Neutral Citation Number: [2026] UKUT 138 (AAC)
Appeal no. UA-2025-001122-HM

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

CB

Appellant

and

Dorset Healthcare University NHS Foundation Trust

Respondent

Before: Upper Tribunal Judge Johnston
Decided on 31 March 2026 following an oral hearing, held by consent by video, on 24 February 2026

Representation:

Appellant:	Mr Waters
Respondent:	Did not attend

On appeal from:

Tribunal:	First-tier Tribunal (HESC) (Mental Health)
Judge/Panel:	Ms M Carpenter (Judge) Dr M Shah (Medical Member) Mr D Frampton (Specialist Member)
Tribunal Case No:	MP/2025/08426
Tribunal Venue:	Remote
Date:	30 May 2025

RULE 14 Direction

Rule 14(7) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides that information about mental health cases and the names of any persons concerned in such cases must not be made public unless the Upper Tribunal gives a direction to the contrary.

The Upper Tribunal DIRECTS that this decision, which does not refer to the patient by name, may be made public.

SUMMARY:
The First-tier Tribunal made an error of law in refusing to adjourn and not following the decision of the Upper Tribunal in SS v Cornwall Partnership Foundation Trust [2023] UKUT 258 (AAC). They also erred in law by not allowing the appellant's representative to make final submissions after the decision not to adjourn was made.

[MENTAL HEALTH (80)]
Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

1. The Upper Tribunal finds that the making of the First-tier Tribunal decision involved the making of an error on a point of law. However, the Upper Tribunal exercises its discretion pursuant to section 12(2)(a) Tribunals, Courts and Enforcement Act 2007 so as not to set aside the decision of the First-tier Tribunal as it would serve no purpose. The appellant is no longer subject to the Mental Health Act 1983.

2. This decision is made following an oral hearing on 24 February 2026, held by consent by video. The appellant was represented by Mr Waters. The respondent was not represented. I am grateful to Mr Waters for his submissions.

REASONS FOR DECISION

A. Introduction

3. The appellant appeals to the Upper Tribunal against the First-tier Tribunal's decision under case number MP/2025/08426. The appeal is within time.

4. Permission to appeal was granted on the 2 June 2025 on three grounds:

> (1) The First-tier Tribunal did not follow the case of SS v Cornwall Partnership Foundation Trust [2023] UKUT 258 (AAC) despite the material facts being the same.
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> (2) Once the First-tier Tribunal had decided the adjournment application, they should have given the appellant the opportunity to make submissions on the final decision to be made.
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> (3) It was arguable that the tribunal did not give adequate reasons for their decision on why they preferred the evidence of the social worker [SW] where it conflicted with the evidence of the responsible clinician [RC].

B. Factual and procedural background

5. The appellant was detained under section 2 and then 3 of the Mental Health Act 1983 (the Act) in September 2024. He was referred to the First-tier Tribunal under section 68(2) of the Act on 26 March 2025. The First-tier Tribunal was held remotely on 30 May 2025. The written decision is dated 2 June 2025.

6. The relevant evidence in the First-tier Tribunal's decision is as follows:

> "12. [The RC] indicated that following a number of changes to [the appellant's] medication, his medication was now optimised. [The RC] stated that the ward environment was not conducive to [the appellant's] presentation, as he was triggered by alarms, noises from other patients, etc. It was therefore difficult to establish the current degree of [the appellant's] mental disorder as the ward environment creates a false clinical picture.
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> 13. [The RC] confirmed that [the appellant] is classed as a delayed discharge patient, and that he is ready for discharge once suitable accommodation is in place.
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> …
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> 17. [The RC] confirmed that a Care Treatment Review under the Learning Disability Transforming Care arrangements had taken place in March 2025. That review supported the current treatment on the ward and the discharge plan to suitable accommodation.
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> …
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> 21. [The ward nurse] agreed that the ward environment was not conducive to [the appellant's] good mental health but stated that until appropriate accommodation was in place the statutory criteria for detention were satisfied.
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> …
>
> 24. [The care coordinator] confirmed that a suitable accommodation placement had been identified. She said that there were some clear indicators that this accommodation would be less likely to break down. The accommodation is an individual flat with continuous 1:1 support and 1:2 support when in the community…."

7. The social worker confirmed that the accommodation was available but that it was necessary to negotiate costs before taking the accommodation to the funding panel to agree. The placement was vacant and available for the appellant once funding was agreed.

