[2017] AACR 38

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

CSIH (Lord Brodie, Lady Clark of Calton and Lord Glennie) CSH/734/2014
31 May 2017

Housing benefit – maximum eligible rent – under occupation – interpretation of "bedroom" in relevant legislation

The respondent was an adult single woman with a severe learning disability and autistic traits who lived with carers. The council decided she was occupying a four bedroom house and reduced her housing benefit (HB) by 25 per cent under regulation B13 of the amended Housing Benefit Regulations 2006 (the Regulations) for under occupation by two bedrooms. She successfully appealed to the First-tier Tribunal (F-tT) which decided that the fourth bedroom had been used as a living room for some years and the property had only three bedrooms so that a 14 per cent reduction of HB was appropriate. The Secretary of State appealed to the Upper Tribunal (UT) against that decision. The main issue was whether the appropriate test for what constitutes a bedroom is actual use or designation of the room, or potential use to be assessed by looking at the property as if it were vacant. The UT dismissed the appeal as the designation of the fourth bedroom as a living room was set in place by the social workers who planned the return of the respondent to her home with carers. The UT considered the disputed issue was a question of fact that was properly determined by the F-tT. The Secretary of State sought permission to appeal to the Court of Session which was granted by the UT.

Held, allowing the appeal, that:

1. 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. The classification does not change because of the actual needs of the occupants or how the rooms are used. It 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 (paragraph 20);

2. in the first instance, it is for the local authority which is responsible for administering the housing benefit scheme to come to a decision objectively about the classification of the property offered for rent in its vacant state. The landlord's description of the property as offered to rent will be a useful starting point in the relevant factual assessment but it is not definitive (paragraph 22);

3. therefore, both the F-tT and the UT erred in law in concluding that the re-designation of a bedroom to a living room by or on behalf of the respondent 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 to be advised to use the property in a way which best suits their needs, but that is not relevant to the issue of what is a bedroom for the purposes of the Regulations (paragraph 25);

4. *(obiter)* a 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 (paragraph 23).

OPINION OF THE COURT OF SESSION, INNER HOUSE

Mr Andrew Webster, instructed by the Office of the Advocate General, appeared for the appellant.

Ms Lesley Irvine, instructed by Balfour+Manson, appeared for the second respondent.

The main issue in the appeal

1. This statutory appeal, under section 13(2) of the Tribunals, Courts and Enforcement Act 2007, from a decision of the Upper Tribunal (Administrative Appeals Chamber) dated 16 May 2015, is concerned with the assessment of housing benefit under the Housing Benefit Regulations 2006 (SI 2006/213) as amended ("the 2006 Regulations"). The main issue raised is the interpretation of the word "bedroom" which is contained in regulation B13 inserted into the 2006 Regulations by the Housing Benefit and Universal Credit (Size Criteria) Miscellaneous Amendments) Regulations 2013 (SI 2013/2828) ("the 2013 Regulations").

Parties to the appeal

2. The Secretary of State for Work and Pensions is the appellant. The City of Glasgow Council is the first respondent and is responsible for the administration of housing benefits. The landlord is a Housing Association. Neither the first respondent nor the landlord have appeared in proceedings in this case. The second respondent is the applicant for housing benefit and is designed in the pleadings as IB. In response to questions of the court, counsel representing the interests of IB explained that there was a Certificate of Guardianship dated 15 February 2013 and an interlocutor of Sheriff Normand dated 13 February 2013 making a Guardianship Order in respect of IB. The Certificate certified that, SO and her husband, DMO, who are the sister and brother in law of IB, were granted authority relating to IB in terms of the Guardianship Order dated 13 February 2013. Counsel was instructed by SO and DMO to appear and respond to the appeal proceedings in the interests of IB. Counsel took no issue about the form of the proceedings which designed IB alone as second respondent. Counsel advised the court that she was properly instructed by the guardians SO and DMO to appear in the interest of IB in the appeal. Counsel for the appellant also agreed that the appeal should proceed on that basis.

Summary

3. Miss IB is an adult single woman who has a severe learning disability and autistic traits. She is unable to live on her own. She is a tenant of a property comprising five main rooms plus kitchen and bathroom which she rents from a Housing Association. She lives with SO and DMO who care for her. She is in receipt of housing benefit which is administered by Glasgow City Council.

