



9 November 2016

## PRESS SUMMARY

**R (on the application of Carmichael and Rourke) (formerly known as MA and others) (Appellants) v Secretary of State for Work and Pensions (Respondent)**

**R (on the application of Daly and others) (formerly known as MA and others) (Appellants) v Secretary of State for Work and Pensions (Respondent)**

**R (on the application of A) (Respondent/Cross-Appellant) v Secretary of State for Work and Pensions (Appellant/Cross-Respondent)**

**R (on the application of Rutherford and another) (Respondents) v Secretary of State for Work and Pensions (Appellant)**

*On appeal from [2014] EWCA Civ 13 and [2016] EWCA Civ 29*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Sumption, Lord Carnwath, Lord Hughes, Lord Toulson

### BACKGROUND TO THE APPEALS

These cases relate to the cap on housing benefit introduced by the Secretary of State under Regulation B13 of the Housing Benefit Regulations 2006 (SI 2006/2013) (“Reg B13”), often described as “the removal of the spare room subsidy” or “the bedroom tax”. The cap is determined according to a number of factors, including whether the number of bedrooms in the home exceeds the number the claimant is entitled to. The number of bedrooms a claimant is entitled to depends on the number of occupants, their ages and sexes and whether any are a couple. A claimant is entitled to an additional bedroom in some specific situations relating to disability need. There is also a statutory scheme for enabling Discretionary Housing Payments (“DHPs”) to be made to individuals entitled to housing benefit who may require an extra room. As the title indicates, these are discretionary.

The claimants in these appeals all live in social sector housing where the number of bedrooms exceeds the number to which they are entitled to under Reg B13. Their housing benefit has been capped accordingly. They are challenging the validity of Reg B13 as it applies to their individual circumstances on the basis that it violates their right to non-discrimination under article 14 of the European Convention on Human Rights (“ECHR”), in conjunction with their right to family life under article 8 and/or property under article 1 of the First Protocol (there is no dispute that housing benefit falls within the scope of these latter articles). They also contend there has been a breach by the Secretary of State of the Public Sector Equality Duty (“PSED”) under the Equality Act 2010 (the “Equality Act”), which obliges public authorities to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share protected characteristics and those that do not.

Mrs Carmichael, Mr Rourke, Mr Drage, JD and Mr Daly (“the MA claimants”), all either have disabilities or live with family members who have disabilities (see **Appendix 1** for details of the claimants’ factual circumstances). Their cases were heard together in the Court of Appeal which accepted that Reg B13 had a discriminatory effect on some people with disabilities, but held that the discrimination was justified. The MA claimants’ needs could be met as necessary though the DHP scheme based on individual assessments. The Court also found that there had been no breach of the PSED. The MA claimants challenge these decisions.

The Rutherford family and A had their cases heard together in the Court of Appeal (differently constituted). The Rutherfords succeeded in their claim on the ground of disability discrimination. A lives in a sanctuary scheme house (accommodation specially adapted to provide protection for women under severe risk of domestic violence); her claim succeeded on the grounds of sex discrimination. Both A' and the Rutherfords' Equality Act claims were rejected. The Secretary of State appeals the Court of Appeal's decision to allow the Rutherfords' and A's discrimination claims. A cross-appeals the rejection of her Equality Act claim.

## JUDGMENT

In respect of the MA claimants' discrimination claims, the Supreme Court unanimously allows the appeal of Mrs Carmichael and dismisses the other claimants' appeals. The MA claimants' appeals under the Equality Act are unanimously dismissed. The Secretary of State's appeal in respect of the Rutherford family is unanimously dismissed. The Secretary of State's appeal in respect of A is allowed, and A's cross appeal is dismissed, by a majority of 5 to 2. Lord Toulson gives the lead judgment. Lady Hale gives a dissenting judgment in relation to A in respect of both the Secretary of State's appeal and A's cross-appeal, with which Lord Carnwath agrees.

## REASONS FOR THE JUDGMENT

The normal test in cases involving questions of economic and social policy is whether the discrimination is "*manifestly without reasonable foundation*". The question of how to deal with the impact of Reg B13 on individuals with disabilities is a clear example of a question of economic and social policy; the housing benefit cap scheme is integral to the structure of the welfare benefit scheme. The Court of Appeal was therefore correct to apply this test [28-38].

In respect of the application of the test, the Court of Appeal was correct that the Secretary of State's decision to structure the housing benefit cap scheme as he did was reasonable [40-41]. However, some people with disabilities have a transparent medical need for an additional bedroom. Reg B13 recognises this and entitles claimants to an additional bedroom in the case of children (but not adults) who cannot share a bedroom because of their disabilities or adults (but not children) in need of an overnight carer [42]. Mrs Carmichael, is an adult who cannot share a room with her husband due to her disabilities. The Rutherfords require a regular overnight carer for their grandson with severe disabilities. There appears to be no reason to distinguish between adult partners who cannot share a bedroom because of disability and children who cannot do so because of disability; or between adults and children in need of an overnight carer. The decisions in relation to Mrs Carmichael and the Rutherfords were therefore manifestly without reason [46-49].

In relation to the other MA claimants, their need for an additional bedroom is not connected, or not directly connected, to their/their family member's disability. Therefore, whilst there may be good reasons for them to receive state benefits to cover the full rent, it is not unreasonable for their claims to be considered on an individual basis under the DHP scheme [51-54].

A, has a strong case for staying in her current house; it has been adapted under the sanctuary scheme and she feels safe where she is [58]. However, there is no automatic correlation between being in a sanctuary scheme and requiring an extra bedroom: the reason that A currently has an additional bedroom is that no two bedroom properties were available when she moved. The Court has considerable sympathy for A as she has strong social and personal reasons for staying, however, these are unrelated to the property size. The fact that people may have strong reasons unrelated to the number of bedrooms, for wanting to stay in their property is taken account of through the DHPs. It therefore does not follow that A has a valid claim for unlawful sex discrimination [59-64]. Although the state has a positive duty to provide effective protection to victims of gender based violence the means by which such protection is provided is not mandated and A has not established that Reg B13 will deprive her of a safe haven [65].

The PSED is a duty on the part of a public authority to follow a form of due process [67]. On the history of events and the evidence, the Secretary of State properly considered the potential impact of the housing benefit cap scheme on individuals with disabilities [68]. Although the Secretary of State did not specifically consider the impact of Reg B13 on those within sanctuary schemes, he did address the question of gender discrimination [69-70]. The MA claimants' appeal, and A's cross-appeal, under the Equality Act, are therefore dismissed [71].

Lady Hale, with whom Lord Carnwath agrees, would have dismissed the Secretary of State's appeal in respect of A. The state has a positive obligation to provide effective protection for victims of domestic violence [73]. A failure to do so constitutes discrimination as it has been internationally recognised that gender based violence is a form of discrimination against women [74]. Sanctuary schemes provide such protection [75]. A's reduction in housing benefit puts at risk her ability to stay there and therefore constitutes discrimination [76]. DHPs are not good enough to justify this discrimination; it is not acceptable for A to endure the additional difficulties and uncertainties involved in obtaining them [77]. Lady Hale would also have allowed A's cross appeal. The PSED was not properly complied with as there was no assessment of the impact of Reg B13 on victims of gender based violence; a disadvantage suffered by women who share a protected characteristic [79-80].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>