DECISION OF THE UPPER TRIBUNAL (ADMINISTRATIVE APPEALS CHAMBER)

As the decision of the First-tier Tribunal (made on 8 February 2016 at Coventry under reference SC015/14/00849) involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and the case is REMITTED to the tribunal for rehearing by a differently constituted panel.

DIRECTIONS:

A. The tribunal must undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the tribunal's discretion under paragraph 6(9)(a) of Schedule 7 of the Child Support, Pensions and Social Security Act 2000, any other issues that merit consideration.

B. The reconsideration must be undertaken in accordance with *KK v Secretary of State for Work and Pensions* [2015] UKUT 417 (AAC).

C. In particular, the tribunal must investigate and decide how regulation B13 applies on and from 7 April 2014.

D. We shorten the time within which a party may apply for permission to appeal to the Court of Appeal to one month pursuant to rule 5(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI No 2698).

Reasons for Decision

A. The issue

1. This is another case on the meaning of 'bedroom' in regulation B13 of the Housing Benefit Regulations 2006 (SI No 213) and the second occasion on which the Chamber President has directed a three-judge panel on the issue.

2. That deceptively simple word has given rise to literally hundreds of cases before the Upper Tribunal raising a number of issues. We call the issue in this case the connection issue. It is this. Is a room in a dwelling classified without reference to the particular individual or class of individual who may occupy it or must the room in question be one that can be used as a bedroom by the actual occupants or class of occupants?

3. This is a distinct issue from the classification issue, which is whether the room could be used as a bedroom at all. This issue embraces a number of questions:

> The features question: could this room be used a bedroom given its size or other features?

The description question: what is the relevance if any of the way in which the landlord has described the room?

The use question: what is the relevance if any of the way in which the room has been used?

The change of use question: this is a variation of the use issue and arises when a room that was used as a bedroom is used for a different purpose. Analytically, the change of use question is not distinct from the use question.

B. The oral hearing

4. We held an oral hearing on 14 July 2017. Alison Meacher of counsel appeared for the local authority, Tom Royston of counsel appeared for the claimant, and Edward Brown of counsel appeared for the Secretary of State. At the end of the hearing, we directed further written submissions, which have now been made. We are grateful to all counsel for their written and oral submissions.

C. The legislation

5. These are the relevant provisions of regulation B13 of the Housing Benefit Regulations 2006:

B13 Determination of a maximum rent (social sector)

(1) The maximum rent (social sector) is determined in accordance with paragraphs (2) to (4).

(2) The relevant authority must determine a limited rent by-

(a) determining the amount that the claimant's eligible rent would be in accordance with regulation 12B(2) without applying regulation 12B(4) and (6);

(b) where the number of bedrooms in the dwelling exceeds the number of bedrooms to which the claimant is entitled in accordance with paragraphs (5), to (7), reducing that amount by the appropriate percentage set out in paragraph (3); and

(c) where more than one person is liable to make payments in respect of the dwelling, apportioning the amount determined in accordance with sub-paragraphs (a) and (b) between each such person having regard to all the circumstances, in particular, the number of such persons and the proportion of rent paid by each person.

(3) The appropriate percentage is-

(a) 14% where the number of bedrooms in the dwelling exceeds by one the number of bedrooms to which the claimant is entitled; and

(b) 25% where the number of bedrooms in the dwelling exceeds by two or more the number of bedrooms to which the claimant is entitled.

(4) Where it appears to the relevant authority that in the particular circumstances of any case the limited rent is greater than it is reasonable to meet by way of housing benefit, the maximum rent (social sector) shall be such lesser sum as appears to that authority to be an appropriate rent in that particular case.

(5) The claimant is entitled to one bedroom for each of the following categories of person whom the relevant authority is satisfied occupies the claimant's dwelling as their home (and each person shall come within the first category only which is applicable)-

(a) a couple (within the meaning of Part 7 of the Act);

(b) a person who is not a child;

(ba) a child who cannot share a bedroom;

(c) two children of the same sex;

(d) two children who are less than 10 years old;

(e) a child.

D. How the issue arises on the facts

6. The claimant occupies her home with her husband and two sons. At the relevant time (28 March 2014), the elder son was 9 years old and the younger son was 7 years old. The tenancy agreement provided that the property had three bedrooms, but that the maximum number of people who could live there was four. In other words, the agreement envisaged that the smaller two bedrooms could not be shared. That was how the claimant's family used the accommodation: the couple occupied the largest room and the boys had a room each. The local authority imposed a 14% reduction under regulation B13 on the ground that two children of the same sex could share one of the rooms, leaving one spare. That would, of course, have complied with the terms of the tenancy, since the number of occupants was still only four.

