27 July 2016

PRESS SUMMARY

Lee-Hirons (Appellant) v Secretary of State for Justice (Respondent) [2016] UKSC 46
On appeal from [2014] EWCA Civ 553

JUSTICES: Lady Hale (Deputy President), Lord Kerr, Lord Wilson, Lord Reed and Lord Toulson

BACKGROUND TO THE APPEAL

The appellant suffers from a personality disorder and chronic paranoid delusional disorder. He has a history of admission to psychiatric hospitals. In 2006 he was convicted of arson and burglary. In the light of his mental disorder, he was made the subject of a "hospital order" under the Mental Health Act 1983 ("the Act"), which authorised his admission to and detention in a secure hospital, and a "restriction order" under the Act, which vested the power to discharge him in the respondent ("the Minister") or the First-tier Tribunal (Health, Education and Social Care Chamber) ("the Tribunal"). The appellant thereby became a "restricted patient" under the Act, and was detained in medium-secure hospitals.

In April 2012 the Tribunal directed that the appellant should be conditionally discharged from hospital and approved a plan that he should move to a registered care home subject to conditions. The appellant took up residence at a care home. On 19 July 2012 the carers responsible for the appellant invited the Minister to consider recalling the appellant to hospital. This was for a number of reasons, including that the appellant's mental health had deteriorated, that he was likely to abscond, and that he was likely to breach the conditions of his discharge. The Minister immediately issued a warrant for the appellant's recall and the warrant was executed on 19 July 2012. As required by the Act, the Minister referred the appellant's case to the Tribunal promptly on 20 July 2012.

The warrant set out no reasons for the appellant's recall. When the appellant was informed that he was being recalled, he was told only that it was because his mental health had deteriorated. When the appellant was taken into hospital, the staff were unable to explain the reasons for his recall. On 24 July 2012 the Minister wrote a letter to the hospital which contained a number of errors, including the assertion that the recall warrant had not been executed, and the instruction that the appellant should be informed of the reasons for his recall "within 72 hours of admission" (even though that time limit had already expired). The letter also failed to state any reasons for the appellant's recall. On 3 August 2012 (15 days after the appellant's recall), he was provided orally with a fuller, adequate explanation for the recall, but was not provided with a written explanation.

The appellant challenged the lawfulness of the decision to recall him. His application was dismissed at first instance. Before the Court of Appeal, his primary case was that there was an unlawful failure to explain the reasons for his recall and that (a) that failure affected the legality of his detention, or alternatively (b) that it generated a right to a declaration and damages. The Court of Appeal dismissed his appeal, and the appellant appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appellant's appeal. Lord Wilson (with whom Lady Hale, Lord Kerr, Lord Reed and Lord Toulson agree) gives the leading judgment. Lord Reed gives a

short concurring judgment.

REASONS FOR THE DECISION

The Department of Health has issued guidelines on the recall of patients to hospital, which set out a three-stage procedure for the communication of reasons ("the Policy") [**16**]. The Minister concedes that the second and third stages of the Policy were not implemented: namely, an adequate explanation was not provided to the appellant within three days of his recall (but only after 15 days), and no explanation in writing was provided within three days (but only months later in the context of these proceedings). The Minister further concedes that this means there has been a breach of the appellant's common law right to have the Policy properly applied, and his right under Article 5(2) of the European Convention on Human Rights ("ECHR") to be informed promptly of the reasons for his recall [**17**-**21**].

Legal sufficiency of the Minister's explanation

The explanation provided to the appellant at the time of his recall (i.e. that it was because of his deteriorating mental health) satisfied the first stage of the Policy. It also complied with the Minister's common law duty to provide reasons [**24**-**25**]. As for the ECHR, Article 5(2) does not in this respect extend beyond the demands of the common law and, accordingly, there is no violation of that article [**26**-**32**]. The Court of Appeal was therefore correct to find that the Minister's explanation at that time was legally sufficient, and it is unnecessary to consider the effect of an insufficient explanation [**32**].

Effect of the Minister's conceded breaches on the legality of detention

The appellant argued that the Minister's conceded breaches rendered his detention between the third and 15th days following his recall unlawful. As to this, there is no link, let alone a "direct link" (as is required following *R (Lumba)* and *R (Kambadzi)* [**34**-**35**]) between the Minister's wrongful failure for 12 days to provide the appellant with an adequate explanation for his recall, and the lawfulness of his detention during that 12-day period [**39**]. Further, the consequences of the appellant's argument would be of concern in other similar cases, given the need to detain restricted patients under the Act in appropriate circumstances [**40**]. The Court of Appeal was therefore right to conclude that the conceded breaches did not render the detention unlawful [**41**].

Damages and declaration

The appellant is not entitled to damages for the breach of his common law right to receive an adequate explanation for his recall within the time set out by the Policy. The breach does not amount to a tort and there is nothing to suggest that damages would have been available in an ordinary action against the Minister [**43**]. The conclusion is the same in relation to the violation of Article 5(2) ECHR; the appellant has failed to establish that the effects of the breach were sufficiently grave [**46**]. As for a formal declaration, it would not add anything to the recording of the Minister's concessions in the Court's judgment [**46**].

Lord Reed adds some observations in relation to the consequences at common law of the Minister's failure to comply with the Policy [**48**-**53**].

References in square brackets are to paragraphs in the judgment