

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)
ON AN APPEAL**

Decision

1. **This appeal by the appellant succeeds.** In accordance with the provisions of section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set aside the decision of the First-tier Tribunal (Health, Education and Social Care Chamber) made on 26th October 2016 (under reference MP/2016/23528) after a hearing on that day at the relevant hospital, to the effect that the appellant was not to be discharged from liability to be detained.

2. I refer the matter to a completely differently constituted tribunal panel in the Health, Education and Social Care Chamber of the First-tier Tribunal (not including any judge or members who have previously considered the matter) for a fresh hearing and decision in accordance with the directions given below. The new hearing should be expedited and held as soon as is reasonably practicable.

3. The parties should regard themselves as being on notice to send to the clerk to the tribunal as soon as is practicable any further relevant written medical or other evidence. The fact that the appeal has succeeded at this stage is not to be taken as any indication as to what the tribunal might decide in due course.

Background and Procedure

4. I set out the background as I understand it and as is necessary to explain my decision, but I am not to be taken as making any findings of fact on any disputed matter. My decision is made on procedural grounds, so it is not necessary to go into great detail.

5. The appellant is a man who was born on 29th March 1976. He is referred to in this decision as “the appellant” or “the patient”. It appears that he suffers from a number of delusions about himself and has been diagnosed as suffering from paranoid schizophrenia exacerbated by the use of illicit and other drugs. There is a long history from at least 2005 of arrests and admissions to and release from mental hospitals. He has self-harmed (including serious attempts at suicide). Although he has threatened or assaulted others, he is seen as being more of threat to himself. His current period of detention began on 1st August 2012 when he was admitted under the provisions of section 3 of the Mental Health Act 1983. Detention was renewed annually but on 17th June 2013 he was transferred to the hospital where he is currently detained. This is a locked rehabilitation hospital and was seen as a step down from where he was previously detained.

6. On 8th August 2016 the patient’s continuing detention was referred to the First-tier Tribunal because he had not had a tribunal hearing for the previous three years. The First-tier Tribunal considered the matter on 26th October 2016. The patient did not attend the hearing and did not really co-operate with the process. The responsible

authority was not represented at the hearing. The view was taken that the patient lacked capacity to appoint a legal representative and the tribunal appointed Karen Wolton, solicitor, to act on his behalf. She attended the hearing to represent the patient's interests.

7. The First-tier Tribunal decided that the patient should not be discharged from liability to be detained and to make no recommendation pursuant to section 72(3) and (3A) of the 1983 Act. Paragraph 19 of its written decision recorded the following:

“The solicitor representing the patient sought an adjournment as she had concerns about the quality of the evidence regarding the patient’s clinical treatment in the past. We have some sympathy with the view that the patient’s treatment history is incomplete. A summary of the previous treatments should be available to the panel wherever possible. However, the recent treatment history during the in-patient admission at [this hospital] was available to the panel. There was ample evidence before the panel that the patient is floridly psychotic and in our view the evidence satisfied the criteria for detention. We refused the request for an adjournment”.

8. Ms Wolton applied on behalf of the patient for permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal. On 16th November 2016 a judge of the First-tier Tribunal refused permission to appeal, observing amongst other matters that “No points of law of general importance arise in this application. In the circumstances I refuse permission to appeal”. I acknowledge that the appeal before me is not an appeal against that refusal by the First-tier Tribunal judge, and that the judge proceeded to give further reasons, but it should be noted that the extract I have reproduced is not the test to apply when deciding whether to give permission to appeal.

9. On 6th December 2016 Ms Wolton renewed the application direct to the Upper Tribunal and on 14th December 2016 (wrongly dated 14th October) I gave permission to appeal. Neither the respondents nor the responsible clinician had any comment to make on the appeal and none of the parties wished the Upper Tribunal to hold an oral hearing.

Conclusions

10. The grounds of appeal argue that the reports before the First-tier Tribunal gave very little information about the patient's previous placement, nor about the reasons for the transfer, nor about any previous trials with clozapine. The application for an adjournment was made with a view to persuading the First-tier Tribunal to recommend a transfer under section 72(3), which was not possible without further information. This was especially important because the First-tier Tribunal proceedings were by way of reference and the patient was unlikely to appeal himself “and may remain inappropriately placed for a further three years”.

11. I agree with these grounds and also note that the application to adjourn was not made by or on the instructions of the patient but by an experienced specialist solicitor who had herself been appointed by the tribunal and felt that there was inadequate evidence before the tribunal (which, to an extent, the tribunal itself acknowledged). I

cannot see that there would have been any prejudice to the interests of justice by the granting of an adjournment. In all of these particular circumstances the refusal to adjourn amounted to a breach of the rules of natural justice and fair procedure and for these reasons this appeal is allowed.

H. Levenson
Judge of the Upper Tribunal

14th March 2017