7. The First-tier Tribunal at first dismissed the claimant's appeal, but the decision was set aside by Upper Tribunal Judge Lloyd-Davies under reference *CH/0571/2015*. At the rehearing, the judge allowed the appeal. She decided that neither of the smaller rooms could be shared. One of the two rooms could accommodate a single bed, but a bunk would obscure much of the natural light. That was not in dispute. The other room could accommodate a bunk bed without interfering with the doorway, natural light, and access to the room, but the child sleeping on the top bunk would be unacceptably close to the light fitting, even if it were changed to a flat rather than pendant fitting, and the bunks would not allow the wardrobe to be opened fully.

E. Our analysis

8. We first explain how we analyse regulation B13 and then consider two cases in which the reasoning is inconsistent with our analysis.

9. The regulation operates to reduce the amount of the claimant's otherwise eligible rent by reference to the number of bedrooms in excess of the claimant's entitlement. Paragraph (5) provides that that entitlement depends on 'the categories of person' occupying the dwelling as their home. That depersonalises the assessment so that the characteristics of the actual individuals concerned are irrelevant. The first task in applying paragraph (5), therefore, is to identify the individuals who occupy the dwelling as their home and then to place them into the categories listed. That was not in dispute.

10. The argument for the Secretary of State and the local authority was that the next task is to identify the number of bedrooms in the dwelling without reference to the categories of person who would have to occupy them. We tested this by asking Mr Brown how many bedrooms there would be in a house that had three small bedrooms that could only be occupied by a child under ten. His answer was: three.

11. It may be significant that Mr Brown did not avoid the question by saying that it was wholly unrealistic to posit such a property as they do not exist. That may be the case, but the purpose of the question was to test Mr Brown's argument to the point of destruction. In any event, our example could easily be made more realistic. Assume a family consisting of mother, father and two sons. Their home has three rooms designated as bedrooms by the landlord. One is a double room, occupied by the parents. The other rooms are smaller and can accommodate only a single bed. The property is a cottage with sloping ceilings in all the bedrooms, such that it would not be possible to use bunk beds. Mr Brown would say that that property had three bedrooms and the claimant was only entitled to two, regardless of the fact that neither of the smaller rooms could accommodate both boys.

12. Mr Royston described that result as absurd. We do not need to go that far. What we say is this. First, to us that is not the natural meaning of the language of paragraph (5). On Mr Brown's approach, the paragraph sets up a calculation by reference to the actual occupants as classified into particular categories but then ignores the inevitable characteristics of the categories, such as that they consist of two people or people of a particular age. The paragraph provides that the claimant is entitled to a bedroom *for* each category. The natural expectation of that language is that the room would be a bedroom for the persons bearing the characteristics of that category, not a room that ignored those characteristics. This leads on to our second reason. If the legislation were to produce the result that Mr Brown and Ms Meacher contended for, it would need much clearer language to show that it was necessary to sever the claimant's entitlement from the characteristics of the categories as set out in paragraph (5). The language does not do that.

13. It is now necessary to apply our reasoning to the circumstances of this case. The opening words of paragraph (5) stipulate that 'the first category only which is applicable' applies. In other words, paragraph (5) works in descending order. At the time of the decision under appeal, there were two boys living in the property with their parents. On the face of it, it looks as if head (c) would apply. However, the room in paragraph (5) must be a bedroom for persons bearing the characteristics of the category, namely two children of the same sex, and must not be a room which ignores those characteristics. In this case, putting both boys into either of the bedrooms would mean that each of the rooms ignores the category's characteristic of two children, because on the First-tier Tribunal's findings the rooms are too small to accommodate two children. That category cannot therefore be applicable because it ignores the connection issue. The word 'applicable' must refer back to this issue. Moving down the list, head (d) might apply as the boys are under 10, but this head would also fail the connection issue because the rooms would still be too small. That leaves head (e).

14. An alternative analysis, which produces the same result, is to say that paragraph (5) must be read as a whole. The boys may fall within the wording of head (c) or (d), but they do not fall within their meaning. If there is no room that can accommodate two children of the same sex, neither head (c) nor head (d) is an applicable category within the meaning of the paragraph.

