

OO v (1) Central and North West London NHS Foundation Trust; (2) Secretary of State for Justice [2024] UKUT 190 (AAC) (28 June 2024)

Judicial Summary

This case is about procedural fairness and expert evidence in the mental health tribunal.

Responsible clinician and rest of clinical team had been supporting the patient's conditional discharge for some months, and patient decided on that basis not to instruct an expert himself, but one business day prior to the hearing of the reference the responsible clinician issued an addendum report indicating that discharge was now opposed.

In his report the responsible clinician deferred to the opinion of another consultant psychiatrist given in criminal proceedings relating to the patient, who was not available for questioning at the hearing.

Various applications for postponement/adjournment made by the detaining authority and the patient were refused by the Tribunal.

Issue of equality of arms- I decide that in this case fairness required the tribunal to postpone or adjourn to give patient an opportunity to seek his own expert evidence to meet the expert evidence supporting detention (following Lord Mansfield CJ in *Folkes v Chadd* ([1782](#)) [3 Doug 157](#) at [159]), and/or to give the patient's representative an opportunity to question the expert to whose opinion the responsible clinician deferred.

The Tribunal's failure to do so meant that the patient was denied the effective judicial determination of his right to liberty to which he was entitled under the Mental Health Act 1983, even though the patient himself had a right to apply to the First-tier Tribunal: the patient was entitled to be treated fairly at all relevant decision-making stages (following Singh LJ in *R (Citizens UK) v Secretary of State for the Home Department* [[2018](#)] [EWCA Civ 1812](#); [[2018](#)] [4 WLR 123](#) at [94]).

The appropriate remedy was to set the decision aside and remit it to the First-tier Tribunal for re-hearing.