Neutral Citation No [2014] NIQB 78 | *Ref:* **TRE9305**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **9/6/14**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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SC's Application [2014] NIQB 78

IN THE MATTER OF AN APPLICATION BY SC FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF DECISIONS BY THE MENTAL HEALTH REVIEW TRIBUNAL DATED 16 APRIL 2013

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TREACY J

Introduction

[1] The Applicant is a 23 year old man who resides as an inpatient in the Avoca Ward of Knockbracken Healthcare Park, detained under Article 12 of the Mental Health (Northern Ireland) Order 1986. In early 2013 he made an application to have the legality of his detention reviewed. By decision of 30 April 2013 the Mental Health Review Tribunal for Northern Ireland ("the MHRT") directed that he should not be discharged. The Applicant challenged that decision. I earlier dismissed the application with brief reasons and indicated to the parties that I would furnish a written judgment.

Relief Sought

[2] The Applicant seeks the following relief:

(a) An order of certiorari quashing the decision of the MHRT made on 16 April 2013 whereby the Tribunal directed that the Applicant should remain detained in accordance with the provisions of the Mental Health (Northern Ireland) Order 1986.

(b) An order of *mandamus* requiring the MHRT to provide a re-hearing of the Applicant's case before a differently constituted panel within an expedited period of time.

(c) An order of *mandamus* requiring the MHRT to expunge all record of the decision dated 16 April 2013 from their records.

(d) A declaration that the said decision is unlawful, ultra vires and of no force or effect.

Grounds upon which Relief is Sought

[3] The relief is sought on the following grounds:

(a) The decision of the adjudicating MHRT is procedurally unfair, in particular by:

(i) Giving reasons that give rise to substantial doubt that the decision maker correctly applied the law with regard to the appropriate burden of proof in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(ii) Giving reasons that give rise to a substantial doubt that the decision maker correctly applied the law with regard to the appropriate test in accordance with Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iii) Giving reasons that give rise to substantial doubt that the decision maker reached a rational decision, in light of the evidence referred to by the decision maker, in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iv) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the evidence put before the Tribunal and the submissions made by the Applicant's counsel at the hearing before the Tribunal.

(v) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the role of the MHRT as an inquisitorial tribunal and failing to meet its duty of due inquiry.

(vi) Giving reasons that give rise to substantial inference that the decision maker, in reaching its decision in respect of the test under Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986, paid regard to evidence that falls outside the definition of relevant evidence pursuant to Article 2(4) of the Mental Health (Northern Ireland) Order 1986.

(vii) Failing to give adequate reasons for reaching their decision so as to enable the reader to understand why and how the finding was decided.

(b) The MHRT, its servants and agents, failed to adequately comply with the duty in Article 83(2)(h) of the Mental Health (Northern Ireland) Order 1986 and Rule 23(2) of the Mental Health Review Tribunal (Northern Ireland) Rules 1986 ("the MHRT Rules"), and their decision was therefore unlawful and ultra vires and did so, in particular by:

(i) Giving reasons that give rise to substantial doubt that the decision maker correctly applied the law with regard to the appropriate burden of proof in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(ii) Giving reasons that give rise to a substantial doubt that the decision maker correctly applied the law with regard to the appropriate test in accordance with Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iii) Giving reasons that give rise to substantial doubt that the decision maker reached a rational decision, in light of the evidence referred to by the decision maker, in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iv) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the evidence put before the Tribunal and the submissions made by the Applicant's counsel at the hearing before the Tribunal.

(v) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the role of the

MHRT as an inquisitorial tribunal and failing to meet its duty of due inquiry.

(vi) Giving reasons that give rise to substantial inference that the decision maker, in reaching its decision in respect of the test under Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986, paid regard to evidence that falls outside the definition of relevant evidence pursuant to Article 2(4) of the Mental Health (Northern Ireland) Order 1986.

(vii) Failing to give adequate reasons for reaching their decision so as to enable the reader to understand why and how the finding was decided.

(c) In directing that the Applicant remain in detention in accordance with the provisions of the Mental Health (Northern Ireland) Order 1986 the MHRT failed to act in a procedurally fair manner and did so, in particular, by:

(i) Giving reasons that give rise to substantial doubt that the decision maker correctly applied the law with regard to the appropriate burden of proof in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(ii) Giving reasons that give rise to a substantial doubt that the decision maker correctly applied the law with regard to the appropriate test in accordance with Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iii) Giving reasons that give rise to substantial doubt that the decision maker reached a rational decision, in light of the evidence referred to by the decision maker, in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iv) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the evidence put before the Tribunal and the submissions made by the Applicant's counsel at the hearing before the Tribunal.