8. The First-tier Tribunal recorded that at the conclusion of the oral evidence the representative of the patient made an application for an adjournment of the hearing in order to seek information on aftercare that would be available to the appellant should the tribunal exercise its power of discharge on the basis that the case was analogous to the case of SS v Cornwall. They said in their decision as follows:

> "28. Ms Groves argued that this case was analogous to SS v Cornwall in that the availability of aftercare was centrally relevant to the decision as to discharge (and not "incapable of affecting the outcome" as per AM v West London Mental Health NHS Trust and Secretary of State for Justice [2012] UKUT 382 (AAC) ("AM v West London").
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> 29. In SS v Cornwall, the Upper Tribunal noted at para 35:
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> ***"In a case like this, where the detaining authority's position is that the patient is ready to be discharged subject to provision of an appropriate***

> ***package of care, the detained patient is placed in an invidious position because the failure by the authority liable to provide him with that care to progress his discharge planning and to provide information about what is available, prevents him from presenting his case for achieving his liberty effectively. Without such information, his application was bound to fail."***
>
> 30. The Tribunal agreed that the availability of aftercare was centrally relevant to the matters in hand, and it was not therefore analogous to AM v West London. However, it did not appear to the Tribunal to be the case that there was any missing information as to the current situation in respect of aftercare (as per SS v Cornwall), and therefore, having regard to the overriding objective, it would not be in the interests of justice for the hearing to be adjourned to gather further information.
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> …
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> 32. Rather than a case of missing information, this is a situation where discharge planning is actively being progressed, but there is a process that needs to be completed before discharge can occur. The Tribunal did not consider that it would be in the interests of justice to adjourn until after that process had concluded.

9. The tribunal identified the practical steps that needed to be completed. These steps were an application for funding for the accommodation and the identification of a community team neither of which was in place.

> "34. The most critical of these is of course the funding decision. The Tribunal acknowledges that there remains an element of uncertainty in respect of [the appellant]'s discharge to the identified accommodation until the funding Panel approve the funding. However, the Tribunal did not consider that this was analogous to the situation in SS v Cornwall where, although potential accommodation had been identified, no assessment had taken place and therefore the patient did not have sufficient information about whether that accommodation was available. In contrast, [the appellant] had been provided with the information about the availability of his accommodation, albeit that it still had to pass the final hurdle of funding approval (and the other practical arrangements noted above).
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> 35. In paragraph 43 of SS v Cornwall, the Upper Tribunal stated:
> "...the tribunal's determining of the application without information on aftercare amounted in practical terms to an abdication of its role, because without that evidence it couldn't know whether ongoing detention represented the least restrictive option for SS's care and so it couldn't properly answer the questions posed by section 72 MHA." (emphasis added)
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> 36. In contrast, in this case, the Tribunal was satisfied that it had been presented with sufficient information as to aftercare to answer the questions as to the statutory criteria, as set out below."

10. They set out their findings on section 72 of the Act. The relevant findings are as follows:

> **"Is [the appellant]'s mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment?**

> 39. The Tribunal was not satisfied that [the appellant]'s mental disorder is currently of a degree which makes it appropriate for him to be liable to be detained. Although [the appellant] remains regularly physically and verbally aggressive, there was clear evidence that the ward environment was causing much of [the appellant]'s dysregulated behaviour, and therefore it was not possible to establish to what extent these behaviours could be described as the degree of his mental disorder or rather as his reactions to the challenging environment.
>
> 40. The Tribunal noted the evidence of all professionals that [the appellant]'s current placement on an acute ward is exacerbating some of his behaviours and that discharge to a quiet individual accommodation with a high level of support would enable him to present as more settled and able to engage in the community. The Tribunal noted that [the appellant] was described as being at his baseline presentation and is ready for discharge once suitable accommodation is in place.
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> 41. Taking this into account, the Tribunal was nevertheless satisfied that [the appellant]'s mental disorder is of a nature which makes it appropriate for him to be liable to be detained in hospital until the identified accommodation is in place:
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> …
>
> **Is it necessary for [the appellant]'s health or safety or the protection of other persons that he should receive such treatment?**
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> 42. The Tribunal was satisfied that detention is necessary in the interests of [the appellant]'s health. If [the appellant] were discharged without appropriate accommodation and aftercare support in place, it is highly likely that his mental and physical health would deteriorate. [the appellant] requires significant support in respect of self-care and nutrition, including monitoring of fluid intake. …"

11. The appellant applied for permission to appeal to the First-tier Tribunal on the grounds that the tribunal erred in law in not following the Upper Tribunal decision in SS v Cornwall and refusing the application for an adjournment; by not giving the appellant the opportunity to make final submissions once they had refused to adjourn. On the 23 June 2025 permission to appeal was refused by the First-tier Tribunal.

