



STJ12  
Rules 46,  
47 & 49

## The First-tier Tribunal (Health, Education and Social Care Chamber) Mental Health

The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008

Case Number: [REDACTED]

Date of Application: [REDACTED]

**Restricted Patient:**

A patient now liable to be detained under Section 37/41 Mental Health Act 1983

Responsible Authority: [REDACTED]

Hospital: [REDACTED]

Before:

(Judge)

Application for Permission to Appeal

In accordance with Rule 46<sup>1</sup>, Ms Wolton has applied for permission to appeal against a decision, or part of a decision, dated 6/08/2020, in respect of the above named patient.

Particulars of Decision Appealed Against

*The Tribunal have imposed a condition without discussion or consultation with the patient or the clinical team. The Tribunal have given no reasons for the imposition of this condition.*

During the Tribunal the conditions to be imposed were generally discussed. The Judge asked about the terms of the tenancy agreement to which the patient would be subject and was told that the tenancy agreement did not permit overnight guests. The representative suggested that it was not necessary for there to be a separate condition covering the terms of the tenancy agreement as the patient would be subject to these requirements in any event. The Tribunal proceeded to insert a condition that the patient should 'abide by the rules applicable to such accommodation, in particular to sleep there every night and not to have overnight guests'. It is not the case that the tenancy agreement requires the patient to sleep every night at the property and this requirement was not otherwise suggested by the clinical team. Had the Tribunal proposed this condition within the hearing, the patient's solicitor would

<sup>1</sup> The tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other of those things (Rule 50).

have made representations against it. The Tribunal have given no reasons as to why they have felt it necessary to impose this condition.

2. *The Tribunal have imposed a condition which is incompatible with a conditional discharge.*

The case of *The Secretary of State for Justice v MM (2018) UKSC60* established that a restricted patient could not be discharged on conditions that involve a Deprivation of Liberty. It is submitted that a condition preventing the patient from taking overnight leave amounts to a deprivation of liberty in line with the guidance in *P v Cheshire West and Chester Council (2014) UKSC19*.

3. *The Tribunal have made an error in the conditions.*

The Tribunal have stated that the tenancy agreement states that the patient should 'sleep every night at the tenancy'. This is incorrect as the tenancy agreement merely states that the tenant should not have overnight guests. The tribunal were not told this in evidence and have therefore made an error.

#### Time Limits

The application was in time (Rule 46(2)).

#### Decision whether to Review

Taking into account the overriding objective in Rule 2, the tribunal has decided

for the reasons given below, that there was a clear error of law in the decision (or part of the decision) appealed against, and that it should review the decision.

#### Decision upon Review

Upon review, the tribunal has decided, for the reasons given below, to take the following action.

#### Action

The tribunal hereby amends the reasons given in the decision, as detailed below.

Condition 2 deleted

Condition one amended as follows:

The Patient shall reside at supported accommodation at

in conformity with the standard terms and conditions of the tenancy. In the event there are to be changes to her accommodation/residence address in the future, the psychiatric supervisor or social supervisor are to notify in advance the Secretary of State for authorisation.

#### The Tribunal considered:

First Tier Decision 6/08/2020

### Summary of Grounds of Application for Permission to Appeal

There appears to be an error in the list of conditions in that condition number 2 states that the patient should "abide by the rules applicable to such accommodation in particular to sleep there every night and not have to have overnight guests."

This condition was not explicitly discussed during the tribunal proceedings and there was no opportunity for the patient to make representations in relation to this condition. The rules of the tenancy agreement were discussed and the representative understood that there would not be a separate condition relating to these rules. We would therefore request that this condition be removed from the decision.

### Reasons for the Tribunal's Decision, including Brief History and Analysis of Key Material

1. The First Tier Tribunal heard the patient's application for conditional discharge on 6/08/2020 and granted the patient immediate conditional discharge to reside
2. The tribunal granted conditional discharge subject to conditions as set out in the first-tier decision.
3. The representative submits that condition 2 should be removed as this was not discussed at the hearing and the patient did not have the right to make any representations related to this separate condition which formed part of the tenancy agreement.
4. The panel who I consulted, confirmed that the exact wording of the conditions were not announced at the hearing but confirmed that the whole basis of the application was that the Patient would take up residence at the  
There was no report from the manager of that Hostel but his unchallenged evidence was that the rules of the Hostel did not permit overnight leave (i.e. that residents slept there every night) and visitors had to leave by 10 pm. There was no suggestion that these rules would not apply to or should be varied in her case.
5. The panel confirm that the condition referred to in condition 2 applied only during the residence at rather than being a condition applicable beyond that. The conditions were in general terms set out at paragraphs 27 and 29 of the Report dated 9/6/20 from There was no challenge to, or discussion about them and it was implicit that those were the conditions to be imposed.
6. I have considered the request made by the representative to amend the decision and for condition 2 "abide by the rules applicable to such accommodation in particular to sleep there every night and not have to have overnight guests" to be removed.
7. The tribunal fail to address in their decision why they made the conditions they made and were required to provide a brief explanation and were also required to announce the conditions that the patient was subject to in exact terms as per decision this was crucial given that the patient was being conditionally discharged immediately. Condition 2 is implicit part of the tenancy agreement and does not amount to any deprivation of liberty. However, condition 1 has been amended as set out above and condition 2 has been deleted.
8. The Tribunal Judge who heard the application will be required to amend the

decision and send to the Tribunal office by 11<sup>th</sup> September 2020.

Judge:

Date: 9/09/2020

Notice

If the tribunal has taken any action following a review without first giving every party an opportunity to make representations, any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again. In the event that permission to appeal has been refused or not admitted, there is a right to make an application to the Upper Tribunal for permission to appeal. Such an application must be made in writing and received by the Upper Tribunal no later than a month after the date on which the First-tier Tribunal (Health, Education and Social Care Chamber) Mental Health sent to you notice of its refusal of permission to appeal, or refusal to admit the application for permission to appeal.