IN THE UPPER TRIBUNAL **Upper Tribunal case No.** HMW/916/2020

ADMINISTRATIVE APPEALS CHAMBER

On appeal from the Mental Health Review Tribunal for Wales

Rule 14(7) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides that the names of any persons concerned in this case must not be made public, unless the Upper Tribunal directs otherwise.

THE UPPER TRIBUNAL DIRECTS that: (a) the cover sheet, which identifies the patient by name and which is not part of the decision, must not be made public; and (b) the decision itself, which does not contain the patient's name, may be made public.

Before: Mr E Mitchell, Judge of the Upper Tribunal

Between:

CS

Appellant

- v -

Elysium Healthcare

1st Respondent

&

Secretary of State for Justice

2nd Respondent

Before: Upper Tribunal Judge Mitchell

Decided on consideration of the papers

Representation:

For the Appellant, Mr Simblett QC and Mr Pezzani of counsel, instructed by Duncan Lewis Solicitors.

For the 2nd Respondent, Ms F Patersson of counsel, instructed by the Government Legal Department.

The 1st Respondent took no part in the proceedings.

DECISION

The decision of the Upper Tribunal is to allow the appeal.

The decision of the Mental Health Review Tribunal for Wales taken on 1 April 2020 under reference TR29167 involved an error on a point of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and remake it as follows:

1. The Mental Health Review Tribunal for Wales has jurisdiction to determine the application made on 21 January 2020 by the patient Mr S under section 70 of the Mental Health Act 1983.

2. Subject to (3) below, the tribunal is to determine the application under the powers conferred on the tribunal by section 73 of the 1983 Act.

3. (2) above does not apply if the patient is no longer a restricted patient by virtue of a hospital order under section 37 of the 1983 Act together with a restriction order under section 41 in which case the tribunal is to determine whether it retains jurisdiction to determine the patient's application and, if so, under which of its powers it is to be determined.

4. The case file is to be put before the President of the Mental Health Review Tribunal for Wales as soon as possible.

REASONS FOR DECISION

Introduction and summary

1. In these reasons:

- "1983 Act" means the Mental Health Act 1983;

- "MHRT(W)" means the Mental Health Review Tribunal for Wales;

- "section 37/41 restricted patient" means a restricted patient by virtue of a hospital order under section 37 of the 1983 Act together with a restriction order under section 41;

- "section 47/49 restricted patient" means a restricted patient by virtue of a transfer direction under section 47 of the 1983 Act together with a restriction direction under section 49.

2. The 1983 Act creates a number of different types of restricted patient. The issue here is whether a tribunal application made when a patient was one type of restricted patient remains valid if, before it is determined, the patient becomes a different type of restricted patient. In this case, the patient was originally a restricted patient by virtue of a transfer direction together with a restriction direction and, subsequently, a restricted patient by virtue of a hospital order together with a restriction order. I decide that the MHRT(W) erred in law in finding that it lacked jurisdiction to determine the application made when the patient was subject to transfer/restriction directions.

Background

3. On 14 May 2008, the patient, as I shall refer to him, was made subject to a sentence of imprisonment for an indeterminate period for public protection. In April 2016, the Secretary of State gave a transfer direction coupled with a restriction direction so that the patient became a section 47/49 restricted patient. He was duly transferred to a psychiatric hospital.

4. On 5 March 2020, the Court of Appeal allowed Mr S's appeal against his sentence of imprisonment for public protection. The Court quashed that sentence and replaced it with a hospital order together with a restriction order under sections 37 and 41 of the 1983 Act respectively. Under the Court of Appeal's decision, Mr S became a section 37/41 restricted patient.

5. Before the Court of Appeal gave its decision, Mr S exercised his right to apply to the MHRT(W) for review of his detention under the 1983 Act. At the date of the Court's decision, that application remained undetermined. Following the Court's decision, the MHRT(W) addressed the validity of the application made by Mr S when he was a section 47/49 restricted patient. The MHRT(W) was comprised of a Deputy President sitting alone.

The tribunal's decision

6. The MHRT(W) gave its decision, on 1 April 2020, 25 days after that of the Court of Appeal. The patient's solicitor's postponement request of 17 March 2020 shows that she assumed that Mr S's undetermined tribunal application would, as she put it, 'roll over' and be treated as an application duly made by a section 37/41 restricted patient.