C. The appellant's submissions and oral hearing

12. Mr Waters representing the appellant confirmed with the Upper Tribunal that he had checked with the respondent whether they were going to appear at the hearing and was told that they were not. On the 24 September 2025 the respondent confirmed with the Upper Tribunal that they did not intend to engage with the proceedings.

13. As to ground (1) Mr Waters relied on the case of SS v Cornwall. He submitted that following that case, the tribunal had a legal duty to use their significant case management powers to facilitate discharge by obtaining the necessary information to make a fully informed decision. In this case the tribunal accepted that discharge planning was centrally relevant and that discharge would occur once arrangements had been made but failed to determine whether those arrangements would in fact

materialise within a reasonable timescale and "deferred that question to future events".

14. He submitted that the evidence before the tribunal contained a number of uncertainties. He said the community team had not been identified, there was conflicting evidence over leave and the funding for the proposed accommodation had not been agreed.

15. He submitted that the tribunal place great emphasis on their being no "missing" information, but SS v Cornwall does not contain the word missing but refers to "more" "further" or "better" or a "lack of" information. He submitted that although aftercare arrangements had progressed further than those in SS v Cornwall "being further along the road is still not reason to kick the can down it."

16. He further submitted that the First-tier Tribunal is bound by decisions of the Upper Tribunal and should follow those decisions unless there are different material facts which distinguishes the cases. I asked Mr Waters in the hearing whether by adjourning this case given the information already in front of the tribunal they would have been going outside their statutory remit which was to decide whether they were satisfied that the patient needed to be detained. He said the decision of the tribunal is ultimately to discharge or not, but they also have the power to adjourn and that is important. Where there is uncertainty, they should adjourn. The RC cannot intervene to organise funding and by adjourning with directions to ensure an aftercare plan was in place this benefits both parties in this case as the detaining authority said the patient is ready for discharge if an aftercare plan was in place. Having an aftercare plan in place would have had a significant impact on their decision.

17. As to ground (2) on which permission was granted Mr Waters submits that the tribunal was making two different decisions on which the appellant should have had the opportunity to make submissions. The tribunal made a decision to refuse to adjourn and did not allow the appellant to make submissions in light of that refusal on discharge. He submits this was a material error and relies on UTJ Church's decision in KH & AH v Nottinghamshire Healthcare NHS Foundation Trust & Avon & Wiltshire Mental Health Partnership NHS Trust [2025] UKUT 128 (AAC). At paragraph 107 of that decision UTJ Church says as follows:

> 107. The decision to continue to impose representation on KH had a significant impact on the way that the proceedings unfolded. Did it have a material impact on the outcome of the reference? That might seem unlikely, given what the reports before the tribunal said, but we can never know. As Lord Pearce observed in Rondel v Worsley [1969] 1 AC 191 (at §275):
>
> "It not infrequently happens that [...] those who have apparently hopeless cases turn out after a full and fair hearing to be in the right."

18. Although the material facts in this case differed as the decision made by the tribunal in KH which was about the continued representation of a patient under 11(7)(b) of the rules despite that patient not wanting representation Mr Waters submits that in this case supports the proposition that even if it was unlikely that submissions would have made a "material impact" on the decision, the appellant should have had the opportunity to make submissions and this was material for the reasons given in Rondel and Worsley above.

19. I have not included Mr Waters submissions on ground (3) as I have not made findings on that ground given my findings on ground (1) and (2).

D. The Law

20. Section 72 of the Mental Health Act 1983 described the powers of the tribunal in an unrestricted case such as this one. The relevant parts of that section are:

> **72 Powers of tribunals.**
>
> (1) Where application is made to the appropriate tribunal by or in respect of a patient who is liable to be detained under this Act or is a community patient, the tribunal may in any case direct that the patient be discharged, and—
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> …
>
> (b) the tribunal shall direct the discharge of a patient liable to be detained otherwise than under section 2 above if it is not satisfied—
>
> (i) that he is then suffering from mental disorder or from mental disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
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> (ii) that it is necessary for the health of safety of the patient or for the protection of other persons that he should receive such treatment; or
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> (iia) that appropriate medical treatment is available for him; or
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> …
>
> (2) A tribunal may under subsection (1) above direct the discharge of a patient on a future date specified in the direction; and where a tribunal does not direct the discharge of a patient under that subsection the tribunal may—
>
> (a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship; and
>
> (b) further consider his case in the event of any such recommendation not being complied with.