4. Glasgow City Council are bound to consider and apply the 2006 Regulation as amended in particular by the 2013 Regulations. The 2013 Regulations, which have been the subject of some controversy, have been referred to as the bedroom tax; spare room subsidy regulations; or more neutrally as the size criteria regulations. The dispute in this case principally relates to the interpretation of the word "bedroom" in regulation B13 of the 2006 Regulations. Regulation B13 lists criteria to determine the number of bedrooms a claimant is deemed to need for the purpose of determining the appropriate maximum housing benefit. There is no definition of the word "bedroom" for the purposes of regulation B13.

5. The housing benefit of Miss IB was reduced by 25 per cent by Glasgow City Council when they applied regulation B13(3)(b) of the 2006 Regulations and concluded that she was under occupying the rented property by two bedrooms. Miss IB successfully appealed that decision to the extent that the First-tier Tribunal decided that the property had three (not four) bedrooms because:

> "What was formerly a fourth bedroom on the ground floor was a livingroom at the relevant date and had been for a number of years".

Accordingly the First-tier Tribunal concluded that a 14 per cent discount was appropriate, as the number of bedrooms in the property exceeded by one the number of bedrooms to which Miss IB is entitled under the Regulations. Miss IB did not appeal that decision.

6. The Secretary of State appealed the decision to the Upper Tribunal on the main ground that in determining whether a room was a bedroom for the purpose of the Regulations, in particular the 2013 Regulations, the appropriate test was not actual use or designation of the room but potential use to be assessed by looking at the property as if it was vacant. The Upper Tribunal refused the appeal by the Secretary of State and decided that on the facts found by the First-tier Tribunal, the designation of the fourth bedroom as a living room was not a family choice or designation but was set in place by the social worker who planned the return of Miss IB to her home with carers. The Upper Tribunal considered that the disputed issue was a question of fact which was properly determined by the First-tier Tribunal.

7. The Secretary of State sought leave to appeal to the Court of Session and this was granted by the Upper Tribunal.

Regulation B13

8. Regulation B13 was inserted into the 2006 Regulations by the 2013 Regulations and states:

> "**Determination of a maximum rent (social sector)**
>
> **B13. –** (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,

(6) The claimant is entitled to one additional bedroom in any case where –

(a) a relevant person is a person who requires overnight care; or

(b) a relevant person is a qualifying parent or carer.

(7) Where –

(a) more than one sub-paragraph of paragraph (6) applies the claimant is entitled to an additional bedroom for each sub-paragraph that applies;

(b) more than one person falls within a sub-paragraph or paragraph (6) the claimant is entitled to an additional bedroom for each person falling within that sub-paragraph, except that where a person and that person's partner both fall within the same sub-paragraph the claimant is entitled to only one additional bedroom in respect of that person and that person's partner.

…

(9) In this regulation 'relevant person' means –

(a) the claimant;

(b) the claimant's partner;

(c) a person ('P') other than the claimant or the claimant's partner who is jointly liable with the claimant or the claimant's partner (or both) to make payments in respect of the dwelling occupied as the claimant's home.

(d) P's partner."

The decision of the First-tier Tribunal dated 12 June and 20 August 2014

9. So far as relevant to the appeal before this court, the First-tier Tribunal found:

"...

6. The appellant is a single woman. She was 54 years old when the decision under appeal was made. She has a severe learning disability and autistic traits. She is unable to live on her own. It appears that she had an award of the lower rate of the mobility component and the middle rate of the care component of Disability Living Allowance which was increased at some point after the decision was made to the higher and highest rates respectively.

7. The appellant is the tenant of the property in question .... It had previously been the family home occupied by the appellant's parents and siblings. As described in the letter at pages 21/2, difficulties with the appellant's care and continued occupation of the property arose after the death of her mother in April 2005. The appellant went to live with her sister, ..., and her sister's husband, ... They were tenants of a 3 bedroomed property which they occupied along with their adult son and daughter.

8. The appellant moved back into her own home along with Mr and Mrs ... in the summer of 2009. She claimed Housing Benefit from 13.8.09.

9. The property comprises 5 main apartments plus kitchen and bathroom. It is classed by the landlord as a four bedroom property and was previously occupied by the appellant's family as a four bedroom property. Shortly after returning to the property in 2009, the downstairs bedroom was converted into a living room for the appellant's use. Mr and Mrs ... use the original living room. Both parties require some privacy. In particular, the appellant can get unsettled and agitated and wants her own space to watch the television programmes she likes and listen to music. She has a television in her bedroom but does not use it. She has carers who call twice a week to take her out and spends some time in her living room with them.

