

This is an edited version of the Tribunal's decision. The forensic patient has been allocated a pseudonym for the purposes of this Official Report

FORENSIC REVIEW: Mr Farnham

s46(1) Review of forensic patients

Mental Health (Forensic Provisions) Act 1990

TRIBUNAL: Anina Johnson Deputy President
John Basson Psychiatrist Member
John Haigh Other Member

DATE OF HEARING: 24 October 2013

PLACE: Forensic Hospital

APPLICATION: Transfer to Mental Health Facility with
Escorted Day Leave

DECISION

1. Having determined pursuant to section 49 of the *Mental Health (Forensic Provisions) Act 1990* that neither the safety of Mr Farnham nor any member of the public would be seriously endangered thereby and having considered the matters to which section 74 refers, the Tribunal orders that Mr Farnham be granted the following leave (to be available at the mental health facility where he is detained, including the Forensic Hospital) and to be exercised at the discretion of the medical superintendent and subject to any conditions and restrictions imposed by the medical superintendent:

1.1 Escorted outside day leave

2. Having considered the matters to which Section 74 of the *Mental Health (Forensic Provisions) Act 1990* refers, the Tribunal orders that Mr Farnham be transferred to the Morisset Hospital and there be detained for care and treatment upon a bed becoming available. Pending such transfer Mr Farnham be detained at the Forensic Hospital for care and treatment.

Signed

Anina Johnson
Deputy President

Dated this day 14 November 2013

REASONS

This is the 11th review of Mr Michael Farnham who is currently detained in the Forensic Hospital on an order of the Tribunal. Mr Michael Farnham's treating team is seeking transfer to a medium secure facility with escorted day leave at this review.

BACKGROUND

Mr Michael Farnham was found not guilty by reason of mental illness of murder and was ordered to be detained.

TRIBUNAL REQUIREMENTS

This is a review pursuant to section 46(1) of the *Mental Health (Forensic Provisions) Act 1990* ("the Act"). Under section 46 the Tribunal is required to review the case of each forensic patient every six months. On such a review the Tribunal may make orders as to the patient's continued detention, care or treatment or the patient's release.

The Act has special evidentiary requirements in relation to leave or release which must be satisfied before the Tribunal can grant leave or release. In view of this, the Tribunal requires notice of applications for leave or release to ensure that the necessary evidence is available. This process also enables the Tribunal to provide notice of such applications to the Minister for Health, the Attorney General, and any registered victims who are entitled to make submissions concerning any proposed leave or release. A notice was provided to the Tribunal prior to this review for an application for transfer to Kestrel Unit, Morisset Hospital with Escorted Day Leave.

The Tribunal must be satisfied pursuant to section 49 of the *Mental Health (Forensic Provisions) Act 1990* *that the safety of the patient or any member of the public will not be seriously endangered if the leave is granted.*

Without limiting any other matters the Tribunal may consider, the Tribunal must consider the principles of care and treatment under section 68 of the *Mental Health Act 2007* as well as the following matters under section 74 of the *Mental Health (Forensic Provisions) Act 1990* when determining what order to make:

- (a) *whether the person is suffering from a mental illness or other mental condition,*
- (b) *whether there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious harm or the protection of others from serious harm,*
- (c) *the continuing condition of the person, including any likely deterioration in the person's condition, and the likely effects of any such deterioration,*

DOCUMENTARY EVIDENCE

The Tribunal considered the documents listed in the Forensic Patient Exhibit List.

ATTENDEES

Mr Michael Farnham attended the hearing accompanied by his lawyer, Mr Todd Davis of the Mental Health Advocacy Service. Also in attendance were:

- Psychiatrist;
- Psychiatrist from Morisset Hospital;
- Registered Nurse;
- Mrs Farnham, Mother

PRESENT CIRCUMSTANCES

[The Tribunal considered Mr Farnham's activities and progress in the last 6 months since his Tribunal review and noted the evidence in relation to his psychiatric condition and mental state.]

Transfer

Mr Farnham has been assessed by the Morisset Hospital. The treating team at Morisset Hospital have written to the psychiatrist confirming that they consider that Mr Farnham would be a suitable person to be detained at Kestrel and participate in the rehabilitation process on offer there. The team at Morisset suggest that the transfer application be accompanied by escorted day leave and unsupervised day leave restricted to the grounds of Morisset Hospital. Upon transfer to Kestrel, the team at Morisset noted that this leave would be initiated in a graduated manner.

[The Tribunal noted submissions made by Mr Farnham's mother (who is also a registered victim) and her request for a non-association order made on behalf of family members who were not registered victims].

Although Ms X is not herself a registered victim she is a member of Mrs Farnham's family. Section 75(1)(i) of the Act allows the Tribunal to impose conditions on leave that prohibit the forensic patient's association with "members of victims' families." Although a "victim of the patient" is defined in the Act, by reference to the definition in the *Victims Rights and Support Act 2013*, the term "members of victims' families" is not. The Tribunal considers that the term should be given its ordinary meaning and would include the children and grandchildren of the registered victim, Mrs Farnham. The Tribunal will make that non-association order.

