



**HSE Legal Activity Project**  
Mental Health Acts 2001 - 2009  
Main Report



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive



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Meeting the Determinants of a  
Quality Mental Health Service



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## Introduction

The National Mental Health Steering Group under the chairmanship of Mr Seamus McNulty sanctioned the establishment of a Legal Activity Project (LAP) on the recommendation of the Health Service Executive (HSE) Mental Health Act Implementation Group in March 2009.

The purpose of the project was to risk manage and minimise as far as practicable legal activity involving HSE mental health services arising out of the implementation of the Mental Health Acts 2001 and 2008 in the context of providing optimal mental health care to service users. It was considered that this could be achieved through learning from the ongoing interpretation of the legislation being provided by legal decisions and judgements and by communicating that learning. In particular the project was concerned with how that learning can inform both training opportunities for staff and policy and procedure development in services involved in the involuntary admission process and supporting structures. The project also sought to advise the HSE on streamlining the logistical elements of HSE mental health service engagement with the legal system in respect of the Acts.

The main tasks identified for the project fall under a number of headings: Legal decisions; Policy and guidance; Training; Strategy; Communications. The project acquired the part time commitment of 6 HSE mental health service staff contributing a range of expertise in training, policy development, administration and the implementation of the Mental Health Acts.

The complete report contains distinct sections reflecting the tasks completed by the project team. This executive summary briefly introduces each section and is laid out as follows:

- Guidance on seeking legal advice and going to court
- Brief Index of Court Judgements relating to Mental Health Acts 2001 to 2009
- Organisational learning strategy to address ongoing training and education needs relating to the continued implementation of the MHA 2001 to 2008
- Mental health micro site and eLearning programmes
- Information on legal costs
- Conclusions and Recommendation

## **Executive Summary of Content**

### **1. Guidance on seeking legal advice and going to court**

There is a need to streamline the logistical elements of HSE mental health service engagement with the legal system in respect of the Acts with clear advice and guidance to managers in mental health services. This guideline has been written in relation to the Mental Health Acts 2001/2009 which became operational in November, 2006 with follow on legislation passed in late 2008 and 2009.

The main purpose of the guideline is to ensure:

- The best interests of the patient is the principal consideration
- Guidance on access to and use of legal services in respect of legal challenges to involuntary admission and renewal orders (including Habeus Corpus applications, actions in relation to Section 19 appeals of Mental Health Tribunal decisions and Judicial Review proceedings.)

### **2. Brief Index of Court Judgements relating to Mental Health Acts 2001 to 2009**

A brief index of High Court and Supreme Court judgements issued between December 2006 and 1st November 2009 has been collated relating to the Mental Health Act 2001, spanning the first 3 years since the commencement of Part 2 of the Act. The index has been developed purely as a quick reference guide for mental health services to judgements issued in relation to the Mental Health Act 2001 in the first 3 years of operation of Part 2 of the Act. From time to time practicing consultant psychiatrists may find themselves wondering whether the circumstances pertaining to the involuntary admission or continued detention of a patient accords with the relevant provisions of the Mental Health Act 2001, or whether the circumstances pertaining have already been the subject of clarification or further interpretation by way of a court judgement. This index provides a quick means of checking whether the matter under consideration by them has been addressed in a court judgement and further provides a means of accessing any judgement that might be considered pertinent. The index also seeks to relate the outcome of court judgements to mental health service practices.

*(The content of the index does not constitute legal advice nor is it intended to substitute for the obtaining of legal advice where that is required.)*

### **3. Organisational learning strategy to address ongoing training and education needs relating to the continued implementation of the Mental Health Acts 2001 to 2009**

The need for training is clearly stated within the Mental Health Act 2001 (Approved Centres) Regulations 2006 (S.I. No. 551 of 2006) and in the various Mental Health Commission Rules and Codes of Practice.

A learning strategy has been drafted and sets out all recommended training requirements relating to the full implementation of the Mental Health Act 2001/2009. This strategy can inform the commissioning and development of appropriate and sustainable training, training resources and materials.

### **Structure of learning strategy**

The strategy falls into two parts. The first seeks to contextualise the changes taking place in mental health service delivery, the impact and influence of mental health legislation and regulation on practice and the emerging changes in undergraduate and ongoing professional education with a shift towards a '*capability*' model of professional role and performance.

The second part of the strategy seeks to outline the scope of learning required (*what we need to know*) and proposes organisational learning methodologies that support the process of learning and skill acquisition (*how you might learn what you need to know*). Examples are offered for illustrative purpose in the appendices that support the operationalisation of the learning methodologies.

In developing the strategy the project team sought to take account of the significant work that has taken place and is emerging with regard to professional education and training, such as the Medical Education Training and Research Report (HSE, 2007), Report of Post - Registration Nursing and Midwifery Review Group (HSE, 2008), The Education and Development of Health and Social Care Professionals in the Health Services (2009), the anticipated report on the education/training provision of mental health professionals working in Ireland (MHC) and the HSE National Service Plan (2009, 2010).

#### **4. Development of a mental health micro-site and eLearning programmes**

Progress is well under way on the development of a mental health organisational e Learning hub. A hub can be described as an "electronic, central distribution warehouse facilitating a 'one stop shop' approach on a topic for theme". This hub will not only provide the launch pad for mental health e Learning programmes but will offer a repository for useful information resources and tools and an online space for discussions, knowledge sharing and collaboration for all HSE mental health staff nationally. The aim of the mental health e Learning hub is to provide accessible, flexible and high quality education and training resource/programmes which will enable practitioners to achieve competencies for best practice. The mental health e Learning hub will also facilitate the introduction of training and linkages to 'personal development plans' as recommended in the policy document *Vision For Change* (DOHC, 2006) (recommendations 5.5 and 18.11).

Over the past several months the project team has invested considerable time and effort in partnership with HSEland in the planning and design of the hub and the conversion of learning materials into e learning formats. The site is due to be piloted in May/June 2010.

## 5. Information on legal costs

The project sought to estimate the legal costs associated with the introduction of the Mental Health Act, 2001 and 2009. High Court and Supreme Court Decisions have been tracked and whatever detailed information was available on the costs of these cases has been collated. In many cases costs are incomplete, mainly due to the time delay in submission of applicant's costs or referral to legal cost accountants for determination. We did not seek to collate information on legal costs associated with Circuit Court cases. The range of costs is from €352,000 at the top end to €9,118 at the lowest end of the scale on an individual case or client basis. The incomplete total of High and Supreme court costs charged to the HSE during the first two and a half years of the implementation of the new legislation amounts to €2.135m. Other legal costs such as legal advice have not been calculated.

