HMW/2710/2014

DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

Save for the cover sheet, this decision may be made public [rule 14(7) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI No 2698)]. That sheet is not formally part of the decision and identifies the patient by name.

This decision is given under sections 12(2)(a),12(2)(b)(i) and 12(3) of the Tribunals, Courts and Enforcement Act 2007.

As the decision of the Mental Health Review Tribunal for Wales on 14 March 2014 involved the making of an error on a point of law, it is SET ASIDE and the matter is REMITTED for rehearing by a differently constituted panel.

I direct that, in advance of that hearing, updated reports are obtained from the Appellant's Responsible Clinician, from the nursing staff and from his care co-ordinator. The tribunal must consider all aspects of the case, both fact and law, entirely afresh.

REASONS FOR DECISION

The parties

1. This appeal is brought with the permission of the Mental Health Tribunal for Wales. The Appellant is a mental patient detained under the Mental Health Act 1983. The Respondents to the appeal are the managers of the hospital where he is detained. They have had sight of the papers and have elected not to respond formally to the grounds of appeal.

History and background

2. The Appellant has been detained under section 3 of the Mental Health Act 1983 since 21 August 2013. He made an application for a tribunal hearing to review his detention whilst he was in a hospital in England. On 27 September 2013 he was transferred to Llanarth Court Hospital in Wales. The Mental Health Tribunal for Wales adjourned the hearing of the Appellant's case on 17 January 2014 because the late receipt of relevant reports put the Appellant at a disadvantage and because there was insufficient time allowed for the hearing.

3. On 14 March 2014 the Appellant's case was considered by the tribunal. At the start of the hearing the Appellant, through his solicitor, invited the tribunal to make recommendations for (a) his transfer to another hospital

located in the area where he would be discharged and (b) a Community Treatment Order. In default of success on those applications, the Appellant invited the tribunal to adjourn once more and give directions for reports identifying suitable placements in order that, on reconvening, the tribunal might consider exercising its powers of recommendation for transfer and/or a Community Treatment Order.

4. The tribunal decided that the Appellant should not be discharged and refused to adjourn for further reports. It did not address in its reasons the invitation to make recommendations save to state that the Appellant was "seeking an appropriate recommendation from the Tribunal that the RC (Responsible Clinician) considers whether or not to transfer the patient onto a CTO (community Treatment Order)".

5. The Appellant's solicitors applied to the Mental Health Tribunal for Wales for permission to appeal the decision. On 11 April 2014 permission to appeal was given by the Mental Health Tribunal for Wales. The appeal was received by the Upper Tribunal on 8 May 2014 and case management directions were made on 6 June 2014.

Appeal on an error of law

6. An appeal to the Upper Tribunal can only succeed if "the making of the decision concerned involved the making of an error on a point of law" [section 12(1) of the Tribunals, Courts and Enforcement Act 2007]. I agree with and adopt Upper Tribunal Judge Jacobs' formulation of the tribunal's task at first instance:

> "…The essence of the legal requirement for a tribunal's decision is that: (i) the tribunal asked itself the correct legal questions; (ii) it made findings of fact that were rationally based in the evidence; and (iii) it answered the legal questions appropriately given its findings of fact. Additionally, the tribunal must: (iv) given the parties a fair hearing; and (v) provide adequate reasons. In simple terms, the issue is whether the tribunal did its job properly…"
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> [paragraph 3, *JLG v Managers of Llanarth Court and the Secretary of State for Justice [2011] UKUT 62 (AAC)*].

The grounds of appeal

7. These essentially go to the adequacy of the tribunal's fact finding and reasoning about the following issues: (i) mental disorder; (ii) the appropriateness of detention; (iii) the availability of appropriate treatment; (iv) the tribunal's discretionary powers to make recommendations pursuant to section 72(3) of the Mental Health Act 1983; and (v) the refusal of an adjournment.

8. The grounds also assert that the tribunal failed to address adequately conflicting evidence on some of the issues outlined in paragraph 7 above. For reasons which I hope will be clear from my decision, it is not necessary for me to determine this appeal on that basis.

9. Additionally it is not necessary for me to address each individual ground of appeal since the essence of this appeal concerns the adequacy of the tribunal's reasons read as a whole.

Adequacy of reasons: some observations

10. By way of context, both the tribunal and the parties will have knowledge of the written and the oral evidence before the tribunal. Second, both the tribunal and the parties are very likely to be informed about the relevant law. The only exception to this may be when the patient is not legally represented. Finally, to quote the Court of Appeal in *English v Emery Reimbold & Strick Limited [2002] 1 WLR 2409* at paragraph 16, justice will not be done if it is not apparent from the tribunal's reasons to the parties why one has won and the other has lost. That latter factor is of particular importance for patients who are detained under the Mental Health Act 1983, such detention being a serious interference with their right to liberty pursuant to Article 5 of the European Convention on Human Rights (now incorporated into English and Welsh law by the Human Rights Act 1998).