7. The MHRT(W)'s decision of 1 April 2020 was made after consideration of the patient's solicitor's written submissions but without holding a hearing.

8. The MHRT(W) observed that, when Mr S made his application, the tribunal had "power to entertain it by virtue of s.69(2)(b)" of the 1983 Act. I do not understand that observation in the light of the restrictions to which all types of restricted patient are subject (see below). The scope of section 69(2)(b) is not an issue on this appeal but I

mention it here in case the tribunal wishes to reconsider its views on the operation of that provision.

9. The MHRT(W) reminded itself of the 1983 Act's prohibition on a first tribunal application, in the case of a section 37/41 restricted patient during the six months following imposition of a restriction order (section 70 of the 1983 Act).

10. The patient's solicitor argued that the application he made as a section 47/49 restricted patient did not lapse upon him becoming a section 37/41 restricted patient. The representative cited the High Court's decision in *R (MN) v the Mental Health Review Tribunal* [2008] EWHC 3383 (Admin), which the MHRT(W) summarised as follows:

> "the Court accepted that an application made under s.47/49 lapses when the Restriction Direction ceases but accepted that to avoid delay the Tribunal could treat the application as if it were an application under s.69(2)(a) which would mean that the Tribunal could hear the application within the first 6 months of the deemed Hospital Order."

11. The MHRT(W) expressed the view that either the solicitor's submissions or the High Court's construction of the 1983 Act (it is not clear which) "flies in the face of the plain reading of s.70 of the Act which prevents [Mr S], once detained under s.37/41, from applying to the Tribunal in the first six months of the Order". If the MHRT(W) read *MN* as a decision concerning the consequences of a patient becoming a different type of restricted patient, it misread the decision. As explained below, *MN* concerned a tribunal application that was pending when a patient ceased to be a restricted patient altogether.

12. In the MHRT(W)'s determination, once Mr S's sentence of imprisonment for public protection was quashed by the Court of Appeal, his transfer and restriction directions "fell and the patient became subject to the regime imposed by s.70 of the Act so far as his right to apply to the Tribunal is concerned".

13. Applying that reasoning, the MHRT(W) found that the application made by the patient when he was still a section 47/49 restricted patient "ceased to have effect and cannot be entertained". In other words, the tribunal found that it had no jurisdiction to consider the application. It follows that, on the tribunal's finding, the patient could not make a tribunal application until six months had elapsed from the date on which the Court of Appeal imposed a hospital order together with a restriction order.

Grounds of appeal

14. The President of the MHRT(W) granted Mr S permission to appeal to the Upper Tribunal. The President expressed the view that the appeal "raises issues which do

not appear to have been considered in the higher courts" and "there is a need for the law on this point to be clarified".

Legal Framework

Legislation

15. Mr S was sentenced to imprisonment for public protection under section 225(3) of the Criminal Justice Act 2003. By virtue of section 225(4), that was a sentence of imprisonment for an indeterminate period and means that the sentencing court must have been of the opinion that there was "a significant risk to members of the public of serious harm occasioned by the commission by [Mr S] of further specified offences" (see section 225(1)(b)).

16. Section 225(3) of the Criminal Justice Act 2003 was repealed by section 123 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 with effect from 3 December 2012. However, this abolition of sentences of imprisonment for public protection was of no effect in relation to individuals, such as this patient, who were convicted before 3 December 2012 (see article 6(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No 4 and Saving Provisions) Order 2012).

17. Section 47(1) of the Mental Health Act 1983 confers power on the Secretary of State by warrant to direct that a person serving a sentence of imprisonment be removed to and detained in a hospital for medical treatment. Such a direction is referred to by the 1983 Act as a transfer direction and has the same effect as a hospital order made under Part III of the 1983 Act.

18. Where the Secretary of State gives a transfer direction, he may also under section 49 of the 1983 Act give a restriction direction that is a direction that the special restrictions in section 41 apply. The special restrictions include:

(a) disapplication of the provisions of Part II of the 1983 Act relating to duration, renewal and expiration of authority for the patient's detention;

(b) the patient remains liable to be detained in hospital "until he is duly discharged under…Part II or absolutely discharged under section 42, 73, 74 or 75";

(c) no application in respect of the patient may be made to the tribunal under section 66 or 69(1). Section 66 specifies the periods within which applications may be made to the tribunal for those who are not restricted patients. Section 69(2) provides as follows:

> "(2) Where a person detained in a hospital—

> (a) is treated as subject to a hospital order…by virtue of section 41(5) above…or
>
> (b) is subject to a direction having the same effect as a hospital order by virtue of section 47(3)… above,
>
> then, without prejudice to any provision of Part II of this Act as applied by section 40 above, that person may make an application to the appropriate tribunal in the period of six months beginning with the date of the order or direction mentioned in paragraph (a) above or, as the case may be, the date of the direction mentioned in paragraph (b) above."