21. This case also concerns the tribunals application of the procedure rules. The relevant rules are:

> **Overriding objective and parties' obligation to co-operate with the Tribunal**
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> 2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
>
> (2) Dealing with a case fairly and justly includes—

> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
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> …
>
> (b) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
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> …
>
> (3) The Tribunal must seek to give effect to the overriding objective when it—
>
> (a) exercises any power under these Rules; or
> (b) interprets any rule or practice direction.
>
> …

Case management powers

> 5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.
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> …
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> (3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—
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> …
>
> (h) adjourn or postpone a hearing;

22. In AM v West London Mental Health NHS Trust [2013] EWCA Civ 1010 Richards LJ when deciding on permission to appeal the Upper Tribunal's decision to refuse an adjournment on the basis that aftercare information would have made no difference to the decision of the First-tier Tribunal said at paragraphs 8 and 9:

> "8. For my part, I acknowledge that aftercare information should be provided in accordance with the provisions to which Mr Pezzani has referred, and that he has put forward very good reasons why it should be provided so as to enable the patient to make full submissions and to enable the Tribunal to make a properly informed decision on discharge.
>
> 9. I also recognise the need for great caution before reaching a conclusion that information about aftercare could make no difference and is therefore unnecessary, given the importance attached to its provision, the fact that a patient depends on the authorities for its provision and also the need to ensure procedural fairness. But it seems to me, as it did to the Upper Tribunal Judge and evidently to Sir Stanley Burnton, that it must, as a matter of principle, be open to a Tribunal to conclude in the circumstances of a particular case that information or better information of aftercare is incapable of affecting the decision, and that an adjournment to secure its provision could achieve nothing beyond additional expense and delay and would therefore be inappropriate. The question to my mind is whether this is such a case. Both the Upper Tribunal Judge and Sir Stanley Burnton concluded that it was. I reject the contention that in so concluding they made an assumption that information about aftercare would have made no difference. Their conclusion was based not on any assumption, but on the particular findings made by the

> First-tier Tribunal about M's condition and his insight, or lack of insight, into his condition, and the resulting conclusion of the First-tier Tribunal that an adjournment was unnecessary. On their findings as to M's condition and mental state, it was, in my judgment, properly open to the First-tier Tribunal to conclude that there was no possibility of discharge at that stage, whatever information about aftercare might be provided. That, as it seems to me, is the basis on which the Tribunal dealt with the question of adjournment, concluding for those reasons that an adjournment was not necessary.

23. In SS v Cornwall Partnership NHS Foundation Trust (Mental Health) [2023] UKUT 258 (AAC) UTJ Church said at paragraphs 32, 45-48 as follows:

> "32. This case was, therefore, a case that fell within the category identified by Dyson LJ in *R (H) v Ashworth Hospital Authority & Ors [2002] EWCA Civ 923* at §69:
>
> "I would endorse the general observation of the judge at paragraph 69: "In general, in a case in which after-care is essential and satisfaction of the discharge criteria depends on the availability of suitable after-care and accommodation, as in H's case, a tribunal should not direct immediate discharge at a time when no after-care arrangements are in place and there is no time for them to be put in place. […] If […] there is uncertainty as to the putting in place of the after-care arrangements on which satisfaction of the discharge criteria depends, the tribunal should adjourn pursuant to rule 16 to enable them to be put in place, indicating their views and giving appropriate directions: c.f. *Ex parte Hall [2000] 1 WLR 1323* , per Kennedy LJ at 1352D."
>
> …
>
> 45. However, when exercising its case management powers the tribunal had to seek to further the overriding objective (rule 2(3)). While "avoiding delay" is one aspect of dealing with cases fairly and justly (rule 2(2)(e)), that objective is qualified by the words "so far as compatible with proper consideration of the issues". If the step taken to avoid delay is liable to hamper proper consideration of the issues, then it does not further the overriding objective.
>
> 46. Other aspects of the overriding objective were also relevant to the decision not to adjourn. In particular, rule 2(2)(a) requires the tribunal to deal with the case in ways which are "proportionate to the importance of the case … and the resources of the parties". At stake was the applicant's liberty, which was clearly a weighty matter, and in the context of the "resources of the parties" it was relevant that SS was wholly reliant on the local authority for information on how it would exercise its discretion as to the particular package of care which it would make available to discharge its section 117 duty.
>
> 47. It was accepted that SS didn't need to be in hospital if an appropriate package of care were available to him in the community, and that this had been the case for some time. The RC's evidence, accepted by the panel, was that not only did SS not need to be in hospital, he needed *not* to be in hospital, because being there was "counter-therapeutic". The tribunal heard that SS was becoming institutionalised to the extent that he considered the PICU ward to be his home and the staff and patients on the ward to be his family. There was a clear risk that the longer he remained there, the more institutionalised he would be, and a successful discharge would become more difficult to achieve.