# 1. Guidance On Seeking Legal Advice And Going To Court

<p><b>Title of Guideline</b> Guideline for Mental Health Managers in Relation to Court Proceedings regarding the Mental Health Act 2001</p>
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<p><b>Developed By</b> Mental Health Implementation Group</p>		<p><b>Date Developed</b> July 2008, Amended December 2009</p>
<p><b>Approved By</b></p> <p>_____</p> <p><i>(Clinical Director)</i></p> <p>_____</p> <p><i>(Local Health Manager)</i></p>		<p><b>Date Approved</b></p> <p>_____</p>
<p><b>Implementation Date</b></p>		<p><b>Review Date</b></p>
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<p><b>Responsible persons for implementation</b> Clinical Director, Local Health Manager</p>
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## 1.0 Policy Statement

**1.1** Legal activity in relation to the Mental Health Acts 2001 and 2008 indicates the high exposure of our mental health services to potential breaches of patient care and particularly of patient human rights in the context of involuntary admission and detention. As a consequence of the introduction of this legislation, there have been a number of legal challenges which on occasion have required Health Service Executive-(HSE) mental health services to adapt / change practices in order to comply fully with the legislation. In the first full year of operation of the Mental Health Act 2001 there were 34 Article 40 inquiries to the High Court (Habeus Corpus), 3 judicial review to the High Court, 2 appeals to the Supreme Court and 39 Circuit Court appeals of Mental Health Tribunal decisions.

These challenges are resulting in increasingly significant costs in terms of clinical time, administrative time and legal fees. The cost of legal actions to the HSE in respect of the Acts is now running into millions of euros. It is clearly in the interests of the HSE to ensure that its mental health services are and remain fully compliant with the requirements of the legislation to the greatest possible extent. A sound working knowledge of the legislation and the obligations placed on mental health services by both the legislation and its regulation is an essential tool for all those working in mental health services. Therefore an urgent need exists, to establish a guideline with the purpose of managing and minimising, as far as practicable, legal activity relating to the Act and HSE mental health services. This will be achieved through learning from the ongoing interpretation of the legislation being provided by court decisions and applying that learning to training opportunities for HSE mental health staff. There is also a need to streamline the logistical elements of HSE mental health service engagement with the legal system in respect of the Acts with clear advice and guidance to managers in mental health services. This guideline has been written in relation to the Mental Health Acts 2001/2009 which became operational in November, 2006 with follow on legislation passed in late 2008 and 2009.

## 2.0 Purpose

**2.1** The main purpose of the policy is to ensure that

- The best interests of the patient are the principal consideration
- To provide guidance on access to and use of legal services in respect of legal challenges to involuntary admission and renewal orders (including Habeus Corpus applications, actions in relation to Section 19 appeals of Mental Health Tribunal decisions and Judicial Review proceedings.)

## 3.0 Scope

**3.1** This policy applies to Local Health Managers and Clinical Directors with responsibility for mental health services to guide them regarding 'access to' and the 'use of' legal services in respect of legal challenges to involuntary admission and renewal orders.

## 4.0 Responsibility

**4.1** The Local Health Manager has responsibility for issues in relation to an individual service.

The Assistant National Director for Mental Health Services and the Regional Directors of Operations have a responsibility for issues which have a national service implication.

## 5.0 Related Documents

**5.1** The Irish Constitution

**5.2** Mental Health Acts 2001/2009

**5.3** European Convention on Human Rights Act 2003

**5.4** Reference Guide to the Mental Health Act - Mental Health Commission 2006

**5.5** HSE Guidance Document for Application for the Assessment or Admission of a child under the Mental Health Act 2001

**5.6** Codes of Practice of the Mental Health Commission?

**5.7** Freedom of Information Acts 1997&2003

**5.8** Data Protection Acts 1988&2003

**5.9** Solicitors Amendment Act 1994

**5.10** Court Rules

**5.11** Capacity Bill

## 6.0 Definitions

### 6.1 Notification of Legal Action

A legal representative on behalf of their client (patient detained under the provisions of Mental Health Act 2001) notifies the HSE of a legal action. Prior to contacting legal advice, it is the responsibility of the clinical director or HSE person notified to access legal advice locally if available and enquire if previous legal advice was sought in relation to the patient detained under the provisions of Mental Health Act 2001. The specific legal action is likely to be one of the following:

### 6.2 Habeas Corpus

A habeas corpus petition is a petition filed with a court by a person who objects to his own or another's detention (in this case under the Mental Health Act 2001). The petition must provide grounds for a deliberation that the Court /Mental Health Tribunal ordering the detention or imprisonment made a legal or factual error. A habeas corpus petition is heard by the High Court which decides on the legal or factual issues of the case. If they decide that a legal or factual error has occurred, they may direct the detainer (in this case the Health Service Executive) to release the client

Habeas Corpus is based on Article 40 .4.1, 4.2 and 4.3 of the Constitution of Ireland which reads:

*4.1 No citizen shall be deprived of his personal liberty save in accordance with law.*

*4.2 Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such a complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law.*

*4.3 Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Supreme Court by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Supreme Court has determined the question so referred to it.*

### 6.3 Judicial Review (Read in Conjunction with Appendix 2)

A patient or the legal representative may request a Judicial Review on a matter of law on any aspect of the Mental Health Act 2001. A Judicial Review will examine the legal interpretation as opposed to the actual process.

Judicial review is a procedure in which the Courts provide remedies against the abuse of the executive power of the State and public bodies. It allows the High Court and the Supreme Court to firstly strike down legislation deemed unconstitutional and secondly to supervise public authorities in the exercise of their powers.

A person who feels that a decision of a public authority, such as a government minister, the District or Circuit Court, a semi-state body, the local council or a statutory tribunal has violated his or her rights, may apply to the High Court for judicial review of the decision. In looking at the decision the courts are principally concerned about the manner in which the decision-making person or body has exercised the relevant power in making the decision rather than the merits of the decision itself. It is not an appeal process and the court does not substitute its opinion for that of the public authority.