(v) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the role of the MHRT as an inquisitorial tribunal and failing to meet its duty of due inquiry.

(vi) Giving reasons that give rise to substantial inference that the decision maker, in reaching its decision in respect of the test under Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986, paid regard to evidence that falls outside the definition of relevant evidence pursuant to Article 2(4) of the Mental Health (Northern Ireland) Order 1986.

(vii) Failing to give adequate reasons for reaching their decision so as to enable the reader to understand why and how the finding was decided.

(d) In directing that the Applicant remain in detention in accordance with the provisions of the Mental Health (Northern Ireland) Order 1986 the MHRT failed to adhere to the statutory obligations under the Mental Health (Northern Ireland) Order 1986 and the common law obligations imposed on it and their actions were therefore unlawful and ultra vires and did so in particular by:

(i) Giving reasons that give rise to substantial doubt that the decision maker correctly applied the law with regard to the appropriate burden of proof in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(ii) Giving reasons that give rise to a substantial doubt that the decision maker correctly applied the law with regard to the appropriate test in accordance with Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iii) Giving reasons that give rise to substantial doubt that the decision maker reached a rational decision, in light of the evidence referred to by the decision maker, in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iv) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the evidence put before the Tribunal and the submissions made by the Applicant's counsel at the hearing before the Tribunal.

(v) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the role of the MHRT as an inquisitorial tribunal and failing to meet its duty of due inquiry.

(vi) Giving reasons that give rise to substantial inference that the decision maker, in reaching its decision in respect of the test under Article 77(1)(b)

of the Mental Health (Northern Ireland) Order 1986, paid regard to evidence that falls outside the definition of relevant evidence pursuant to Article 2(4) of the Mental Health (Northern Ireland) Order 1986.

(vii) Failing to give adequate reasons for reaching their decision so as to enable the reader to understand why and how the finding was decided.

(e) The MHRT's decision was Wednesbury unreasonable in that the MHRT, by directing the continued detention of the Applicant, followed a procedure which no reasonable Mental Health Review Tribunal, properly directing itself in relation to the law, could have followed and did so in particular by:

(i) Giving reasons that give rise to substantial doubt that the decision maker correctly applied the law with regard to the appropriate burden of proof in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(ii) Giving reasons that give rise to a substantial doubt that the decision maker correctly applied the law with regard to the appropriate test in accordance with Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iii) Giving reasons that give rise to substantial doubt that the decision maker reached a rational decision, in light of the evidence referred to by the decision maker, in accordance with Article 77(1) of the Mental Health (Northern Ireland) Order 1986 (as amended).

(iv) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the evidence put before the Tribunal and the submissions made by the Applicant's counsel at the hearing before the Tribunal.

(v) Giving reasons that give rise to substantial inference that the decision maker reached its decision based on a misunderstanding of the role of the MHRT as an inquisitorial tribunal and failing to meet its duty of due inquiry.

(vi) Giving reasons that give rise to substantial inference that the decision maker, in reaching its decision in respect of the test under Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986, paid regard to evidence that falls outside the definition of relevant evidence pursuant to Article 2(4) of the Mental Health (Northern Ireland) Order 1986.

(vii) Failing to give adequate reasons for reaching their decision so as to enable the reader to understand why and how the finding was decided.

(f) In detaining the Applicant the MHRT has acted in a manner contrary to its obligations under Section 6 of the Human Rights Act 1998 and has acted incompatibly with the Applicant's rights under Articles 5, 6 and 8 of the European Convention on Human Rights ("ECHR") in a manner which is not proportionate.

Factual Background/Sequence of Events

[4] The Applicant is an inpatient in the Avoca Ward of Knockbracken Healthcare Park. He has been detained by the Belfast Health and Social Care Trust under Article 12 of the Mental Health Order 1986.

[5] January 2012: the Applicant takes an overdose of paracetemol in an apparent suicide attempt.

[6] Summer 2012: The Applicant's mother first becomes aware that the Applicant is suffering paranoid delusions.