11. What follows is intended to be of assistance to tribunals composing reasons in mental health cases. It is not an exhaustive or novel treatise on the art of reason writing but merely an aide memoire of those matters, pertinent to this appeal, which may assist in the production of adequate and intelligible reasons.

12. First, it would be helpful if tribunals were to set out their reasons by reference to the relevant criteria for detention. As Upper Tribunal Judge Jacobs observed in paragraph 9 of *JL v Managers of Llanarth Court and SOS for Justice [2011] UKUT 62 (AAC)*, it might be better if tribunals were to set out their reasons under the headings provided by the legal questions they have to determine. I agree. Using headings within the statement of reasons makes it easier to show that the tribunal has dealt with each of the legal criteria it has to address. I note that the First-tier Tribunal (Mental Health) in England has made template decisions using appropriate headings available to tribunal judges to assist them in reason writing.

13. Second, the tribunal's reasons should address how the tribunal dealt with any disputes as to either the law or the evidence. If this is not done, the unsuccessful party might believe that the tribunal has ignored important issues. In particular, failing to address explicitly any applications made by one or other of the parties may render a set of reasons inadequate. Such an omission certainly makes it more difficult for a party to know why they

have been unsuccessful and additionally raises doubt as to whether the tribunal has dealt fairly with that party's case. However, it is not necessary for a set of reasons to resolve evidential matters which are irrelevant to the legal issues that the tribunal has to determine; a prudent tribunal though may wish to explain briefly why it has not resolved a factual dispute.

14. Third, the reasons themselves must be clear and unambiguous. It is not for a party to deduce the reasons for a decision.

15. Fourth, rehearsing what each witness told the tribunal is, without more liable to render a set of reasons erroneous in law. What is required is to explain (i) what facts the tribunal found as a result of that evidence and (ii) what conclusions on those facts the tribunal reached.

16. Fifth, it is not necessary for the tribunal's reasons to mention all of the evidence in a case. It is entitled to be selective in its references to evidence in its reasons though it should, as I have indicated in paragraph 13 above, identify and resolve evidence and applications which are in dispute.

The tribunal's decision

17. I turn now to the statement of reasons in this appeal.

18. The first three paragraphs set out the background to the hearing and note that the Appellant was not seeking discharge but a recommendation from the tribunal. Unfortunately, though the tribunal identified the application for a recommendation for a Community Treatment Order, it did not explicitly record that the Appellant's solicitor also sought a recommendation for transfer to another hospital.

19. The following four paragraphs summarise the oral evidence given at the hearing by the Responsible Clinician, the Appellant's community psychiatric nurse, a staff nurse caring for the Appellant, the Appellant's mother and his sister. The reasons conclude with a paragraph which deals with the application to adjourn and refuses it. There are no headings within the body of the reasons addressing the relevant criteria for detention.

20. However these reasons are presented, I need to consider whether they did what adequate reasons should do and address the legal criteria for detention under the Mental Health Act in sufficient detail and clarity for the Appellant to know why his applications were unsuccessful.

21. Unfortunately these reasons do not explain what findings of fact the tribunal made arising from the evidence it summarised. If the summaries of the oral evidence given were intended by the tribunal to stand as the tribunal's findings of fact, that should have been stated. It was not.

22. There is no hint in the reasons, with the exception of the application to adjourn, that there were any disputes either about the evidence or the criteria for detention. The absence of apparent dispute within the reasons is implausible given the case advanced by the Appellant at the hearing. Further, if, as the Appellant alleges, there were disputes about whether the patient had a personality disorder as well as paranoid schizophrenia and whether there was appropriate treatment available for him, those relevant evidential disputes are not mentioned at all within these reasons.

23. Moreover the tribunal's reasons do not explain the conclusions to be drawn from any facts found. It is thus difficult to discern precisely what the tribunal found, for example, about the availability and suitability of the hospital treatment for the Appellant. Should this be inferred from the tribunal's finding that he could only be managed under conditions of medium security? I do not think that it should. To do so leaves the Appellant second guessing why the criteria for detention are satisfied. Conversely, though the tribunal stated that the patient was a risk to himself and others, I am left in the dark as to the evidential foundation for that conclusion.

24. Regretfully I have come to the clear view that the tribunal failed to provide adequate reasons for its decision and thus erred in law. I have every sympathy for tribunals who often need to produce reasons within strict time limits for more than one case heard on the same day but the problems with these reasons are ones of substance rather than form.

Disposal

25. I allow this appeal and set aside the decision of the tribunal made on 14 March 2014. I remit the matter for rehearing by a differently constituted tribunal.

Gwynneth Knowles QC
Judge of the Upper Tribunal
11 September 2014.

Signed on original as dated