Classic grounds for Judicial Review are:

- Breach of Natural and Constitutional Justice i.e. 'the rule against bias', and the requirement to 'hear the other side'
- Reasonableness i.e. Did the public authority abuse its jurisdiction? Does their decision offend against fundamental reason and common sense
- Legitimate Expectation i.e. of receiving a benefit or privilege which arises either from an express promise given on behalf of a public authority or the existence of a regular practice which an individual can reasonably expect to continue
- Proportionality e.g. Are restrictions imposed by legislation in the context of constitutional rights disproportionate and therefore invalid?

#### **Plaintiff v Defendant:**

**1. Plaintiff:** A person who commences an action against someone in the Civil Courts.

**2. Defendant:** A person; company or organisation who defends a civil action taken by a plaintiff and against whom the court is asked to order damages or corrective action to redress some unlawful or improper action alleged by the plaintiff.

#### **Also:**

A person who is charged with a crime in a Criminal case.

**Applicant v Respondent:**

**3. Applicant:** A person who makes an application for a Court Order.

**4. Respondent:** A Person against whom a summons is issued, or a petition or appeal brought.

**The Notice Party**

- You are not looking for relief from the notice party; however they will be affected by the order so they are entitled to be on notice

**The Affidavit**

- This is a written statement which is signed and sworn before a Solicitor; Judge; Justice of the Peace; Commissioner for Oaths and can be used as evidence in Court hearings
- You can only swear something if you have the means of knowledge

**Deponent**

- A person who makes a statement under oath

If the application for Judicial Review is successful, there are a number of discretionary remedies available:

1. Certiorari i.e. The Court may set aside (quash) the unlawful act
2. Prohibition i.e. The Court prohibits the public authority from acting unlawfully
3. Mandamus i.e. The Court compels the public authority to perform a legal duty of a public nature
4. Damages i.e. Costs are awarded and damages

There are two stages in proceedings for Judicial Review;

- Leave to apply for Judicial Review (ex parte)
- Where leave is granted, the substantial application is heard

An application for leave must be made promptly and in any event within three months from the date when grounds for the application first arose or six months where the relief sought is certiorari unless the Court considers there is good reason for granting an extension. (In relation to planning decisions this time period is reduced to eight weeks.)

A judicial review may be taken regarding any aspect of the proceedings involved under the Mental Health Act 2001

## 6.4 Appeals of Mental Health Tribunal Decisions (Section 19)

*(To be read in conjunction with Appendix 2)*

6.5 A patient may appeal to the Circuit Court against a decision of a tribunal to affirm an order made in respect of him or her on the grounds that he or she is not suffering from a mental disorder.

*In this Act "mental disorder" means mental illness, severe dementia or significant intellectual disability where—*

- *because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons,*  
or
- *(i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission, and (ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent.*S3.(1)

The appeal must be made within 14 days of the decision of the tribunal to affirm the order detaining the patient.

The Circuit Court hears the case and either affirms or revokes the order of the tribunal.

Notice under section 19 is served by the plaintiff i.e. the person bringing the proceedings on the following:

- (a) The Consultant Psychiatrist concerned
- (b) The Tribunal concerned
- (c) The Clinical Director of the Approved Centre
- (d) Any other person specified by the Circuit Court

There is no mention of the clients name is allowed under Section 19 either by broadcast or written publication.

No appeal shall be allowed other than appeal to the High Court on a point of law

## 6.6 Section 19 Appeals

Will more than likely require only Junior Counsel. The HSE are Notice Party to these proceedings. However, as they may be called on to defend their decision to detain a patient, it is necessary to brief Counsel to protect the interest of the HSE.

## **6.7 Section 25(1) of the Act - An order authorising the detention of a child in an Approved Centre**

*Save where a child has been detained in accordance with section 23(2) of the Act or in a case to which section 25(7) of the Act applies, an application under section 25(1) of the Act for an order authorising the detention of a child in an approved centre shall be made to a Judge of the District Court assigned to the district court district in which the child resides or is for the time being to be found at a sitting of the Court for the said District. Save in a case to which section 25(7) of the Act applies, such application shall be preceded by the issue and service of a notice in the Form 84A.1 Schedule C upon the parents of the child or either of them or upon a person acting in loco parentis of the child. Such notice shall be served at least ten days prior to the date fixed for hearing the application. Where a child has been detained in accordance with section 23(2) of the Act, such notice shall be served as promptly as reasonably possible and prior to the hearing of the application at a sitting of the Court held within the time specified in section 23(3) of the Act, and may be served by delivering a copy of the notice to the parents of the child or either of them or upon a person acting in loco parentis of the child.*

Section 25: Applications are made by Solicitor in the District Court and Counsel should not be necessary.

## **6.8 Affidavit**

A written statement given under oath by a person, called the deponent, attesting as to certain facts within his or her own knowledge, to be presented as evidence in Court.

## **6.9 District Court**

Claim does not exceed €6,350. It also deals with family law cases including custody and maintenance of children, application for barring orders and appeals to tribunals and applications to assess and or admit a child under the Mental Health Act 2001. There is no Jury in the District Court.

## **6.10 High Court**

The High Court is based in Dublin and hears cases that cannot be dealt with by the lower courts. It deals with cases where a claim exceeds €38,000. It also hears appeals for the Circuit Court and can give rulings on questions of law raised in the District Court. Video conferencing is available in the High Court- however this facility, if required needs to be booked and agreed by all parties involved if appropriate.

### **6.11 Professional Witness**

A professional witness is a doctor who is called as a witness to testify to the facts usually of a consultation in which he or she was acting in his/her normal professional capacity. Professional witnesses may also be required by the court to give a professional interpretation of the facts. Normally a professional witness enters the court only to give his/her evidence and will not usually listen to the evidence of other witnesses. The professional witness is a “witness to fact”

### **6.12 Expert witness**

A staff member who is called as a witness may or may not be a witness to the facts in the case. Such a doctor should be a recognised expert with considerable length and breadth of experience in his/her area of medical practice. Expert witnesses will generally be asked to give an opinion only. They are asked to interpret the facts provided by others. Expert witnesses may attend the entire hearing and listen to the evidence of professional witnesses before taking the witness stand themselves. The expert witness is called to provide an expert opinion.