19. Section 50(2) of the 1983 Act provides that a restriction direction, in the case of a person serving a sentence of imprisonment, ceases to have effect on the person's release date.

20. Section 70 of the 1983 Act provides as follows:

> "A patient who is a restricted patient within the meaning of section 79 below and is detained in a hospital may apply to the appropriate tribunal—
>
> (a) in the period between the expiration of six months and the expiration of 12 months beginning with the date of the relevant hospital order, hospital direction or transfer direction; and
>
> (b) in any subsequent period of 12 months."

21. Section 77(1) of the 1983 Act provides as follows:

> "(1) No application shall be made to the appropriate tribunal by or in respect of a patient under this Act except in such cases and at such times as are expressly provided by this Act."

22. The definition of "restricted patient" in section 79 of the 1983 Act includes both a section 37/41 restricted patient and a section 47/49 restricted patient.

23. In the case of a section 37/41 restricted patient, section 73 of the 1983 Act provides the MHRT(W)'s powers of discharge. The tribunal is required to direct absolute discharge in the circumstances provided for by section 73(1), briefly, where the tribunal is not satisfied that the 1983 Act's detention criteria continue to apply but is satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment. If the tribunal is not satisfied as to the detention criteria

but is satisfied that it is appropriate for the patient to remain liable to recall, it must direct conditional discharge instead.

24. In the case of a section 47/49 restricted patient, the MHRT(W)'s powers are provided by section 74 of the 1983 Act and reflect the fact that such patients are also subject to an underlying sentence of imprisonment. If the tribunal is of the opinion that, were the patient subject to a restriction order, he would be entitled to an absolute or conditional discharge, the tribunal must notify the Secretary of State of that opinion. What happens next is dependent on the Secretary of State but may include the patient's absolute or conditional discharge (section 74(2)) or his transfer to prison (section 74(3)).

25. Section 11(3) of the Criminal Appeal Act 1968 provides as follows:

> "(3) On an appeal against sentence the Court of Appeal, if they consider that the appellant should be sentenced differently for an offence for which he was dealt with by the court below may—
>
> (a) quash any sentence or order which is the subject of the appeal; and
>
> (b) in place of it pass such sentence or make such order as they think appropriate for the case and as the court below had power to pass or make when dealing with him for the offence;
>
> but the Court shall so exercise their powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below."

26. Insofar as relevant, "sentence" is defined by section 50(1) of the 1968 Act as follows:

> "(1) In this Act "sentence", in relation to an offence, includes any order made by a court when dealing with an offender including, in particular—
>
> (a) a hospital order under Part III of the Mental Health Act 1983, with or without a restriction order…"

27. In section 50(1)(a) of the 1968 Act, "restriction order" has the meaning given by section 145(1) of the 1983 Act (see section 51(2) of the 1968 Act).

Case law

28. The High Court's decision in *R(MN) v the Mental Health Review Tribunal* [2008] EWHC 3383 (Admin) was the only case law referred to in the MHRT(W)'s reasons for

its decision. *MN* concerned a patient who had been a section 47/49 restricted patient. The decision states, at paragraph 5, that the patient ceased to be a restricted patient because "during the period of his detention the sentence - or the operative part thereof - had partly expired with the result that he ceased to be a restricted patient".

29. Like the present patient, the patient in *MN* applied to the tribunal when he was a section 47/49 restricted patient. Unlike the present case, however, the patient in *MN* lost his restricted patient status before his tribunal application had been determined. The mental health review tribunal found that the patient's application was of no effect once he ceased to have the status of a restricted patient.

30. The patient's situation, once he ceased to be subject to a restriction direction, was analogous to that of a section 37/41 patient whose section 41 restriction order ceases to have effect and remains subject, as Plender J put it, only to an "ordinary hospital order". The patient argued that his extant tribunal application survived the loss of his restricted patient status so that, as well as his right to have that application determined, he had the further right to make a fresh application as a hospital order patient under section 69 of the 1983 Act (such a right being free of the prohibition on making an application during the first six months of detention that applies to restricted patients).