[7] 5th August 2012: The Applicant is admitted to Lagan Valley Hospital.

[8] 6th August 2012: The Applicant is detained for assessment.

[9] 17th October 2012: Applicant discharged from detention under the Mental Health (Northern Ireland) Order 1986 by a decision of the MHRT.

[10] 17th October 2012 – 8th January 2013: the Applicant remained in Lagan Valley Hospital as a voluntary patient.

[11] 18th January 2013: the Applicant is detained again under the Mental Health (Northern Ireland) Order 1986 and transferred to Ward K in the Mater Hospital.

[12] 30th January 2013: Applicant is discharged from detention by Belfast Health and Social Care Trust

[13] 13th February 2013: the Applicant is detained by the Belfast Health and Social Care Trust at Ward K of the Mater Hospital, Belfast.

[14] 21st February 2013: the Applicant is transferred to the Avoca ward at Knockbracken Healthcare Park, Belfast.

[15] 6th March 2013: The Applicant's solicitors make an application on behalf of the Applicant to the MHRT to have the lawfulness of the Applicant's detention reviewed.

[16] 16th April 2013: The MHRT panel convene to hear the application. The panel was comprised of a qualified and experienced member from each of the following disciplines: law, medicine and social services. In considering the application the panel had available to it the following evidence:

- A report by Dr Pamela McGucken, a consultant psychiatrist who had been supervising the Applicant's care since 21 February 2013 and who was the 'Responsible Medical Officer'.

- A report prepared by Mr Carson, the Applicant's social worker) dated 8 April 2013.

- A report prepared by Mr Pat Curran (the Applicant's former social worker) dated 13 August 2012.

- A second psychiatric report prepared by Dr O Daly dated 30 October 2012.

- A report from Pat Curran dated 8 October 2012.

- A decision from the Tribunal dated 17 October 2012.

- The outcome/details of the interview/assessment conducted by the psychiatrist member of the Tribunal with the Applicant.

- Oral evidence from Dr McGucken, Consultant Psychiatrist.

- Oral evidence from Mr Carson, the Applicant's social worker.

- Oral evidence from the Applicant.

[17] 30th April 2013: The written decision and reasons are released to the Applicant's solicitors. The decision directs that the Applicant should not be discharged from detention.

Statutory Framework

[18] **Article 77 (1) Mental Health (Amendment) (Northern Ireland) Order 2004**

(1) Where an application is made to the Review Tribunal by or in respect of a patient who is liable to be detained under this Order, the Tribunal may in any case direct that the patient be discharged, and shall so direct if –

(a) the Tribunal is not satisfied that he is then suffering from mental illness or severe mental impairment or from either of those forms of mental disorder of a nature or degree which warrants his detention in hospital for medical treatment; or

(b) the Tribunal is not satisfied that his discharge would create a substantial likelihood of serious physical harm to himself or to other person; or

…

[19] **Article 2 (4) Mental Health (Amendment) (Northern Ireland) Order 2004**

(4) In determining for the purposes of this Order whether the failure to detain a patient or the discharge of a patient would create a substantial likelihood of serious physical harm –

(a) To himself, regards shall be had only to evidence –

(i) that the patient has inflicted, or threatened or attempted to inflict, serious physical harm on himself; or

(ii) that the patient's judgment is so affected that he is, or would soon be, unable to protect himself against serious physical harm and that reasonable provision for his protection is not available in the community.

(b) to other persons, regards shall be had only to evidence –

(i) that the patient has behaved violently towards other person; or

(ii) that the patient has so behaved himself that other persons were placed in reasonable fear of serious physical harm to themselves.

Arguments

Applicant's Arguments

[20] The Applicant argues that the MHRT has failed to discharge the duty at Rule 23(2) of the MHRT Rules. That is, that when the tribunal 'relies upon any of the matters set out in Article 77(1) or (3) or Article 78(1) or (2) of the order, [it] … shall state its reasons for being satisfied as to those matters.

[21] The Applicant argues that the MHRT decision falls into illegality by reason of giving reasons which were inadequate. The Applicant argues that adequate reasons:

(a) Must be intelligible and adequate.

(b) Must enable the reader to understand why and how the matter was decided and what conclusions were reached on the principle issues in dispute.

(c) Must not give rise to a substantial doubt that the decision-maker erred in law, or misunderstood some important matter or failed to reach a rational decision on relevant grounds.