### **6.13 Barristers at Law**

When barristers are initially “called to the Bar”, they act as ‘Junior Counsel’. A Junior Counsel may have the letters BL after his/her name, which stands for “Barrister at Law”. Junior Counsels tend to do most of the paperwork in cases (drafting legal documents) and they represent clients mainly in the lower courts (the District Court and the Circuit Court).

After about 10 to 15 years of practicing as a Junior Counsel, a barrister may decide to become a Senior Counsel. This is sometimes called “taking silk” because the senior counsel’s gown was traditionally made of silk. Senior Counsel may have the letters SC after his/her name.

Senior Counsel are very experienced advocates who represent clients in the High Court and the Supreme Court. Usually, if a senior counsel is involved in a case, there will also be a junior counsel to assist.

## 7.0 Standard Operating Procedure for Mental Health Managers in relation to Court Proceedings regarding the Mental Health Act 2001

**7.1** The Local Health Manager consults with the Clinical Director of the Approved Centre with regard to how the legal action is to be managed and agrees a plan of action.

**7.2** The Local Health Manager or nominated person will contact the HSE solicitor to act on behalf of the HSE. Variation Order or Authorisation Form /Order Book granting authorisation to the solicitor representing the HSE to issue the proceedings will be signed.

**7.3** Referral of a case to the Law Agent should be in line with local HSE arrangements until such time as there is as there is a National Policy.

**7.4** The Local Health Manager or nominated person should have a meeting with the HSE solicitor to:

**7.4.1** Ensure that the HSE solicitor has received the documentation and has taken the appropriate procedural actions depending on the nature of the proceedings

**7.5** When instructing the Solicitor the HSE lead person should ensure that they are provided with all the necessary facts and documentation regarding the case

**7.6** The HSE should request that the solicitor provide in writing their view / opinion on the HSE's legal position; i.e. likelihood of success; the appropriate course of action to take; whether it is necessary to brief counsel; whether Junior or Senior Counsel is required; provide suggestions as possible Counsel; indicate likely costs of defending the matter.

**7.7** Briefing Counsel - The Solicitors generally know which Counsel have expertise in a particular area and / or they have particular Counsel they brief on a regular basis. This does not mean the HSE have to agree to brief the counsel suggested by the Solicitors. If the HSE lead person has a particular Counsel in mind, they may instruct the Solicitor to brief that person instead .

**7.8** Representation generally required in:

**7.8.1** District Court: Solicitor / sometimes Junior Counsel.

**7.8.2** Circuit Court: Junior Counsel

**7.8.2** High Court: Senior Counsel / usually with Junior Counsel

**7.8.3** Supreme Court: Senior Counsel / usually with Junior Counsel.

**7.9** Decide whether the HSE will require any additional technical or expert witness. If so these witnesses shall be identified and arrangements made for them to be engaged.

**7.10** Request the HSE solicitor to secure from Counsel(s) what their expected fees in respect of the case will be, in accordance with the Bar Councils rules and code of practice on Fee Estimates (See Appendix 5, 6)

**7.11** Direct the HSE Solicitor to advise the applicant's solicitor to apply for the Attorney General Scheme on the basis that the HSE will contest their application for costs.

**7.12** The Clinical Director of the Approved Centre or his/her nominees should commence the collection, collation and assimilation of all relevant documentation (**Refer to 8.0**) and ensure that the patient file is fully up to date.

**7.13** In relation to legal proceedings, the Local Health Manager shall identify to the legal team the office holder(s) who may be the most appropriate to act as deponent(s) of the affidavit(s) and who are considered as the most appropriate Court witnesses on behalf of the HSE, and where these are required.

**7.14** Where applicable and appropriate the Local Health Manager should establish contact with other co-defendants (for example the Mental Health Commission).

**7.15** Where the possible outcomes of the case may have implications for the HSE as an organisation or for the provision of services at a national level, the matter should be notified to the Assistant National Director for Mental Health Services.

**7.16** All legal advice accessed by the HSE needs to be 'in writing'.

**7.17** Standard procedures regarding accessing any legal advice should ensure that costs are centralised and directed to the cost accountant.

## 8.0 Information Required for Going to Court

**8.1** Full name of the plaintiff

**8.2** Address of the plaintiff

**8.3** Patient Record- including all records in relation to the involuntary admission and review process (Mental Health Commission forms, Section 17 report, etc) outlining the clinical facts to the case and their clinical opinion.

**8.4** Copy of relevant policies relating to the case e.g. Assisted Admission Policy or Admission Policy or copy of all relevant policies in relation to the Mental Health Act 2001

**8.4.1** All judges are now addressed as “Judge” regardless of the Court venue.

**8.4.2** A person has the option to swear an oath or make an affirmation. The latter does not require a bible and is as follows: *“I do solemnly, sincerely and truly declare and affirm that my evidence shall be the truth, the whole truth and nothing but the truth”*.

## Appendix 1: Appeal to Circuit Court: Section 19 Mental Health Act 2001

### Appeal to Circuit Court

#### 19.

(1) A patient may appeal to the Circuit Court against a decision of a tribunal to affirm an order made in respect of him or her on the grounds that he or she is not suffering from a mental disorder.

(2) An appeal under this section shall be brought by the patient by notice in writing within 14 days of the receipt by him or her or by his or her legal representative of notice under section 18 of the decision concerned.

(3) The jurisdiction conferred on the Circuit Court by this section may be exercised by the judge of the circuit in which the approved centre concerned is situated or, at the option of the patient, in which the patient is ordinarily resident.

(4) On appeal to it under *subsection (1)*, the Circuit Court shall-

(a) unless it is shown by the patient to the satisfaction of the Court that he or she is not suffering from a mental disorder, by order affirm the order, or

(b) if it is so shown as aforesaid, by order revoke the order.

(5) An order under *subsection (4)* may contain such consequential or supplementary provisions as the Circuit Court considers appropriate.

(6) Notice of any proceedings under this section shall be served by the person bringing the proceedings on-

(a) the consultant psychiatrist concerned

(b) the tribunal concerned

(c) the clinical director of the approved centre concerned, and

(d) any other person specified by the Circuit Court

(7) Before making an order under this section, the Circuit Court shall have regard to any submission made to it in relation to any matter by or on behalf of a party to the proceedings concerned or any other person on whom notice is served under *subsection (6)* or any other person having an interest in the proceedings.