15. Head (e) covers *a* child and has to be applied twice to ensure that the claimant is entitled to one room for each of her children. It is inherent in the regulation that this double application may have to be taken. Suppose that the claimant has twin boys. When they attain the age of 16, they cease to be children and the claimant becomes entitled to a room for each of them under head (b), despite the fact that it refers to *a* person who is not a child. The same is true of head (ba), which may have to be applied to more than one child who cannot share a bedroom.

16. This means that the number of bedrooms to which a claimant is entitled may vary from time to time. This can happen even if we are wrong on the connection issue. If a couple have a boy and a girl, the claimant's entitlement will increase by one bedroom when the elder attains the age of 10. Likewise if a couple have a daughter aged seventeen who then moves out, the claimant's entitlement will reduce by one bedroom.

17. Contrary to Ms Meacher's argument, our analysis does not amount to legislation, it does not gloss the language, and it does not read in words. All we have done is to explain how the actual words of paragraph (5) operate. That is a necessary and appropriate task when dealing with words that are not defined in order to show how they have to be applied.

18. Mr Brown argued at the hearing that our analysis was contrary to the policy or purpose underlying regulation B13, which was to encourage mobility so that the social housing stock could be allocated most appropriately. The underlying policy has been the subject of much discussion in the discrimination cases that

have arisen under the regulation. We gave Mr Brown the chance to produce evidence that threw light on how the policy or purpose of the legislation might apply to what we have called the connection issue. The Secretary of State's answer came in the form of a witness statement from Ms Beverley Anne Walsh of the Working Age Strategy Directorate of the Department for Work and Pensions, together with extensive attachments. We are grateful to her for her statement and for the information she provided. Mr Royston made a short submission with less extensive attachments and Ms Meacher made a detailed submission. We have studied the material, including the Parliamentary material, but we have not found anything that assists us in answering the connection issue. It contains numerous examples of how the legislation should apply apart from the connection issue, but we can find nothing that indicates any policy or purpose on that specific issue. Just to take one obvious example, we do not doubt that financial considerations were important in devising the policy represented by regulation B13, but that does not help us to decide whether the precise extent of the savings included cases such as the one before us. We were also referred to the facts of some of the cases involved in the *Carmichael* litigation, but again they do not assist on the connection issue.

F. Secretary of State for Work and Pensions v Glasgow City Council and IB [2017] CSIH 35

19. This is a decision of the Inner House of the Court of Session in Scotland, the equivalent of the Court of Appeal in England and Wales.

The facts as found by the First-tier Tribunal

20. IB has a severe learning disability and autistic traits. The house she was renting had formerly been her parents' home, but they had died and she moved to live there with her sister and brother-in-law who are her guardians. The property originally had four bedrooms. The claimant occupied one of them and her sister and brother-in-law occupied another. Both rooms were on the first floor along with a third bedroom; there was no dispute about the classification of that room. The issue concerns a further room, which was on the ground floor. In terms of regulation B13, the issue was whether the claimant's eligible rent should be reduced by 14% or 25%. It would be the latter if the ground floor room was a bedroom and the former if it was not.

21. The local authority decided that the ground floor room was a bedroom and reduced the claimant's maximum rent under regulation B13. The First-tier Tribunal found that this room was not a bedroom. It had been converted on the advice of a social worker for use as a living room for the claimant, allowing her some privacy from her sister and brother-in-law who used the original sitting room. The claimant spent some time there on her own, especially when she was agitated or unsettled, or with her carers when they visited.

The Court of Session's reasoning

22. The Upper Tribunal dismissed the appeal against the First-tier Tribunal's decision, but the Court of Session allowed the appeal. This was its reasoning:

> [18] In the present case the focus is on the meaning of the word 'bedroom' in the Regulations. Counsel for the parties were agreed that there was no definition in the Regulations of the word 'bedroom' albeit the word appears frequently in different parts of the Regulations in a scheme which has become very complex. We consider that it is essential to consider the statutory context in interpreting the word 'bedroom' in Regulation B13. The 2006 Regulations, as amended, are designed to assist a person liable to make payments in respect of a dwelling in Great Britain which he occupies as his home (section 130 of the Social Security Contributions and Benefits Act 1992). The scheme provides a detailed and complex system for calculating housing benefit and payments in respect of properties 'rented' by 'tenants'. The dwellings covered are classified in different ways. A common classification which is used in the statutory scheme is by reference to number of bedrooms.
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> [19] There was no real dispute in this case about the purpose of the Regulations and we consider that purpose would be frustrated if a tenant who rented what was objectively classified, for example, as a three bedroom property could by his use or unilateral structural changes to the property change the classification to a two or one bedroom property.
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> [20] In the present case the appellant did not challenge that the five rooms in the dwelling rented by the applicant contain one livingroom, kitchen and bathroom. That leaves four rooms which the appellant submitted are properly classified as bedrooms. In our opinion the classification and description of a property used as a dwelling is a matter of fact to be determined objectively according to relevant factors such as size, layout and specification of the particular property in its vacant state. That classification cannot be changed except by structural alterations made with the landlord's approval which have the result of changing the classification of the property having regard objectively to its potential use in a vacant state. Thus the classification of a property as having one or more bedrooms does not change depending on the actual needs of the occupants or how they use the rooms for whatever reason from time to time. This may work both in favour of and against the applicant for housing benefit. For example, if the property considered objectively is classified as three bedrooms, the fact that the tenant always uses the livingroom as a bedroom should not result in reclassification of the property for the purposes of the 2006 Regulations as a four bedroom property. In contrast, if a tenant chooses or requires to use one of the three bedrooms as a storeroom for essential medical equipment, that should not result in a reclassification of the property from a three bedroom property to a two bedroom property. We note, for example, that one of the factual cases considered in *R(MA)* was the application summarised in

appendix 1 at page 4576. He had a three bedroom property and used one bedroom as a store for essential equipment required because of disability. It was not submitted by any party nor raised by any of the Justices that the property should be classified as having only two bedrooms which would determine the relevant reduction under Regulation B13. The issue of the interpretation of 'bedroom' and the relevant factors to be considered was not of course raised directly in *R(MA)*.

[21] The issue was raised directly at tribunal level in a number of cases. A three judge panel was convened in *SWP* v *Nelson* against a background that there were a number of different approaches taken by First-tier Tribunals to the interpretation of the word 'bedroom' in Regulation B13. We consider that there is merit in the approach of the Upper Tribunal to the extent that they recognised that the assessment should focus on the property when vacant rather than how it is actually being used from time to time (paragraph 28) and in their practical approach to considering what may be relevant factors illustrated in paragraphs 30 to 33. To the extent however that the Upper Tribunal entertained the possibility that the designation or choices made by family members as to who should occupy bedrooms or how rooms should be used had any relevance, we do not agree.

[22] In our opinion, in a disputed case in the first instance it is for the local authority who is responsible for administering the housing benefit system to come to a decision objectively about the classification of the property offered for rent in its vacant state. That may involve taking into account, for example, the number of rooms, their size, layout and function as living/dining space, kitchen, washing/toilet facilities and what other space is available. This may include deciding whether a room is suitable to accommodate a bed with, for example, sufficient space, height, light, privacy to be classified as a bedroom. The classification decision is not dependent on suitability for occupancy by more than one person. We accept that the landlord's description of the property as offered to rent will often be a useful starting point in the relevant factual assessment but it is not definitive.

[23] In this objective assessment, we do not consider that assistance can be drawn from paragraphs (5) and (6) of Regulation B13 in concluding whether a room is properly classified as a bedroom. We are not clear what assistance the Upper Tribunal in the *Nelson* decision derived from these provisions. For example, in a particular property there may be a room available which is not big enough for a double bed but the room is otherwise suitable as a bedroom to accommodate a child in a single bed. In our opinion that room may still properly be classified as a bedroom even although the particular occupants of the property have no child and the room is too small for the couple who live in the property and need a bedroom. We consider that what is required in assessing whether a room is a bedroom is an objective assessment of the property as vacant which is not related to the residents of the property or what their actual use or needs might be. The use and needs

of the residents may vary from time to time and the number or residents may also vary. This may lead to what might be regarded as overcrowding or under occupation as defined by Regulation B13 at a particular time. None of that however affects the prior question which in our opinion is to be determined objectively as to the number of bedrooms in the property.

[24] We are of the opinion that if a room is converted by the landlord or with his consent in such a way that it can no longer be classified objectively as a bedroom, for example, if it is converted into a wet room or if a wall is knocked down between two small bedrooms to provide a larger bedroom, the result of objective assessment of the property may be that it has one less bedroom after the conversion work. That result arises regardless of whether the physical reconfiguration is done because of the mental or physical disability of one of the occupants or merely as a way of upgrading the landlord's property or for some other reason. We would expect the landlord to reflect the conversion work in the lease terms and in the landlord's description of the property. That may impact on the rent which the landlord is able to charge.