[22] The Applicant submits that where the MHRT states that it is not satisfied, *'on a balance of probabilities, that the patient would choose to remain in hospital if discharged from detention under the Order'* a misunderstanding of evidence, and a misunderstanding of the law (specifically with regard to the application of the burden of proof and the application of Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986) are disclosed. The Applicant submits that neither the evidence of the Applicant or the Respondent supported this finding. The Applicant submits that this finding indicates that the MHRT has misunderstood an important matter of evidence or failed to reach a rational decision on the evidence referred to.

[23] In reaching the decision impugned at paragraph 6 the Applicant submits that the MHRT clearly determined that the likelihood of the Applicant remaining in hospital after discharge was a vital consideration when determining the Article 77(1)(b) test. The Aapplicant submits that the MHRT failed to identify in its decision the manner in which it resolved the issue.

[24] The Applicant submits that in relation to decisions made under Article 77(1)(a) and (b) the onus is on the detaining authority to satisfy the MHRT that the Applicant is suffering from the requisite mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment and that the

discharge of the Applicant would create a substantial likelihood of serious physical harm to himself or to other persons. That this onus is on the trust is explicitly stated as being the purpose of the Mental Health (Amendment) (NI) Order 2004 in the Explanatory note. The burden was changed on foot of a successful challenge of the English Provisions under Section 4 of the Human Rights Act 1998 where the Court granted a declaration that said provisions were not compatible with Articles 5(1) and 5(4) ECHR. The Applicant therefore submits that the MHRT's finding that '*the tribunal is not satisfied, on a balance of probabilities, that the patient would choose to remain in hospital if discharged from detention'* discloses a misapplication of the burden of proof. Consequently the MHRT were also in breach of their obligation under Section 7 of the Human Rights Act 1998 not to act in a way that is incompatible with a convention right.

[25] The Applicant submits that it is not for the patient to prove to the Tribunal that he would remain in hospital if he was discharged. The Applicant respectfully submits that if the Tribunal considers a key factor in making its determination regarding the continued detention of the Applicant to be the likelihood of him remaining in hospital following his discharge then it is for the Respondent to persuade the MHRT to the contrary.

[26] The Applicant submits that the reasons for being satisfied under Article 77 constitutes an inadequate reason in that it tends to show that the MHRT have erred in law.

[27] The Applicant submits that the reasons referred to in Part III of their decision are sufficient to pass the threshold of illegality. The Applicant submits that on application of R (on the application of Nash) and JR45 [NIQB] 36 the inadequacy of the reason is sufficient to render the decision of the MHRT illegal.

[28] The Applicant further submits that even if the reasons given by the MHRT were adequate for the purposes of discharging their duty under Article 83(2)(h) of the Mental Health (Northern Ireland) Order 1986 and Rule 23(2) of the MHRT Rules the ground of illegality remains intact on the basis of the Respondent's failure to apply the burden of proof correctly.

[29] The Applicant challenges the application of the *'serious harm'* limb of the Article 77(1)(b) test under which the MHRT found that the Applicant did not meet the test for discharge (the Applicant also failed to meet the test under 77(1)(a)). That is to say the MHRT found that the discharge of the Applicant would create a substantial likelihood of serious physical harm to himself and to other persons. The leading judgment relating to the '*serious harm'* test is that in JR45. In reaching its decision in relation to 'reasonable fear' the Applicant submits that the Respondent does not refer to the evidential requirement prescribed by Article 2(4) of the Mental Health (Northern

Ireland) Order 1986 nor does it refer to the decision in JR45 or the *'real probability test'*. The Applicant is further concerned that the MHRT has recorded that *'This evidence was not challenged by the patient'*. The Applicant submits that he did not dispute that the incident with his mother took place however he did take issue with the incident being sufficient to meet the Article 77(1)(b) test. The Applicant submits that the fact that the MHRT have failed to recognise the Applicant's challenge to the second part of this test draws the inference that the MHRT has erred in law by failing to apply the Article 77(1)(b) test correctly. In particular by failing to give consideration to the reasonableness of any fear alleged by the Applicant's mother and the degree of harm required in order to satisfy the Article 77(1)(b) test.