> 48. The only reasons not to adjourn for aftercare information would be either because it is not relevant because the patient had not reached the stage at which discharge was a realistic prospect, or because there was no realistic prospect of such aftercare information being produced. Clearly neither of those situations was applicable in SS's case."

E. The Analysis

Ground (1) The First-tier Tribunal did not follow the case of SS v Cornwall Partnership Foundation Trust [2023] UKUT 258 (AAC) despite the material facts being the same.

24. The First-tier Tribunal is bound to follow the decisions of the Upper Tribunal unless those decisions can be distinguished on their facts. The First-tier Tribunal in the present case purported to distinguish the present case from Cornwall on the basis that the present did not have "missing information".

25. I find that the First-tier Tribunal erred in law in doing so, for the following reasons.

26. There was missing information in the present case, as there was in SS v Cornwall.

27. At the first hearing in SS v Cornwall the tribunal adjourned because the patient had been well enough for discharge from hospital for some time if a discharge pathway and accommodation was available. The next tribunal met some 7 weeks later and decided not to adjourn and did not discharge the patient. At this stage the RC was concerned that the patient was becoming institutionalised, but no aftercare plan was in place although significant progress had been made. There was a potentially suitable placement identified, and the patient was to be assessed but this had not yet taken place and so there remained uncertainty as to what would be available to the patient should he be discharged. The reason given by the First-tier Tribunal in that case for not adjourning the hearing was that the discharge plan was not ready and it would take some time. They decided that it was not "necessary" in the interests of justice for the hearing to be further delayed. It was this decision which was found to be in error of law.

28. In SS v Cornwall the key question when deciding an application to adjourn for aftercare information was identified at paragraph 29 of that judgment:

> "…In his decision refusing permission to appeal Judge Jacobs' decision in AM v West London to the Court of Appeal (reported as AM v West London Mental Health NHS Trust [2013] EWCA Civ 1010; [2013] MHLO 73) Richards LJ said that the key question in such a situation was whether information about discharge and aftercare was "incapable" of affecting the decision whether to adjourn…"

29. The Tribunal in the present case did not give a reason for finding that "it did not appear … that there was any missing information as to the current situation in respect of aftercare (as per SS v Cornwall)", except to say that the "discharge planning is actively being progressed but there is a process to be completed before a discharge can occur".

30. But in any event, (i) the finding that it did not appear that there was any missing information was not supported by the evidence, and (ii) the evidence also did not show that the information that was missing was "incapable of affecting the decision" or that "an adjournment to secure its provision could achieve nothing beyond additional expense and delay" as in SS v Cornwall). I deal with each of those points in turn.

31. Firstly, there was missing information. The tribunal found that aftercare was of "central importance" to the patient's case. Funding for the accommodation had not been agreed and there was no community team in place.

