

Housing Benefit

Urgent Bulletin

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

HB U4/2014

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Who should read	All Housing Benefit staff
Action	For information

Removal of the spare room subsidy – Upper Tribunal decisions

1. HB Bulletin U7/2013 asked local authorities (LAs) to notify us of all First-tier Tribunal (FtT) decisions received relating to the removal of the spare room subsidy so that we could get a clearer picture of the number of FtT decisions where this policy was the main issue.
2. This bulletin is to inform you that a number of cases have now been heard by the Upper Tribunal (UT) in Scotland. A brief summary of the decisions can be found at **Annex A**.
3. These decisions now provide binding caselaw relating to the removal of the spare room subsidy that must be followed by LAs and other FtTs in Great Britain (England, Scotland and Wales) when making decisions. In addition in cases where an FtT ignores relevant caselaw LAs should consider if an application for permission to appeal to the UT is appropriate.

CSH/188/2014

This case relates to a couple living in a two bedroom property who argued that due to his wife's disabilities her husband required a bedroom of his own. The FtT allowed the appeal stating that the claimant was entitled to two bedrooms so an under-occupancy reduction was not appropriate. The Secretary of State appealed to the UT on the grounds that the FtT had applied the wrong test for justification, had not followed the decision of the Court of Appeal in '*MA & Others*' and had instead relied upon the decision of the Court of Appeal in '*Burnip*'.

The Judge accepted the submissions on behalf of the Secretary of State, agreed that the FtT erred in law by following the decision in '*Burnip*' and followed the decision in '*MA*'. The Judge acknowledged that sitting as a judge of the UT in Scotland he was not bound by a Court of Appeal decision in England and Wales. He made it clear that he would only decline to follow such a decision if in his view it was "clearly wrong". As he did not consider the decision in '*MA & Others*' to be clearly wrong he chose to follow it.

In addition the Judge held that the approach taken in '*MA and Others*' applied to both decisions of the Court of Appeal on judicial review applications and also to those taken through the standard appeals procedures.

CSH/372/2014 and CSH/374/2014

These cases both related to a single claimant who argued that the legislation was discriminatory on the grounds of disability in terms of the Equality Act 2010. The FtT confirmed that the LA decision to apply a reduction due to under-occupation was correct. The UT dismissed the claimants' appeals and confirmed the decision made in the Court of Appeal in '*MA & Others*'. The policy does not unlawfully discriminate against disabled claimants and the Secretary of State complied with his public sector equality duty in respect of disabled claimants when formulating the policy.

The Judge acknowledged that sitting as a judge of the UT in Scotland he was not bound by a Court of Appeal decision in England and Wales. He made it clear that he would only decline to follow such a decision if in his view it was "clearly wrong". As he did not consider the decision in '*MA & Others*' to be clearly wrong he chose to follow it.

CSH/589/2014

This case relates to a single claimant where the FtT accepted the claimant's argument that the third bedroom in her house was used as an extension to her own room as due to her disability she required extra space to get dressed

and also to store medication and medical notes in a locked cupboard. The FtT concluded that the application of the size criteria in the social sector was incompatible within the terms of Article 14 of the European Court of Human Rights (ECHR). The Secretary of State appealed and the UT found that the FtT had erred by not applying the correct test for justification of discrimination in a case relating to the payment of state benefits and that the decision of the Court of Appeal in *MA & Others* had not been followed.

The UT Judge in deciding the appeal followed MA and allowed the appeal, confirming the original LA decision.

CSH/377/2013

This case relates to a single claimant whose son stays with him for three nights per week but lives with his mother the rest of the time. The FtT refused the appeal and the claimant was granted permission to appeal to the UT. The claimant relied on the argument that Article 8 of ECHR (Protection of Home and Family Life) obliged the LA to apply regulation 20 of the Housing Benefit regulations so as to treat him as responsible for his son with the result that there should not be an under-occupancy reduction. The claimant had received Discretionary Housing Payments (DHP) since 1 April 2013 to make up the shortfall in rent.

The UT Judge refused the appeal stating that taking the DHP into account there was no interference of any gravity with the claimant's Article 8 right or that of his son and determined that in relation to the issue of justification, the decision in *MA and Rutherford* had addressed this issue albeit in a different area of discrimination. The Judge found that "a scheme which includes a measure which may affect a claimant's home and family life, but which also incorporates protection in his particular situation, which protection has actually been given, albeit on a discretionary basis, cannot in my view be seen as disproportionate or not justified in terms of the Convention right".

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