[30] The Applicant submits that the reasons provided for the Respondent finding that the Applicant fell short of the Article 77(1)(b) standard for discharge are inadequate in that they disclose both a misunderstanding of the evidence and a misunderstanding of the law sufficient to persuade the court that the result of the Tribunal might have been different had these matters been considered correctly. The Applicant further submits that this element of the MHRT decision also leaves the Respondent open to judicial intervention on the grounds of illegality and Wednesbury unreasonableness.

[31] The Applicant further submits that the MHRT should have scrutinized the incident in relation to the mother in an objective manner rather than simply accepting the hearsay evidence in respect of the Applicant's mother's fear.

Respondents Arguments

[32] The Respondent makes three initial observations;

(a) In the Applicant's skeleton argument of 29 May 2013 there is no reliance placed on argument raised in respect of the alleged breach of the Applicant's convention rights.

(b) The Chairman of the Panel, Mr McAlister, deposes that all relevant evidence was taken into account by the Tribunal and that there was no misapplication of the burden of proof.

(c) There are two significant disputes of facts between the parties. The first dispute of a factual nature is the allegation that the Tribunal failed to appreciate that the Applicant challenged whether the incident with his mother was sufficient to meet the test of his having put here in *reasonable fear of serious physical harm'*. The second factual dispute is whether the Tribunal misinterpreted Dr McGucken's evidence as to the Applicant's avowed intention to remain in hospital. The Respondent submits that the

court will, if it is unable to resolve these factual questions, take the evidence where it lies against the Applicant.

[33] In relation to the Applicant's contention that the Tribunal failed to 'properly assess' the Applicant's evidence in relation to whether he would remain in hospital if discharged, the Respondent makes four principal submissions:

(a) It is abundantly clear from the Panel's decision that the Tribunal took into account all of the evidence available to it.

(b) The Respondent contends that the Panel's decision wherein it recorded Dr McGucken as saying that the Applicant '*might well*' remain in hospital is not synonymous with it being 'likely' that he would remain in hospital.

(c) The Tribunal is not bound to accept the Applicant's evidence without demur. The Tribunal must exercise its proper discretion is assessing the plausibility of the Applicant's assertions in the context of all the evidence before it.

(d) The Judicial Review court must adopt an approach of self-restraint, preserving a latitude of judgment and discretion for public bodies such as the Respondent.

[34] The Respondent contends that the impugned decision in this instance falls well within the remit of the Tribunal's discretion, and that in these circumstances and this context the Court should afford the Tribunal the requisite degree of deference. Moreover, given that the impugned decision relates to the Tribunal's exercise of discretion in determining matters of fact and degree arising from the oral and written evidence, this is undoubtedly within the bounds of the latitude to be afforded to the 'reasonable judgment' of this specialised statutory tribunal. It is clear that the Tribunal had the opportunity to assess the Applicant's credibility, and to evaluate the expert medical evidence, and so was well placed to determine whether the Applicant should be discharged.

[35] The Respondent argues that at its height the Applicant has argued that the Respondent has failed to understand the evidence in relation to whether the Applicant would remain in hospital if discharged, and the consequent impact that this has had on the burden of proof. However, this is not borne out by a careful consideration of the written decision, the appeal bundle before the Tribunal and the affidavit of the Tribunal Chairman. It is submitted that the written decision as a standalone document demonstrates that all evidence was considered, evaluated and applied to this case.

[36] In relation to the contention that the Tribunal failed to apply the test in Article 77(1)(b) of the Mental Health (Northern Ireland) Order 1986 the Respondent submits that it is clear from the decision that it was satisfied upon the balance of probabilities and clearly expressed that the burden was discharged by the Trust. The Tribunal is entitled to reach its own decision within the realm of its discretion.

[37] The Respondent does not accept that the likelihood of the Applicant remaining in hospital was inappropriately elevated to a '*vital consideration'* in the determination of Article 77(1)(b). It is made clear that it was a material factor, but only insofar as it informed the Tribunal as to the risk of substantial likelihood of serious physical harm to the Applicant or to others. There is no evidence whatsoever that the consideration of this factor was such as to impose a burden on the Applicant that he would have to convince the Tribunal that he would remain in hospital if discharged.

[38] The Respondent contends that the relevance attributed by the Tribunal to the likelihood of the Applicant not remaining in hospital was in the context wherein it considered his clearly articulated wish to obtain unescorted passes in order to end his life by way of suicide. This is clearly fundamental to an assessment of the risk to himself, in respect of serious physical harm, rather than creating a new and impermissible hurdle for the Applicant to surmount. This risk was further considered in relation to the likelihood of his visiting his mother and exposing her to the real probability of serious physical harm.