**(8)** The Circuit Court shall exclude from the Court during the hearing of an appeal under this section all persons except officers of the Court, persons directly concerned in the hearing, *bona fide* representatives of the Press and such other persons (if any) as the Court may in its discretion permit to remain.

**(9)** No matter likely to lead members of the public to identify a patient who is or has been the subject of proceedings under this section shall be published in a written publication available to the public or be broadcast.

**(10)** Without prejudice to *subsection (8)*, the Circuit Court may, in any case if satisfied that it is appropriate to do so in the interests of the patient, by order dispense with the prohibitions of that subsection in relation to him or her to such extent as may be specified in the order.

**(11)** If any matter is published or broadcast in contravention of *subsection (8)*, each of the following persons, namely-

- (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,
- (b) in the case of any other publication, the person who publishes it, and
- (c) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper, shall be guilty of an offence.

**(12)** Nothing in this section shall affect the law as to contempt of court.

**(13)** In this section-

“broadcast” means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

“written publication” includes a film, a sound track and any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

**(14)** In any proceedings under this section a document purporting to be a report prepared pursuant to section 17 concerning a patient shall be evidence of the matters stated in the document without further proof and shall, unless the contrary is proved, be deemed to be such a document.

**(15)** A notice required by *subsection (6)* to be served on a person, may be so served-

(a) by delivering it to him or her or to his or her solicitor

(b) by addressing it to him or her and leaving it at his or her usual or last known residence or place of business or by addressing it to his or her solicitor and leaving it at the solicitor's office

(c) by sending it by registered post to him or her at his or her usual or last known residence or place of business or to his or her solicitor at the solicitor's office, or

(d) in the case of a body corporate, by delivering it, or sending it by registered post, to the secretary or other officer of the body at its registered or principal office

**(16)** No appeal shall lie against an order of the Circuit Court under this section other than an appeal on a point of law to the High Court.

## Appendix 2: Judicial Review - Procedural Matters

Article 34.3.2 of the Constitution grants the High Court jurisdiction to question the validity of any law having regard to the provisions of the constitution.

Applications for Judicial Review (JR) are made pursuant to the *Rules of the Superior Courts Order* 84 Rules 18 to 27.

### Purpose of Judicial Review:

- “Protection of the Rule of Law”
- To ensure that the lower courts and public bodies do not exceed their powers and to not abuse any discretion that they may have
- Judicial Review gives the High Court a supervisory role over inferior courts, tribunals and other bodies ensuring that they act within their powers as laid down by law

### What it is and what it is not:

- Judicial Review is not an appeal
- It is not the function of the High Court to substitute its own view
- Judicial review is concerned solely with the manner in which the impugned decision is made
- It is not concerned with the legality of the decision
- It is not concerned with the merits of the case
- Cannot seek a JR based on insufficient evidence
- It is sufficient to seek a JR if:
  - The Court or Tribunal acted outside its jurisdiction or powers
  - Bias (doesn't have to be actual it can be perceived)
  - Breach of natural and constitutional justice
  - Disregard to fair procedures
  - Error on the face of the record

### Can Judicially Review:

- Final decisions of the inferior courts i.e. the District Court and Circuit Court
- Decisions of the Special Criminal Court
- Decisions of the Taxing Master
- Decisions of the Master of the High Court
- Decisions of Tribunals and other bodies

- In certain circumstances decisions of the President of the District Court and Circuit Court concerning the administration of those courts
- Decisions of the DPP in limited circumstances

### **Cannot Judicially Review:**

- Decisions of the High Court
- Decisions of the Central Criminal Court
- Decisions of the Court of Criminal Appeal
- Decisions of the Supreme Court

The orders available are:

- Certiorari: - an order quashing a decision
- Prohibition: - an order prohibiting certain actions
- Mandamus: - an order to do something
- Quo Warranto: - 'by what authority' – an action which questions the authority of someone
- Declaration: - an order declaring your rights
- Injunction: - an order stopping an action
- Damages: - money

### **The application is a two stage process:**

**(1)** The application for leave to apply for Judicial Review (Leave stage).

This application is made in the High Court ex-parte by way of:

(a) Notice / Statement of grounds –Which will set out the applicants name, address and description, the relief sought, the grounds upon which the relief is sought, name and details of the applicants solicitor.

And

(b) An Affidavit verifying the grounds set out in the Notice and setting out all other relevant facts and evidence.

**(2)** The substantive application (if leave is granted).

**An applicant at the leave stage must satisfy the court that:**

- He has sufficient interest in the matter to which the application relates
- That the facts set out in the affidavit would be sufficient if proved to support a stateable ground for the form of relief sought
- That there is an arguable case at law
- The application has been made promptly (within 6 months for an order of Certiorari and within 3 months for all other orders sought)
- That the only effective remedy would be an order by way of judicial review or that if there is an alternative remedy, that application by way of judicial review is more appropriate

**If refused leave to apply for Judicial Review:**

- If an ex-parte application is refused in whole or in part in the High Court an application for a similar purpose may be made to the Supreme Court ex-parte within four days from the date of refusal

**If granted leave to apply for Judicial Review:**

- Must serve the following on respondent within 14 days (usually in criminal matters):
  - Notice of Motion
  - Copy of the Order granting leave
  - Statement of grounds
  - Grounding affidavit
- Alternatively the Judge may indicate that the proceedings be brought by way of Plenary Summons (usually the case in non criminal matters)
- The Court may fix a return date or enter the matter into the list of fixed dates, from here it is given a date for hearing
- A book of documents has to be lodged with the registrar of the Court seven days prior to the hearing date and should include the following:
  - Notice of Motion
  - Order granting leave
  - Statement grounding application for leave
  - Verifying affidavit
  - Exhibits

### **The Hearing:**

- Evidence is based on Affidavit
- It is possible to cross examine, however to do so the party wishing to cross examine must bring a notice for leave to cross examine, the court then decides whether or not to permit cross examination

### **Costs:**

- Order 84 Rule 20(b) Rules of the Superior Courts 1986; provides that where a Court grants leave to apply for Judicial Review it may impose such terms as to costs as it thinks fit
- Costs usually follow event (Order 99)
- Generally the court will reserve the issue of costs until the determination of the substantive hearing and not at the leave stage. However in some cases it has been held that in certain circumstances it may be appropriate to award costs of the initial ex-parte application to the applicant