[25] It follows therefore that we consider both the First-tier Tribunal and the Upper Tribunal judge to have erred in law in concluding that the re-designation of a bedroom to a livingroom by or on behalf of IB with or without professional advice about that re-designation was a relevant factor. An applicant for housing benefit and the occupants of a dwelling may choose or need or be advised to use the property in a way which best suits their needs but in our opinion that is not relevant to the issue of what is a bedroom for the purposes of the 2006 Regulations.

[26] We consider that our approach to the interpretation of the word 'bedroom' for the purposes of the 2006 Regulations does not raise any discrimination issue. Discrimination may arise under the 2006 Regulations, because of the specific rules set out in Regulation B13 as to the number of bedrooms deemed to be appropriate by reference to the list set out in Regulation B13 paragraphs (5) to (9). In the developing case law which was considered in *R(MA)*, the alleged discrimination focused on the additional needs for an additional bedroom because of disability and other reasons. In the present case it is not submitted that IB requires an additional bedroom.

[27] For the reasons given, we conclude that the property occupied by Miss IB is a four-bedroom property and that the number of bedrooms in the dwelling exceeds by two, the number of bedrooms to which Miss IB is entitled under the 2006 Regulations. Accordingly in terms of B13(3)(b) of the 2013 Regulations the maximum rent is limited by 25%.

Why we do not follow the reasoning IB

23. Decisions of the Court of Appeal are binding on the Upper Tribunal. This does not mean that decisions of the Court of Session are also binding. Laws LJ

explained why in *Marshalls Clay Products Ltd v Caulfield, Clarke v Frank Staddon Ltd* [2004] ICR 1502 at [32]:

> The rules of precedent or *stare decisis* cognisable here are given by the common law . . . The essence is that precedent confines the very power of the courts subject to it. It is not a rule of discretion or comity or anything of the kind. It is therefore of necessity a doctrine whose reach is limited to the jurisdiction in which the courts in question operate. The House of Lords is no exception; by statute its writ runs to three jurisdictions, and accordingly it binds the lower courts within each of those jurisdictions. Statute might also extend the scope of precedent, as was done by the European Communities Act 1972 . . . Now, statutory provisions which give dominion to courts in one jurisdiction (international or otherwise) over courts in another are apt, here at least, to father constitutional tensions. But it is at least clear, and here is the point on this part of the case, that it would be a constitutional solecism of some magnitude to suggest that by force of the common law of precedent any court of England and Wales is in the strict sense bound by decisions of any court whose jurisdiction runs in Scotland only or – most assuredly – *vice versa*. Comity and practicality are another thing altogether. They exert a wholly legitimate pressure.

IB is persuasive authority in the Upper Tribunal when it exercises jurisdiction in England (as it is doing in this case), but no more.

24. More importantly, we doubt whether we would have followed the reasoning in *IB* even if it had been a decision of the Court of Appeal in England and Wales. We say that because *IB* was not concerned with the connection issue. Rather, it was concerned with the classification issue and in particular with the change of use question. The room in question had been a bedroom, but it had been changed for use as a living room for the claimant. So it is not necessary for us to decide whether the Court was right on the issue before it. What we have to decide is whether we should apply the Court's reasoning to the issue before us. We have decided not to do so. The Court did not consider the issue before us and, so far as the decision shows, the reasoning on which we rely was not put to the Court in argument. The Court did not consider that reasoning, let alone reject it.

G. Secretary of State for Work and Pensions v Nelson and Fife Council [2014] UKUT 525 (AAC), [2015] AACR 21

25. This is a decision of the Upper Tribunal sitting as a three-judge panel in two joined Scottish cases. Unlike *IB*, this decision does mention the connection issue.

26. The panel dealt with the correct general approach to provisions like regulation B13 in these paragraphs:

> 19. When an ordinary or familiar English word such as 'bedroom' is used in a statutory test and is not defined in the legislation:

i) the test should not be re-written or paraphrased, and

ii) the ordinary or familiar word should be construed and applied in its context having regard to the underlying purposes of the legislation.

The decision of the House of Lords in *Uratemp Ventures Ltd v Collins* [2001] UKHL 43; [2002] 1 AC 301 which was relied on by the Secretary of State is an example of this well established approach.