31. Plender J rejected the patient's argument; he could not rely on the "old Section 70 application". Since the patient now had a fresh right to make an immediate application under section 69, as a hospital order patient, to treat the old application as of no effect was not inconsistent with the patient's right under Article 5 of the European Convention on Human Rights of access to a tribunal "capable of giving determinations within a reasonable time and regular reviews of the patient's status".

32. The Upper Tribunal's decision in *AD'A v Cornwall Partnership NHS Foundation Trust* [2020] UKUT 110 (AAC) concerned a patient who was originally liable to be detained for treatment under section 3 of the 1983 Act but was subsequently received into guardianship under section 7 of that Act. In the interim, she applied to the First-tier Tribunal for review of her liability to be detained under section 3. At no point, therefore, had the patient been a restricted patient.

33. The First-tier Tribunal found that, once the patient had been received into guardianship, it had no jurisdiction to decide the application made when she was subject to section 3 of the 1983 Act. The tribunal struck out the application.

34. On appeal, Upper Tribunal Judge Jacobs noted, at paragraph 10, that "a tribunal's jurisdiction is different from the powers it has within that jurisdiction" and "these may change if the law changes or if the circumstances of the case change". He went on in paragraph 18 to hold that, despite a clear alteration in the patient's legal status in consequence of which she acquired a new right of appeal, and the

respondent to the proceedings became a local authority, the tribunal's jurisdiction to determine the patient's application survived:

> "There is no reason in principle why any of those changes should affect the tribunal's jurisdiction under the existing application. Indeed, the survival of that jurisdiction is consistent with, perhaps even required by, the policy of judicial supervision. And the tribunal has the necessary powers to make the changes to the proceedings consequent upon the patient's change of status."

The arguments

35. No party requests a hearing of this appeal and I am satisfied that the appeal may be fairly determined on written submissions.

The patient

36. The patient's written submissions were drafted jointly by counsel, Mr Simblett QC and Mr Pezzani.

37. The patient argues that, by virtue of section 70 of the 1983 Act, a restricted patient is clearly prevented from applying to the tribunal until at least six months have elapsed since s/he became a restricted patient.

38. The way in which section 11(3) of the Criminal Appeal Act 1968 confers functions on the Court of Appeal shows that if a prisoner's sentence is quashed, the Court's replacement sentence or order takes effect not from the date of the order but from the date of the now quashed sentence. If a sentence is quashed it is void *ab initio* and a nullity. Once a sentence is quashed, the Court has power under section 11(3)(b) to pass a sentence or order "in place of it". For a fresh sentence or order to take the place of a quashed sentence, it must take effect as from the date of the quashed sentence. Any other interpretation of section 11(3) would be absurd and should be avoided.

39. If a replacement sentence/order took effect from the date of the Court of Appeal's order then, in Mr S's case, since his sentence of imprisonment for public protection had become a nullity, "there is no sentence to which prisoners are subject in the period between sentence and appeal". The undesirable consequences of this include "that all those who had been detained between sentence and successful appeal against sentence would have an action for false imprisonment": see *R v Governor of Brockhill Prison ex parte Evans (no. 2)* [2001] 2 AC 19.

40. The correct legal analysis is that, as a result of the Court of Appeal's order, the patient was treated as if a hospital order were imposed on 14 May 2008 (the original sentence date). On that basis, Mr S had the same tribunal rights as any other

section 37/41 restricted patient namely to apply to the tribunal once he had been a restricted patient for six months and, thereafter, every 12 months.

41. Under the MHRT(W)'s approach, Mr S was disadvantaged by his successful appeal against his sentence of imprisonment for public protection. Throughout, he remained a restricted patient and all that changed was the type of restricted patient. This switch from one type of restricted patient to another was the only reason for denying him the review of detention to which he would otherwise have been entitled. Such an outcome was absurd and contrary to section 11(3) of the Criminal Appeal Act 1968 which requires the Court of Appeal to ensure that "taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below".

42. The MHRT(W)'s approach may also result in breach of a patient's right under Article 5(4) of the European Convention on Human Rights to a speedy and effective hearing to challenge the lawfulness of detention: see *R (C) v Mental Health Review Tribunal* [2002] 1 WLR 176.