10. There are 3 bedrooms upstairs. As at the relevant time, the appellant occupied one bedroom and her sister and her husband shared another. The third room was a spare bedroom.

...

14. The Respondent treated the property as having four bedrooms and made an under-occupancy reduction of 25% (ie £22.82 per week) from 1.4.13. A Discretionary Housing Payment of £12.78 per week was awarded from 1.4.13 to 30.6.14.

15. I accepted the argument that what had been the downstairs bedroom was no longer a bedroom. The legislation does not contain a definition of what constitutes a bedroom or render the landlord's classification definitive. Nor, in my view, does it follow from the room having been used in the past as a bedroom and being capable of being furnished and used again as a bedroom that it had to be treated as a bedroom at the relevant time. I

> concluded that whether or not a room is a bedroom is a question of fact to be decided in light of the circumstances pertaining to the case at issue. I found it credible and reasonable that the appellant required her own living space because of her disability.
>
> ...
>
> 20. It follows from the above that the appellant is entitled to two bedrooms and occupied a property containing three bedrooms, as a result of which a 14% under occupancy reduction applies.
>
> 21. In light of the above, it is not necessary to address the human rights argument.
>
> 22. While not pertinent to the decision, having regard to the circumstances and the judgement in MA and Others v SSWP [2014] EWCA Civ 13, I was not satisfied that there were grounds to disapply the regulations even if it had been found that Mr and Mrs ... were unable to share a bedroom."

10. By allowing the appeal in part the First-tier Tribunal, for the reasons given, decided that the four bedroom property had become by established use a three bedroom property with two living rooms.

The decision of the Upper Tribunal judge dated 16 May 2015

11. The judge of the Upper Tribunal in considering the appeal made reference to the approach and reasoning in the three-judge panel decision of the Upper Tribunal in *Secretary of State for Work and Pensions* v *Nelson and Fife Council (HB)* [2014] UKUT 525 (AAC); [2015] AACR 21 ("the *Nelson* decision"). He accepted in paragraph 10 that "in the present case there is no doubt on the F-tT's findings that the room was originally used as a bedroom and could have been used as such". On further consideration of the facts found, in paragraph 15 the judge of the Upper Tribunal stated:

> "15. I am of the opinion that the Nelson decision goes no further than saying that normally the family designation and choice is not a relevant factor, but leaves open the question of whether or not there might be exceptional circumstances when re-designation might be appropriate. The Nelson decision does recognise at paragraph 29 that issues as to the designations of rooms can arise and specifically refer to the conversion of a room to a bathroom or wet room which could normally only be done with the consent of the landlord. I therefore see no reason why designation on professional advice for a mental health or mental disability condition could not also be one of those circumstances that a tribunal can take into account in determining whether or not a room is available to 'be used as a bedroom' – paragraph 28(ii). If re-designation is limited to physical conversion only for a physically disabled person, but that this re-designation is not available to a mentally disabled person when required on profession advice, then I consider that would amount to discrimination for no rational reason."

The judge considered that the present case was not a mere family choice or designation and that there was nothing in the *Nelson* decision to prevent him reaching his decision on the exceptional facts of the case. Accordingly he refused the appeal.

Submissions by counsel for the appellant

12. Having set out the relevant facts and considered regulation B13 in the context of the 2006 Regulations, counsel for the appellant submitted that the purpose of regulation B13 had the combined effect of encouraging mobility, freeing up properties for those in need and reducing the housing benefit costs to the tax payer. He referred to the similar, albeit not identical, scheme relative to housing benefit in the private sector which was introduced by amendment in regulation 13D of the 2006 Regulations. Counsel submitted that the existence of discretionary housing payments in the Discretionary Financial Assistance Regulations 2001 (SI 2001/1167) (the 2001 Regulations) are also relevant as these are intended to provide another source of funding which can be used in appropriate cases to give additional funding based on actual need.