Escorted leave from the Forensic Hospital

The treating psychiatrist at the Forensic Hospital was asked by Mr Davis, lawyer for Mr Farnham, whether there was any risk associated with Mr Farnham having escorted day leave from the Forensic Hospital. This question was asked in the context of the Morisset psychiatrist's evidence that it would be at least six

months before Mr Farnham could expect to arrive at Morisset, and that the final transfer date remains uncertain. Mr Davis noted that accessing escorted day leave on any particular occasion would be at the discretion of the medical superintendent or his delegate. The Forensic Hospital psychiatrist said that there was no reason why leave of that kind could not be safely accessed by Mr Farnham.

The issues surrounding accessing Escorted Day Leave from the Forensic Hospital have been extensively discussed by the Tribunal in a decision published under the name *Ms Crocker* (Official Report 2/2013, available on the Tribunal's website). In particular, the Tribunal notes that:

- A member of the treating team is only able to apply to the Tribunal for rehabilitative leave once that leave has been approved by the Forensic Hospital's Leave Committee.
- The specifics of the use of leave are to be determined in a risk management plan.
- The Forensic Hospital is a high secure environment, so that the security status of patients would generally preclude them from having leave. Those clinically suitable for leave should be transferred to a medium or low secure facility to access leave.

The Forensic Hospital's policy that the treating team should only apply to the treating team for leave once leave has been approved by the Leave Committee does not, of course, preclude the Tribunal from granting leave without the prior approval of that Committee.

The Tribunal's obligation is to consider the relevant statutory provisions, which require it to be satisfied that "the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.": s. 49(3) of the Act.

In considering whether the safety of Mr Farnham or any member of the public would be seriously endangered, the Tribunal notes that the Ministry of Health's Forensic Directive (PD2012_050) at 4.2 sets out a number of criteria under which escorted day leave is to take place, including that there should be a risk management plan in place and that there will be a risk assessment conducted of the patient immediately before the patient leaves the facility.

The Forensic Directive also provides (at 9.3.5):

"If a forensic patient has previously been granted leave by the Tribunal to be exercised at the mental health facility in which they are detained, generally this leave is also available to be utilised after the forensic patient is transferred to another mental health facility although the Tribunal order should be always be checked to ensure that leave can continue to be exercised."

As noted above, the Minister for Mental Health has a right to appear and make submissions in relation to leave. That is why the Tribunal has developed its process of asking for a Notice of Intent from treating teams or patients, so that the Minister can be given notice of the issues to be discussed in a particular

hearing. The Minister has been given notice of the application for escorted day leave (albeit to be exercised from Morisset hospital) and has not indicated an intention to participate in the hearing.

DETERMINATION

The Tribunal considers that Mr Farnham should be transferred to the Kestrel Unit at Morisset Hospital, when a bed becomes available with escorted day leave. In the meanwhile, he should be detained at the Forensic Hospital.

The Tribunal was also satisfied that it should grant escorted leave, to be exercised at either Morisset or the Forensic Hospital. It does so for the following reasons:

- Both the Forensic Hospital psychiatrist and the psychiatrist at Morisset have both given evidence that Mr Farnham does not present a significant risk to himself or others if he were to have escorted leave.
- The Forensic Hospital's policy provides for the use of escorted leave for rehabilitative purposes.
- Ordinarily, given the security arrangements at the Forensic Hospital, a person who is clinically ready to access escorted leave would be transferred to a medium secure unit and have access leave from that unit.
- However, in circumstances where a patient has been clinically assessed as ready for transfer, but that transfer is likely to be delayed, the Tribunal considers it would be appropriate to bring forward that entitlement to access escorted leave.
- This approach is supported by the Ministry of Health's Forensic Directive which provides that leave which was available to a patient at one hospital will continue to be available to the patient if transferred to another hospital. Thus, once a grant of escorted day leave is made for Morisset Hospital, it is logical to extend that entitlement to the intervening period pending transfer.
- Although a formal risk management plan was not presented to the Tribunal at this hearing (unlike in *Croker*) the Tribunal notes that the preparation of a risk management plan is a policy prerequisite to the exercise of any leave. A risk assessment is to be conducted on the day of the proposed leave, and if the clinician is not satisfied that it is safe to proceed on leave, then the leave does not go ahead.

On this basis, the Tribunal was satisfied that a grant of escorted leave would not seriously endanger Mr Farnham or any other member of the public and having regard to the other matters to which sections 49 and 74 of the Act refer.

The Morisset team also asked for a grant of unsupervised day leave restricted to the grounds of Morisset Hospital. The grounds of the Morisset hospital are sizeable. Given that Mr Farnham has spent many years in a secure environment, the Tribunal considered it was preferable that Mr Farnham's first outside

leave take place under escort. If escorted leave occurs before Mr Farnham is transferred to Morisset, then the Tribunal may consider granting the unsupervised outside ground leave on the next occasion. Otherwise, the issue can be reconsidered once Mr Farnham is at Morisset.

Signed

Anina Johnson
Deputy President

Dated this day 14 November 2013