43. Finally, section 70(a) of the 1983 Act prohibits *applications* during the first six months of restricted patient status. However, Mr S made his application, under section 70(b), before the Court of Appeal made his order. Even if section 70(a) applies to patients who attain restricted status on appeal, it would not have 'bitten' on Mr S because since 5 March 2020 he had made no tribunal application.

44. Mr S made a valid application to the MHRT(W) and the tribunal was not permitted to surrender its jurisdiction and ignore his application. The higher courts have consistently held that extant tribunal applications remain valid and must be determined irrespective of changes to a patient's 1983 Act status. For recent confirmation, see the Upper Tribunal's decision in *AD'A v Cornwall Partnership NHS Foundation Trust* [2020] UKUT 110 (AAC). The Upper Tribunal should declare that the MHRT(W) has jurisdiction to hear the application made by Mr S before the Court of Appeal quashed his sentence of imprisonment for public protection. In practical terms, it does not matter whether the tribunal proceeds under section 73 or 74 of the 1983 Act since the tests are materially the same.

Respondents

45. Lamentably, Elysium Healthcare have failed to respond to Upper Tribunal case management directions which required that organisation to supply a written response to this appeal. Since this appeal is now supported by the Secretary of State for Justice, I shall not prolong the proceedings by taking steps to require Elysium Healthcare to comply with directions. However, that organisation should not assume that the Upper Tribunal, as a matter of course, permits its case management directions to be disregarded. The Upper Tribunal has the power to order a senior

official or director of an organisation that is a party to proceedings to provide an explanation in open court for its failure to comply with case management directions (see rule 16 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

46. The Secretary of State for Justice supports this appeal. His written response to the appeal was admitted by a Registrar of the Upper Tribunal who granted an extension of time for complying with directions requiring supply of a response.

47. The Secretary of State's written response, drafted by Ms F Paterson of counsel, submits that the MHRT(W) erred in law by failing to adopt a purposive construction of section 70 of the 1983 Act such being necessary to secure compliance with Article 5(4) of the European Convention on Human Rights. The Secretary of State further submits that the tribunal's decision was inconsistent with the ratio of *AD'A v Cornwall Partnership NHS Foundation Trust*. The Secretary of State invites the Upper Tribunal to allow this appeal and order reinstatement of the application to the MHRT (Wales) made by Mr S on 21 January 2020.

48. *AD'A* also concerned a patient whose 1983 Act status altered while a tribunal application was extant. In that case the patient went from being liable to detention for treatment under section 3 of the Act to being received into guardianship under section 7. Upper Tribunal Judge Jacobs held as follows:

> "The tribunal's powers are conferred on it in exercise of its jurisdiction. They are not themselves matters of jurisdiction. The jurisdiction remains the same: to decide whether to discharge the patient. The conditions that decide how the jurisdiction to discharge is to be exercised have changed, but the ultimate issue for the tribunal has not…".

49. The Secretary of State submits that the present case is materially indistinguishable from *AD'A*. The subject matter of Mr S's tribunal application – whether or not he should be detained under the 1983 Act – did not change when the legal basis for his detention changed as a result of the Court of Appeal's order. The detention itself continued. To effectively remove the tribunal's jurisdiction for six months cannot be considered consistent with the 1983 Act's policy of "treatment not containment" (*B v Secretary of State for Justice* [2012] 1 WLR 2043) since it amounts to a dilution of judicial supervision.

50. The Secretary of State also argues that the MHRT(W)'s construction arguably fails to secure the prompt review of detention guaranteed by Article 5(4). The Upper Tribunal's obligations under sections 3 and 6 of the Human Rights Act 1998 call for the purposive construction contended for by the Secretary of State.

Conclusions

51. I agree with the Appellant and the Secretary of State that the MHRT(W) erred in law in finding that it lacked jurisdiction to determine the application made when the patient was a section 47/49 restricted patient once he had become a section 37/41 restricted patient.