#### Note:

- The remedies available are discretionary, i.e. even where an applicant has shown they qualify for the relief sought, the Court has the power to refuse the application. An example of where JR might be refused to a qualified applicant is where the making of the order might prejudicially affect a third party
- An applicant is required to show that they have exhausted any alternative remedies available. (The alternative remedies must be adequate)
- However if the decision was made without jurisdiction or in breach of natural justice, the fact that an alternative remedy in the form of an appeal exists is irrelevant
- Likewise if an appeal is only likely to deal with the merits of the case and not with the jurisdiction of the tribunal
- Judicial Review is appropriate if the rules of natural justice have been breached or if a judge exceeds his jurisdiction, or if there is a technical issue e.g. statutory interpretation

### **The Respondent:**

- This is the person against whom the order is sought
- You can only have someone as a respondent if you are looking for something from them

### **The Notice Party:**

- You are not looking for relief from the notice party, however they will be affected by the order so they are entitled to be on notice

**The Affidavit:**

- This is a written statement which is signed and sworn before a Solicitor; Judge; Justice of the Peace; Commissioner for Oaths and can be used as evidence in Court hearings
- You can only swear something if you have the means of knowledge

**Deponent:**

- A person who makes a statement under oath

## Appendix 3: Rules of the Superior Courts

### ORDER: 84

#### JUDICIAL REVIEW AND ORDERS AFFECTING PERSONAL LIBERTY.

1. (1) Orders of habeas corpus, orders of certiorari, orders of mandamus, orders of prohibition and orders of attachment shall be witnessed in the name of the Chief Justice or, if the office of Chief Justice be vacant, in the name of the President of the High Court, sealed with the seal of the High Court and bearing date of the day of issue.  
  
(2) The expression "order of habeas corpus" does not include an order made pursuant to Article 40 section 4 of the Constitution.  
  
(3) Every order referred to in this rule shall be served personally on the person to whom it is directed, unless the Court otherwise directs.

#### I. Habeas Corpus.

2. An application for an order of habeas corpus ad subjiciendum shall be by motion ex-parte for a conditional order.
3. Unless the Court shall otherwise direct
  - (a) the application for an order of habeas corpus ad subjiciendum shall be on affidavit which shall be entitled shortly in the matter in question and in the matter of the Habeas Corpus Act, 1782,
  - (b) No order of habeas corpus ad subjiciendum shall be granted where the validity of any warrant, committal order, conviction or record shall be questioned, unless at the time of moving a copy of such warrant, committal order, conviction or record verified by affidavit be produced to the Court, or the absence thereof accounted for to the satisfaction of the Court.
4. The order of habeas corpus ad subjiciendum shall be served personally on the person to whom it is directed, unless the Court shall otherwise direct. If the order is directed to a jailer or other public official, it shall be served by leaving it with him or his servant or agent at the place of confinement or restraint, or in such manner as the Court may direct.

5. The Court may, on the motion to make absolute notwithstanding cause shown, order either that the body of the person detained be produced before the Court or that such person be released from such detention.
6. Every conditional order of habeas corpus shall be filed in the Central Office and served together with a copy of the grounding affidavit (if any) within ten days from the day the same shall be pronounced, unless further time is allowed by the Court, and in default thereof such conditional order shall stand discharged.
7. Unless the conditional order shall otherwise direct, cause shall be shown within ten days after service thereof.
8. Where cause is shown it shall be by affidavit. The affidavit shall in addition to the facts deposed to, state concisely the grounds relied on as cause. The affidavit shall be filed in the Central Office and notice of filing shall be served on the applicant or his solicitor within the time allowed for showing cause.
9. (1) Where cause has been shown as aforesaid the applicant may apply to the Court by motion on notice to make absolute the conditional order, in whole or in part notwithstanding the cause shown.  
  
(2) Notice of such motion shall be served on the party showing cause or his solicitor within six days after service by him of a notice of filing in pursuance of rule 8 or, where cause is shown by more than one party then within six days of the service of the last of such notices, and if such notice of motion shall not be served on such party he shall be entitled to an order of course allowing the cause shown and directing that his costs of showing cause be taxed and paid by the applicant.
10. Where cause has not been shown in the manner and within the time aforesaid the applicant shall on filing an affidavit of service of the conditional order and a certificate that no cause has been shown, be entitled to obtain a side bar order making the conditional order absolute (unless the conditional order shall have otherwise directed).
11. The return to the order of habeas corpus, where the body is not produced, shall be by affidavit to be made by the party to whom the order is directed and shall contain such full answer to the allegation that the person is detained as the circumstances may require.
12. If an order of habeas corpus is disobeyed by the person to whom it is directed, application may be made to the Court, on an affidavit of service and disobedience, for an attachment for contempt. In vacation an application may be made to the Court for a warrant for the

apprehension of the person in contempt to be brought before the Court to be bound over to appear at the next ensuing sittings, to answer for his contempt, or to be committed to prison for want of bail.

13. An application to bring up a prisoner to give evidence in any cause or matter, civil or criminal, before any Court, may be made to the Court on affidavit.

## **II. Attachment for Contempt.**

14. An application for an order of attachment for contempt shall be made by motion ex-parte.

## **III. Bail.**

15. (1) An application for bail by a person in custody shall be by motion on notice to the Chief State Solicitor grounded on the affidavit of the applicant.

(2) Proceedings shall be entitled:

THE HIGH COURT  
IN THE MATTER OF A BAIL APPLICATION  
THE PEOPLE (AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)  
.V.  
AT PRESENT PENDING IN THE COURT  
AT

or to the appropriate effect.

(3) Where an applicant has no solicitor, the Court may dispense with the necessity for a notice of motion and affidavit, and in lieu thereof shall give all appropriate directions including a direction that the applicant be brought before the Court on a date and at a time to be specified, of which the Chief State Solicitor shall be notified, and for the purpose of giving such directions, the Court may hear the applicant.

(4) References to the Director of Public Prosecutions shall, where appropriate, be deemed to include references to the Attorney General.

#### **IV. Recognizances.**

16. Every recognisance acknowledged on the removal of an order, or other proceeding, or for the appearing or answering of any party in the Court, or for good behaviour shall, after the acknowledgement thereof, be transmitted to the Central Office and filed there.
17. No recognisance shall be forfeited or estreated without an order of the Court. Notice of application for any such order shall be served on the parties by whom such recognisance's shall have been given.

