

In the matter of an application by RM (a person under disability) by SM, his father and next friend (AP) (Respondent) for Judicial Review (Northern Ireland)

Case ID: 2022/0144

Case summary

Issue

Whether the Review Tribunal (the Tribunal) was entitled to conclude that RM's mental disorder continues to be of a nature or degree warranting his continued detention in hospital for medical treatment (i.e. whether the test for discharge from a Restriction Order under Article 78 of the Mental Health (Northern Ireland) Order 1986 (the Order) is met).

Facts

RM suffers from a severe mental impairment. On 2 March 2018, RM was charged for a series of violent and sexual offences. RM was found unfit to plead to the charges but was held to have committed the alleged acts.

The Crown Court imposed a Hospital Order and a Restriction Order on RM. RM was detained in a psychiatric ward in hospital.

On 16 January 2019, RM made an application for discharge to the Tribunal. The expert medical evidence before the Tribunal indicated that RM would shortly begin receiving treatment outside of hospital in a community-based setting as part of a period of testing.

Under Article 78 of the Order, a patient may only continue to be detained if they are suffering from a mental disorder of a nature or degree which warrants their detention in hospital for medical treatment.

The Tribunal acknowledged that RM's care plan would involve him moving to live in a community-based setting but considered that he would nonetheless remain a patient receiving treatment in hospital.

RM brought an application for judicial review of the decision of the Tribunal arguing that his continued detention was unlawful in light of the treatment plan advanced in medical evidence which did not envisage further treatment in hospital.

The High Court dismissed the appeal upholding the decision of the Tribunal. However, the Court of Appeal overturned the decisions of the Tribunal and High Court holding that they had erred in law. The Tribunal and Department of Justice now jointly appeal to the Supreme Court.

Judgment appealed

[\[2022\] NICA 35](#)

Parties

Appellant(s)

Department of Justice

Respondent(s)

- (1) RM
- (2) Review Tribunal

Appeal

Justices

Lord Reed, Lord Sales, Lord Stephens, Lady Rose, Lady Simler

Hearing start date

15 November 2023

Hearing finish date

16 November 2023

Watch hearing

15 November 2023 [Morning session](#) [Afternoon session](#)

16 November 2023 [Morning session](#)