52. The patient has remained throughout a restricted patient. He clearly made a valid tribunal application, for the purposes of section 77(1) of the 1983 Act, as a section 47/49 restricted patient. Section 70 of the 1983 Act confers the right to apply to the tribunal on restricted patients at large. At this stage, no distinction is drawn between different types of restricted patient. So far as the tribunal's powers are concerned, different types of restricted patient are treated differently. The tribunal's powers in relation to section 37/41 restricted patients are conferred by section 73 of the 1983 Act. For other types of restricted patient, including a section 47/49 restricted patient, the tribunal's powers are conferred by section 74. The tribunal's powers are obviously constructed differently to reflect the fact that, for some restricted patients, discharge from detention under the 1983 Act will not necessarily lead to discharge from all forms of detention, which was the present patient's situation until the Court of Appeal quashed his sentence of imprisonment for public protection. There is nothing in the differences between sections 73 and 74 that necessarily nullifies an application made by a section 47/49 restricted patient if, before its determination, the patient becomes a section 37/41 restricted patient. The substantive tests are materially the same. For example, section 74(1)(a) requires the tribunal to ask itself whether the patient would, if subject to a restriction order, be entitled to absolute or conditional discharge under section 73. The material differences concern what happens next, once the tribunal determines the application.

53. If Parliament had intended such a disadvantageous measure as to nullify a tribunal application made by a section 47/49 patient who, in the meantime, became a section 37/41 patient, I would expect it either to use clear wording to that effect or to cast the tribunal's powers in relation to section 37/41 restricted patients in such a way that they could not properly be exercised in relation to an application that began life as one made by a section 47/49 patient. Parliament has done neither and I therefore hold that the MHRT(W) erred in law in finding that it lacked jurisdiction to consider the application made by the patient when his status was that of a section 47/49 restricted patient.

54. The present case may be readily distinguished from *MN* because that case involved a patient who ceased to be a restricted patient before his tribunal application had been determined. The falling away of restrictions gave rise in that case to an

immediate right to make a fresh tribunal application as an unrestricted patient. That was not the case for the present patient.

55. I do not need to rely on Upper Tribunal Judge Jacob's reasoning in *AD'A*. The present case is more straightforward because, unlike *AD'A*, it involved no change in a patient's 1983 Act status while a tribunal application was pending.

56. There is also no need for me to deal with the argument that the MHRT(W)'s approach was flawed because it failed to seek a construction of the 1983 Act that was consistent with Court of Appeal's duty under the 1968 Act not to deal with an offender more severely than did the court below, nor the argument that the tribunal's construction was incompatible with Article 5(4). But I will say that both arguments, in my opinion, have force.

Disposal of this appeal

57. Section 78A(3) of the 1983 Act provides as follows:

> "Section 12 of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) applies in relation to appeals to the Upper Tribunal [against a decision of the MHRT(W)] under this section as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Mental Health Review Tribunal for Wales."

58. Section 12(1) of the 2007 Act provides that section 12(2) applies if the Upper Tribunal, in deciding an appeal, finds that the decision in question involved the making of an error on a point of law. I find that the MHRT(W)'s decision involved the making of an error on a point of law.

59. The Upper Tribunal's powers under section 12(2) of the 2007 Act include power to set aside a tribunal's decision and, if it does, re-make the decision. I set aside the MHRT(W)'s decision and re-make it. My re-made decision is that the MHRT(W) has jurisdiction to determine the application made by the patient in January 2020 under section 70 of the 1983 Act, when he was a section 47/49 restricted patient, in the exercise of powers conferred on the tribunal by section 73 of the 1983 Act (unless there has been an alteration in the patient's legal status of which I am unaware) . I have directed that the case file be put before the President of the MHRT(W) in order that she may take consider whether any case management steps are required. All this is reflected in the decision given above.

Progress of these Upper Tribunal proceedings

60. It is right that I conclude by apologising to the patient, on behalf of the Upper Tribunal's Administrative Appeals Chamber, for delays in progressing these proceedings. As I have said, this was partly due to the conduct of Elysium Healthcare who saw fit to ignore the Upper Tribunal's case management directions as well as attempts made by registrars of the Upper Tribunal to chase up that organisation's response to the patient's appeal. But, regrettably, that was not the only cause of delay.

61. On 23 February 2021, the patient's solicitor emailed the offices of the Administrative Appeals Chamber of the Upper Tribunal stating that, in the light of the parties' agreement, "ask that given there seems to be no dispute that this can be placed before a Judge without further delay". The file was not referred to me until the end of May 2021. Like many parts of the judiciary, the Administrative Appeals Chamber has been put under pressure by changes to working practices, and staff absences, in connection with the Covid-19 pandemic. Nevertheless, delays such as this cannot be justified. I have been assured that arrangements are in place so that mental health cases are treated as priority cases by the staff who provide administrative support to the Chamber.

(Signed on the Original)

E Mitchell

Judge of the Upper Tribunal

29 June 2021