[39] The Respondent believes that there is a dispute of fact between the Applicant and the Tribunal as to whether it appreciated the nuance of the case made by the Applicant in relation to the confrontation with his mother, prior to detention. The Respondent contends that it did understand the case made: viz, that the Applicant did not challenge that there had been an incident, rather he challenged the nature of that incident. Nonetheless, the Respondent was entitled to find, informed as it was by (*inter alia)* Mr Carson's evidence, that there was a real probability that the Applicant's mother had been exposed to the risk of serious physical harm and would be substantially likely to be exposed to that again, if the Applicant were to be discharged.

[40] The Tribunal is not obliged to replicate verbatim the analysis of the 'reasonable fear' test in case law. Moreover, the Tribunal did specifically articulate that if the Applicant was to be discharged the Applicant's mother's fear was 'reasonably' held and that she would be 'exposed to the real possibility of serious physical harm'.

[41] In relation to the Applicant's contention that the written reasons were inadequate the Respondent submits that a full appreciation of the written reasons for the Tribunal's decision reveals that the pertinent issues have been appropriately identified and the reasons why the decision was reached have been set out with clarity. In light of the

issues raised at the hearing before the Tribunal, analysis of the written judgment demonstrates that there has been no deficiency of reasoning, explanation or logic.

Discussion

Burden of Proof

[42] It does not follow, from the impugned statement in the MHRT's decision (i.e. 'In this respect the Tribunal is not satisfied, on a balance of probabilities, that the patient would choose to stay in the hospital if discharged from detention under the order') that the burden of proof has in any way shifted onto the Applicant in this regard or in relation to any other matter to be decided by the Tribunal. This ground of challenge is without merit.

Reasons Challenge

[43] The giving of adequate reasons is a condition of the legality of the decision. The extent of the duty to give reasons has been described in various ways, including 'There must be a reasoned exposition of the Tribunal's evaluation and determination of each of the matters enshrined in Article 77(1) or (3), as the case may be – and, by extension Article 2(4)' (JR45 [2011] NIQB 17) and at para 19 of English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 3 All ER 385, [2002] 1 WLR 2409:

> [19] "… The judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. … It need not involve a lengthy judgement. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."
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> …
>
> [21] When giving reasons a judge will often need to refer to a piece of evidence or to a submission which he has accepted

> or rejected. Provided that the reference is clear, it may be unnecessary to detail, or even summarise the evidence or submission in question. The essential requirement is that the terms of the judgement should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the judge's decision."

[44] In the instant case, the issues to be determined by the Tribunal were clearly whether or not the Tribunal was satisfied that discharge of the Applicant should be ordered under Article 77. The judgment first sets out the evidence which was considered, then it sets out its decision on Article 77(1)(a) and its reasons for same, then it sets out its decision on Article 77(1)(b) and its reasons for same.

[45] In relation to the test at Article 77(1)(a) the Tribunal must decide whether it is satisfied that the patient is 'then suffering from mental illness or severe mental impairment or from either of those forms of mental disorder of a nature or degree which warrants his detention in hospital for medical treatment'. In this case the Tribunal decided, on a balance of probabilities, that it was so satisfied. The reasons it gave for being so satisfied were as follows:

(a) That the Tribunal accepted the diagnosis of schizophrenia characterised by delusions of a persecutory nature.

(b) That the views of the psychiatrist, that the illness was only partially treated were accepted.

(c) That the illness is of a nature and degree which warrants ongoing medical treatment in a hospital environment.

(d) That any reduction in risk was due to the consistent approach of staff in a secure setting.

(e) That the patient's psychosis persisted at that time.

(f) That the trust had fulfilled its onus in this regard.

[46] The Tribunal has set out the evidence that it has been persuaded by and states that the Trust has succeeded in discharging its onus to prove that the evidence presented meets the statutory test. In my view, this is sufficient reasoning to allow both the parties and any appellate court to analyse the reasoning that led to the ultimate decision and no illegality due to inadequacy of reasons is disclosed.