32. Secondly, the First-tier Tribunal applied the wrong test when making the decision on whether to adjourn. The test is not whether there was "missing information"; the key question identified by Richards LJ in AM v West London Mental Health NHS Trust and followed in SS v Cornwall was whether "information or better information of aftercare is incapable of affecting the decision, and that an adjournment to secure its provision could achieve nothing beyond additional expense and delay and would therefore be inappropriate…" (paragraph 9 of AM). The information that was not before the tribunal was whether the accommodation would be funded and what team would provide care in the community. That information was capable of affecting the decision. In their findings on section 72 the tribunal said that the ward was causing much of the [appellant]'s dysregulated behaviour; that his behaviour would be more settled in the community; that he was described as being at his baseline presentation and is ready for discharge once suitable accommodation is in place; and that if he was discharged without appropriate accommodation his physical and mental health would deteriorate. The evidence of the RC was that if aftercare was available the patient would be discharged. This is not a case where nothing beyond additional expense and delay would be gained by the adjournment. UTJ Church said at paragraph 48 as follows:

> "48. The only reasons not to adjourn for aftercare information would be either because it is not relevant because the patient had not reached the stage at which discharge was a realistic prospect, or because there was no realistic prospect of such aftercare information being produced. Clearly neither of those situations was applicable in SS's case."

33. Neither of those situations were applicable to this case. The evidence was that the funding decision would be made in approximately two weeks and the community team would then be identified. The information before the tribunal was that aftercare information was relevant, the patient had reached the stage at which discharge was a realistic prospect and there was a realistic prospect of that information being provided once the funding panel had met and a community team had been allocated.

34. Mr Waters submitted that the tribunal had a duty to facilitate discharge. I need not decide whether that is in fact the test in view of my above findings.

Ground (2) Once the First-tier Tribunal had decided the adjournment application, they should have given the appellant the opportunity to make submissions on the final decision to be made.

35. In this case the tribunal made both the decision not to adjourn and not to discharge at the same time. The appellant's representative did not have the

opportunity to make submissions after the decision not to adjourn was made on whether the tribunal should be satisfied of the criteria under section 72. This is a material error of law.

36. The importance of procedural fairness is clear in law. Mr Waters relied on the case of KH & AH v Nottinghamshire Healthcare NHS Foundation Trust & Avon & Wiltshire Mental Health Partnership NHS Trust and specifically paragraph 107 of that decision where UTJ Church said:

> "107. The decision to continue to impose representation on KH had a significant impact on the way that the proceedings unfolded. Did it have a material impact on the outcome of the reference? That might seem unlikely, given what the reports before the tribunal said, but we can never know. As Lord Pearce observed in Rondel v Worsley [1969] 1 AC 191 (at §275):
>
> "It not infrequently happens that [...] those who have apparently hopeless cases turn out after a full and fair hearing to be in the right.""

37. In DB v Lancashire and South Cumbria NHS Foundation Trust and the Secretary of State for Justice I cited the case of R(A Child) [2025] EWCA 1504 when deciding on procedural fairness in that case. The first reason for why procedural fairness is important is relevant to this case. Moylan LJ said this at paragraph 34 of that judgment;

> "In respect of Ground 4, I propose first to refer to what was said in the judgment of the court, given by Baker LJ, in Re A:
>
> > "[29] There are at least two fundamental reasons why procedural fairness is important. The first is that it helps to improve the chances of reaching the right result. In John v Rees [1970] Ch 345, at 402, Megarry J noted that there are some who would say that, when the outcome of a case is obvious, why force everybody to go through the tiresome waste of time involved in framing charges against a person and giving them an opportunity to be heard? Megarry J eloquently answered that question in the following way:
> >
> > "As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

38. Rule 2 of the Tribunal Procedure Rules requires the tribunal to deal with cases fairly and justly which includes:

> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
>
> …

> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings…

39. It was incumbent on the First-tier Tribunal to give the appellant the opportunity to make submissions on the decision under section 72 once they had made the decision not to adjourn. To not give the appellant that opportunity was procedurally unfair and did not recognise the importance of the case for the patient nor enable him through his representative to participate in the proceedings. This was an error of law.

Ground 3. It is arguable that the tribunal did not give adequate reasons for their decision in that they did not decide on conflicting evidence about leave.

40. Given I have found ground (1) and ground (2) were material errors of law I have decided it is unnecessary to make a finding on this ground. As the appellant is no longer subject to the Act although I have identified two material errors of law Although the decision of the First-tier Tribunal involved the making of an error on a point of law, it is not set aside under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 as there would be no practical effect for the parties.

F. Conclusion

41. The First-tier Tribunal erred in law. As the appellant is no longer subject to the Act there is no purpose in setting aside the decision.

42. The reason I have decided the points of law although the appeal became academic, is that it is important to point out the test to be applied when a tribunal should have adjourned and the importance of procedural fairness.

Deputy Chamber President Judge Sarah Johnston
Sitting as an Upper Tribunal Judge
31 March 2026