20. So a problem for courts and tribunals in giving guidance, and for fact-finders in reaching and explaining their conclusions on the application of a test using ordinary or familiar English words that are not defined is that they cannot re-write the test and as Lord Upjohn explains in *Customs and Excise Commissioners v Top Ten Promotions* [1969] 1 WLR 1163, at 1171, they must adopt the following approach:

> 'It is highly dangerous, if not impossible, to attempt to place an accurate definition upon a word in common use; you can look at examples of its many uses if you want to in the Oxford Dictionary but that does not help on definition; in fact it probably only shows that the word normally defies definition. The task of the court in construing statutory language such as that which is before your Lordships is to look at the mischief at which the Act is directed and then, in that light, to consider whether as a matter of common sense and every day usage the known, proved, admitted or properly inferred facts of the particular case bring the case within the ordinary meaning of the words used by Parliament.'

21. It follows that the underlying purposes of the relevant test using such language and the context in which the language is used are important and often determinative factors to be taken into account in determining whether on the facts of a given case the relevant test is satisfied.

22. It also follows that in most cases the decision-maker's understanding of the test and approach to its application in a given case is best provided by the reasons given for the decision (eg albeit in an obvious case it is a bedroom because it has room for two single beds and storage, good ventilation and either it has been or could be used as room in which two people have slept or could sleep).

23. The approach reflects the old adage that it is difficult to define an 'elephant' but we know one when we see one and so we can explain why we think we have seen one by describing what we have seen.

27. The panel then considered how to apply that approach to regulation B13. It first identified that the 'underlying purposes is to limit the housing benefit entitlement of those under occupying accommodation'. Extracting the points relevant to the connection issue, it then went on to say at [27] and [28] that:

> 'the use or potential use of the relevant room or rooms can be by any of the people listed in sub-paragraphs (5)-(6)'
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> 'the underlying purpose of regulation B13 would be undermined if this was not the case'
>
> 'that purpose and that interpretation of the regulation shows that the test is focused on the availability of rooms that could be used as bedrooms by any of the listed people and thus essentially the assessment of the property when vacant; rather than how it is being used from time to time.'

28. We agree with the panel on the general approach to regulation B13, but we do not agree with the passages we have just quoted for the reasons we have given in our analysis of the regulation. It is fair to ask why those statements are not decisive of the issue before us, given that they were made by a three-judge panel in what is now a reported decision. (For the Upper Tribunal's doctrine of precedent, see *Dorset Healthcare NHS Trust v MH* [2009] UKUT 4 (AAC) at [37] and *Secretary of State for Defence v AD and MM* [2009] UKUT 10 (AAC) at [132].) These are our reasons for differing from the reasoning in *Nelson*.

> First, the Upper Tribunal's approach to precedent is not rigid. It recognises that there may be compelling reasons why even a single judge should not follow a decision by a three-judge panel; and a slavish adherence to the standard approach should not allow the perpetuation of error.
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> Second, we were appointed to consider the connection issue by our Chamber President, who presided in *Nelson*. He can only have done so in the knowledge that we might disagree with that decision.
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> Third, the connection issue did not arise in *Nelson*.
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> Fourth, although the panel mentioned the connection issue and, no doubt, considered it an important part of its analysis, the actual focus of the reasoning thereafter was on the classification issue and in particular the features and use questions. We can find nothing to indicate that the panel's reasoning on those questions was affected by its view of the connection issue.
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> Finally, as with *IB* and so far as the decision shows, the reasoning on which we rely was not put to the panel in argument. The panel did not consider that reasoning, let alone reject it.

H. Why we have directed a rehearing

29. A rehearing is needed to make findings of fact on the problems, if any, that might arise if the room in question were furnished with bunk beds. We were not persuaded by the First-tier Tribunal's concern over the light fitting. Changing the fitting so that it was close to the ceiling is one of those minor adjustments that a claimant can be expected to make and the use of LED bulbs should reduce,

if not eliminate, any danger that the boy sleeping in the upper bunk might burn himself. We are, though, conscious that basing findings on the features of a room from written descriptions and diagrams can be difficult. We note that photographs can be misleading, even unintentionally, so care should be taken to provide the tribunal rehearing this appeal with clear and unambiguous information about the features of both rooms.

Signed on original
on 01 December 2017

Mrs Justice Gwynneth Knowles
Upper Tribunal Judge Jacobs
Upper Tribunal Judge Hemingway