13. Counsel submitted that the Upper Tribunal erred in law in concluding that the actual use of the room as a living room, even when based on professional advice from a social worker, was relevant to the question of whether or not a room was a bedroom for the purposes of the Regulations. The proper approach was to have regard to whether the room, if vacant, could be used by any of the people listed in regulation B13(5) and (6) as a bedroom, taking into account its physical characteristics. Counsel invited the court to follow the approach of the Upper Tribunal in the *Nelson* decision in paragraphs 27(i) and (ii). He submitted that the Upper Tribunal erred in paragraph 27(iii) in concluding that there was some scope for considering that designations or choices made by the family could ever be relevant. *Esto* actual use was relevant, only physical alteration would be sufficient for a re-definition of a room. Further even if mental health needs were relevant to the re-designation, a belief by a social worker was not sufficient to justify a finding of re-designation.

14. In conclusion counsel submitted that the Upper Tribunal judge erred in raising a discrimination issue in relation to the definition of the word "bedroom". The matter was not properly focused before the Upper Tribunal judge. He was not entitled to consider the matter in the way he did without any consideration as to whether any "discrimination" was justified and without having any regard to the existence of discretionary housing payment under the 2001 Regulations.

Submissions by counsel instructed by the guardians of Miss IB

15. Counsel invited the court to refuse the appeal and adopted her written note of argument. She accepted that the main focus of the appeal is whether established use and designation are relevant factors to be taken into account in determining whether a room is a "bedroom" for the purpose of regulation B13. Circumstances where the established use or designation of the room follows on from professional advice takes the case beyond mere personal preference. Assuming that such use is relevant, the question arises as to what factors a Tribunal is required to have regard. She submitted that in the absence of any definition in the Regulations, the word "bedroom" must be construed and applied in its context having regard to the underlying purpose of the legislation. She supported and relied on the decision of the Upper Tribunal in the *Nelson* decision. The Upper Tribunal in that case properly recognised that issues concerning the designations of rooms may arise and personal designation or choice may be relevant. In any event the Upper Tribunal did not have cause to consider the "legitimacy" of personal designation or use in a case such as the present where the use was based on professional advice given by a social worker. Further, advice to convert the bedroom to a living room emanated from the same body corporate, that is Glasgow City Council, which employed the social worker who gave advice. She submitted that, where use of a room was an issue, relevant factors would include the necessity or otherwise of the use, the question of structural alteration or otherwise and the landlord's consent to such use or otherwise. In the present case the First-tier Tribunal made their

decision on facts found by the Tribunal that Miss IB "required her own living space because of her disability". The Upper Tribunal were correct to give proper regard to that finding. Physical alteration was not required.

16. For the purposes of statutory construction, consistency requires that the Regulations do not distinguish between "types of disability" such as mental and physical disability. To reclassify a room by reason of structural alteration needed because of physical disability but not a room required because of mental disability where no structural alterations were necessary was discrimination. In relation to the issue of justification of discrimination, counsel submitted that the Secretary of State had not put forward any justification. Further, the possible availability of discretionary housing payments was irrelevant.

Decision and reasons

17. The history and background to the Regulations is considered and discussed at some length in *R (MA)* v *Secretary of State for Work and Pensions* [2016] UKSC 58; [2016] 1 WLR 4550; [2017] AACR 9. In particular the evolution of regulation B13 is considered by Lord Toulson JSC in paragraphs 16–20 under reference to the detailed consideration given to the policy development considered in the lower courts. This is summarised by Lord Toulson in paragraph 16:

> "... as part of its policy for curbing public expenditure the government aimed to ensure that social sector tenants of working age who were occupying premises with more bedrooms than they required should, wherever possible, move into smaller accommodation. It was recognised at an early stage that a policy based purely on numbers of rooms and occupants would cause problems for some with disabilities, and there was a debate within government and Parliament about how such problems should be addressed. ..."

In his opinion, Lord Toulson summarised the development of policy and the law which led to the introduction of paragraph (6) of Regulation B13 and other changes to the Regulations as a result of challenges in the courts to the discriminatory effect of the Regulations. The discriminatory effect which was challenged and in some cases upheld was because regulation B13 sought to limit housing benefit payable to an applicant by limiting the maximum rent by reference to a statutory formula which set out the number of bedrooms to which an applicant was deemed to be entitled without any reference to real or actual needs of the applicant or occupants.

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.

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.

20. In the present case the appellant did not challenge that the five rooms in the dwelling rented by the applicant contain one living room, 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 living room 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 *Secretary of State for Work and Pensions* 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 living room 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 regulation B13(3)(b) of the 2006 Regulations the maximum rent is limited by 25 per cent.

28. The appeal is allowed. All questions of expenses are reserved.