#### **V. Judicial Review.**

18. (1) An application for an order of certiorari, mandamus, prohibition or quo warranto shall be made by way of an application for judicial review in accordance with the provisions of this Order.  
  
(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to -
  - (a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition, certiorari, or quo warranto,
  - (b) the nature of the persons and bodies against whom relief may be granted by way of such order, and
  - (c) all the circumstances of the case,it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.
19. On an application for judicial review any relief mentioned in rule 18 (1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter and in any event the Court may grant any relief mentioned in rules 18 (1) or (2) which it considers appropriate notwithstanding that it has not been specifically claimed.
20. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for such leave shall be made by motion ex parte grounded upon-

(a) a notice containing a statement of:

- (i) the name, address and description of the applicant,
- (ii) the relief sought and the grounds upon which it is sought,
- (iii) the name and registered place of business of the applicant's solicitors (if any), and
- (iv) the applicant's address for service within the jurisdiction (if acting in person); and

(b) an affidavit which verifies the facts relied on.

Such affidavit shall be entitled:

THE HIGH COURT JUDICIAL REVIEW BETWEEN A.B. APPLICANT AND  
C.D. RESPONDENT

(3) The Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit.

(4) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(5) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(6) If the Court grants leave, it may impose such terms as to costs as it thinks fit and may require an undertaking as to damages.

(7) Where leave to apply for judicial review is granted then-

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by plenary summons.

- 21.** (1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, or six months where the relief sought is certiorari, unless the Court considers that there is good reason for extending the period within which the application shall be made.
- (2) Where the relief sought is an order of certiorari in respect of any judgement, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgement, order, conviction or proceeding.
- (3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.
- 22.** (1) An application for judicial review shall be made by originating notice of motion unless the Court directs that it shall be made by plenary summons.
- (2) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a Court and the object of the application is either to compel the Court or an officer of the Court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the Clerk or Registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the Clerk or Registrar on behalf of the Judge.
- (3) A notice of motion or summons, as the case may be, must be served within 14 days after the grant of leave, or within such other period as the Court may direct. In default of service within the said time the stay of proceedings referred to in rule 20 (7) shall lapse. In the case of a motion on notice it shall be returnable for the first available motion day after the expiry of 10 days from the date of service thereof, unless the Court otherwise directs.
- (4) Any respondent who intends to oppose the application for judicial review by way of motion on notice shall file in the Central Office a statement setting out concisely the grounds for such opposition and, if any facts are relied on therein, an affidavit verifying such facts. Such respondent shall serve a copy of such statement and affidavit (if any) on all parties not later than seven days from the date of service of the notice of motion or such other period as the Court may direct. The statement shall include the name and registered place of business of the respondent's solicitor (if any).

(5) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion or summons must be filed before the motion or summons is heard and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion or summons.

(6) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

**23.** (1) A copy of the statement in support of an application for leave under rule 20, together with a copy of the verifying affidavit must be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may, on the hearing of the motion or summons, allow the applicant or the respondent to amend his statement, whether by specifying different or additional grounds of relief or opposition or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant or respondent intends to apply for leave to amend his statement, or to use further affidavits he shall give notice of his intention and of any proposed amendment to every other party.

**24.** (1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if -

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and

(b) the Court is satisfied that, if the claim had been made in a civil action against any respondent or respondents begun by the applicant at the time of making his application, he would have been awarded damages.

(2) Order 19, rules 5 and 7, shall apply to a statement relating to a claim for damages as it applies to a pleading.

**25.** (1) Any interlocutory application may be made to the Court in proceedings on an application for judicial review. In this rule “interlocutory application” includes an application for an order under Order 31, or Order 39, rule 1, or for an order dismissing the proceedings by consent of the parties.

(2) Where the relief sought is or includes an order of mandamus, the practice and procedure provided for in Order 57 shall be applicable so far as the nature of the case will admit.

**26.** (1) On the hearing of any motion or summons under rule 22, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, committal, conviction, inquisition or record, unless before the hearing of the motion or summons he has lodged in the High Court a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons. If necessary, the court may order that the person against whom an order of certiorari is to be directed do make a record of the judgement, conviction or decision complained of.

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the High Court.

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in a civil action against any respondent or respondents begun by plenary summons by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by plenary summons.

(6) Where the relief sought is or includes an order of mandamus, the proceedings shall not abate by reason of the death, resignation or removal from office of the respondent but they may, by order of the Court, be continued and carried on in his name or in the name of the successor in office or right of that person.

(7) At any stage in proceedings in prohibition, or in the nature of quo warranto the Court on the application of any party or of its own motion may direct a plenary hearing with such directions as to pleadings, discovery, or otherwise as may be appropriate, and thereupon all further proceedings shall be conducted as in an action originated by plenary summons and the Court may give such judgments and make such orders as if the trial were the hearing of an application to make absolute a conditional order to show cause.

**27.** The forms in Rules of the Superior Court shall be used in all proceedings under this Order.

## Appendix 4: Summons

Usually proceedings are issued in the High Court by an originating summons.

There are three types of originating summons:

- **Plenary summons.** This type of summons is used to commence proceedings where there is a real dispute between the parties and/or the amount of the Plaintiff's claim is not specific or easy to calculate. For example, a plenary summons may be used where the Plaintiff claims that he or she was injured in a road traffic accident due to the Defendant's negligence. When a plenary summons is issued, the next step is for the parties to exchange pleadings (see Statement of Claim and Delivering the "Defence" in a civil case). Eventually, the case will be given a date for a trial and there may be evidence given by witnesses
- **Summary summons.** This type of summons is used when the amount of the Plaintiff's claim is easily quantifiable and the Defendant does not have any valid defence. For example, a summary summons may be used where the Plaintiff claims that he or she lent the Defendant a specific amount of money that has not been repaid. "Summary" proceedings do not involve pleadings and do not end in a trial with evidence given by witnesses. It is a fast-track procedure where the judge decides the case after reading affidavits submitted by both sides. However, if it becomes clear to the judge that the Defendant has a stateable defence to the claim, the judge may order that the case be dealt with as "plenary proceedings". This means that pleadings will be exchanged and the matter may go to trial
- **Special summons.** This type of summons is used for cases that involve pure issues of law or very specific issues of fact. For example, a special summons will be issued to commence a claim relating to the administration of the estate of a deceased person. Like summary proceedings, this is a fast-track procedure where the judge decides the case by reading affidavits submitted by both sides

To serve an originating summons, a copy of the summons must be handed to the Defendant and he or she must be shown the original. The summons can be served on the Defendant's solicitor if he or she accepts service on behalf of his/her client and is authorised to do so.