[47] In relation to the test at Article 77(1)(b) the Tribunal must decide in the first instance if it is satisfied that the discharge of the patient would create a substantial likelihood of serious physical harm to himself, and in the second instance if it is satisfied that the discharge of the patient would create a substantial likelihood of serious physical harm to another person.

[48] When considering whether discharge would create a substantial likelihood of serious physical harm to *himself*, the tribunal is only empowered to consider the following types of evidence:

(i) that the patient has inflicted, or threatened or attempted to inflict, serious physical harm on himself; or

(ii) that the patient's judgment is so affected that he is, or would soon be, unable to protect himself against serious physical harm and that reasonable provision for his protection is not available in the community.[see Article 2(4)(a) set out at para 19 above].

[49] When considering whether discharge would create a substantial likelihood of serious physical harm to *another* person, the tribunal is only empowered to consider the following types of evidence:

(i) that the patient has behaved violently towards other person; or

(ii) that the patient has so behaved himself that other persons were placed in reasonable fear of serious physical harm to themselves.[see Article2(4)(b) set out at para 19 above].

[50] In the instant case, when considering the test in relation to risk to himself the tribunal decided that it was satisfied that the discharge of the patient would create a substantial likelihood of serious physical harm to himself. The reasons it gave for being so satisfied were that:

(a) The tribunal accepts that such circumstances (that is circumstances in which a substantial likelihood of serious physical harm to his mother/himself) can only occur should the patient take his leave of hospital if regraded. In this respect, the tribunal is not satisfied, on a balance of probabilities, that the patient would choose to stay in hospital if discharged from detention under the order.

(b) The patient has indicated that he would like to be entitled to unescorted passes. He has indicated that this will be his opportunity to end his life by way of completed suicide.

(c) On the evidence the tribunal is satisfied that there is a real probability that the patient would complete suicide.

(d) The evidence of the psychiatrist that a patient can make plans for the future while contemplating suicide is accepted.

[51] In the instant case, when considering the test in relation to risk to another the tribunal decided that it was satisfied that the discharge of the patient would create a substantial likelihood of serious physical harm to another. The reasons it gave for being so satisfied were that:

(a) "It is clear from the evidence that the patient's mother was placed in reasonable fear of serious physical harm immediately prior to the patient's admission".

(b) The mother's fear remains.

(c) The tribunal accepts that such circumstances (that is circumstances in which a substantial likelihood of serious physical harm to his mother/himself) can only occur should the patient take his leave of hospital if regraded. In this respect, the tribunal is not satisfied, on a balance of probabilities, that the patient would choose to stay in hospital if discharged from detention under the order.

(d) Based on the evidence leading up to the patients admission to hospital that his discharge from detention would create a substantial likelihood of physical harm to his mother.

[52] The Tribunal sets out the evidence that it has been persuaded by and relies upon to make its decision. In my view, this is sufficient reasoning to allow both the parties and any appellate court to analyse the reasoning that led to the ultimate decision and no illegality due to inadequacy of reasons is disclosed.

[53] Ultimately, the decision which has to be reached by the Tribunal is relatively straightforward, it either is or is not satisfied of the relevant matters in the terms expressed in the statute. It is the function of the Tribunal to weigh up the evidence and decide whether it is satisfied or not. How it weighs and interprets the evidence is a matter for it unless it is clearly irrational which is not the case here.

Misapplication of the Serious Harm Test

[54] When considering whether or not it is satisfied under Article 77(1)(b) in relation to creation of substantial likelihood of serious physical harm to another, the tribunal can consider only evidence of the following natures:

(i) that the patient has behaved violently towards other person; *or*

(ii) that the patient has so behaved himself that other persons were placed in *reasonable* fear of *serious physical harm* to themselves.

[55] In JR45 the court correctly observed that:

> 'The evidence relating to the patient's past conduct must establish not only that this engendered a fear of serious physical harm to some third party but that such fear was reasonable. In my view, this imports an objective element, which is designed to protect the patient from unfounded, irrational or ill motivated assertions of fear by some third party'.

[56] I have already set out at para 36 the evidence actually relied on in the instant case. While the Tribunal is under a duty to ensure that the fear relied upon in the evidence is reasonable, it does not have to take any specific steps to ascertain this. The tribunal has clearly stated that it was persuaded by the evidence that the mother's fear was rational and it is entitled to reach this conclusion. No misapplication of law is discerned.

Conclusion

[57] For the above reasons the application for judicial review is dismissed.