated as being suitable for an adult lodger
- the second argument raised was that, even if the room is big enough to be a bedroom, it should still not be classified as a bedroom. This is because where a room is required to be put to some other exceptional use (in this case storing disability equipment), which is necessary for reasonable enjoyment of the property, it should not be classified as a bedroom.

The FtT judge found that the room was not big enough to be classified as a bedroom and as such he found that it was unnecessary to rule on the second argument.

Case 2

The claimant is a disabled tenant who lives in a 3 bedroom property. The claimant lost his left leg above the knee and has applied to have the box room turned into a wet-room as he finds using the bath difficult. The original decision of Fife Council was that he was only entitled to a one bedroom property. However, this was subsequently revised as the claimant argued that he needed a room for his sons to come and stay overnight to provide care when he was in discomfort. Fife Council then revised its decision to entitle him to one additional room as it accepted he needed a room for an overnight carer (**To note:** the FtT judge found this revision decision rather odd but, as it was not in issue before the Court, he could not rule on it).

In addition to the claimant's bedroom, there are two additional bedrooms in the property; one is significantly larger than the other. Only the size of the smaller room was in issue, presumably because Fife Council accepted that the larger one was used by a carer. The claimant argued that the smaller room was not big enough to be a bedroom.

In relation to the smaller room, the same arguments as in Case 1 were raised and the FtT judge found:

- In respect of the first argument, the FtT judge agreed with the appellant that, on current overcrowding legislation, the room was not big enough to be classified as a bedroom
- In respect of the second argument, the judge found that, even if he did accept this argument in principle (which he did not concede) he would have found against the appellant as there was no evidence that he could not store the equipment elsewhere

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