### Rules

All originating summonses must contain the following information:

- A title. The Plaintiff's name and the Defendant's name make up the title of the proceedings
- The type of the Summons, for example, "plenary summons"
- A description of the parties. The summons must state the surname, first name, the residence or place of business and the occupation of the Plaintiff. It must also state the name and address of the Defendant (or his/her solicitor)

- A “indorsement of claim”. This is the part of the summons that sets out what the Plaintiff claims he or she is entitled to. The level of detail necessary in this section depends on the type of summons. If the summons is a plenary summons, it is only necessary to give the Defendant information about the general nature of the Plaintiff’s claim - more detail will be provided in the Statement of Claim that follows. If the summons is a summary summons or a special Summons, much more detail must be given about the nature, extent and grounds of the Plaintiff’s claim against the Defendant. It should clearly set out the allegations that are being made by the Plaintiff and the amount that the Plaintiff claims he or she is entitled to

## **Rates**

The stamp duty that must be paid when a summons is issued is 110 euro.

Your solicitor and barrister will also charge fees for their services.

## Appendix 5: Legal Costs

Solicitors are not obliged to bill by the hour and in most HSE areas, the traditional billing method is used. i.e. the Solicitor submits a detailed bill of costs at the end of a case. Often the area will make a number of payments on account over the life of the case and these payments are deducted from the final Bill of Costs when submitted by the Solicitor.

Pursuant to Section 68 of the Solicitor (amendment) Act 1994, when you instruct a Solicitor, s/he is obliged to provide written details of the likely fee that will be charged. Often it is not possible to give a definite sum but they are obliged to provide an estimate of likely costs and provide details of the basis upon which the fee will be calculated. The basis for charging is: complexity; difficulty; urgency; venue (DC/HC/SC); importance of the matter to the client; skill and expertise; time reasonably spent.

The former Northern Area Health Board, (LHO 6; 7; 8) have an agreement with two firms of Solicitors with regard to the method of billing and the rate charged. It was agreed that bills would be submitted on a monthly basis. Each of the firms submits an invoice on a monthly basis. This invoice sets out the number of hours being billed for that month and a narrative of work done. In the case of one firm they include Solicitors time sheets for the month which provides a detailed log of activity for the month. We have agreed an hourly rate with both firms for Partner; Associate Solicitor; Solicitor; Trainee; and Secretary. We also have an agreed schedule of charges for administrative matters.

It isn't really possible to give an average cost for Solicitor or Counsel that will be applicable across the board to all cases. If you are concerned about the bill of costs it is open to you to refer the matter to a legal cost accountant for review. They can attempt to negotiate with the Legal Cost Accountant who drew up the bill of costs. If there is no agreement it can then be referred to the Taxing Master of the High Court (if it is a High Court matter) who will tax the costs.

When Counsel is briefed on a legal matter they will charge a brief fee, this covers reading the brief, the initial preparation for the case and the first day in court. Where subsequent days in court are required they will charge a refresher fee. They will also charge for consultations, drafting legal submissions, making costs applications if necessary.

The basis for charging by Counsel is similar to that for Solicitors. Counsel will consider the complexity of the matter; difficulty; urgency; the venue; skill and expertise. All Barristers are now required to provide an estimate of likely costs when briefed and you should ensure that your Solicitor obtains this from Counsel.

## Appendix 6: Charges to Clients

### Section 68 of Solicitors (Amendment) Act 1994 –

Charges to clients.

#### 68.

(1) On the taking of instructions to provide legal services to a client, or as soon as is practicable thereafter, a solicitor shall provide the client with particulars in writing of-

(a) the actual charges, or

(b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or

(c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made,

by that solicitor or his firm for the provision of such legal services and, where those legal services involve contentious business, with particulars in writing of the circumstances in which the client may be required to pay costs to any other party or parties and the circumstances, if any, in which the client's liability to meet the charges which will be made by the solicitor of that client for those services will not be fully discharged by the amount, if any, of the costs recovered in the contentious business from any other party or parties (or any insurers of such party or parties).

(2) A solicitor shall not act for a client in connection with any contentious business (not being in connection with proceedings seeking only to recover a debt or liquidated demand) on the basis that all or any part of the charges to the client are to be calculated as a specified percentage or proportion of any damages or other moneys that may be or may become payable to the client, and any charges made in contravention of this subsection shall be unenforceable in any action taken against that client to recover such charges.

(3) A solicitor shall not deduct or appropriate any amount in respect of all or any part of his charges from the amount of any damages or other moneys that become payable to a client of that solicitor arising out of any contentious business carried out on behalf of that client by that solicitor.

(4) *Subsection (3)* of this section shall not operate to prevent a solicitor from agreeing with a client at any time that an amount on account of charges shall be paid to him out of any damages or other moneys that may be or may become payable to that client arising out of any contentious business carried out on behalf of that client by that solicitor or his firm.

(5) Any agreement under *subsection (4)* of this section shall not be enforceable against a client of a solicitor unless such agreement is in writing and includes an estimate (as near as may be) of what the solicitor reasonably believes might be recoverable from any other party or parties (or any insurers of such party or parties) in respect of that solicitor's charges in the event of that client recovering any damages or other moneys arising out of such contentious business.

(6) Notwithstanding any other legal provision to that effect a solicitor shall show on a bill of costs to be furnished to the client, as soon as practicable after the conclusion of any contentious business carried out by him on behalf of that client-

(a) a summary of the legal services provided to the client in connection with such contentious business,

(b) the total amount of damages or other moneys recovered by the client arising out of such contentious business, and

(c) details of all or any part of the charges which have been recovered by that solicitor on behalf of that client from any other party or parties (or any insurers of such party or parties),

and that bill of costs shall show separately the amounts in respect of fees, outlays, disbursements and expenses incurred or arising in connection with the provision of such legal services.

(7) Nothing in this section shall prevent any person from exercising any existing right in law to require a solicitor to submit a bill of costs for taxation, whether on a party and party basis or on a solicitor and own client basis, or shall limit the rights of any person or the Society under *Section 9* of this Act.

(8) Where a solicitor has issued a bill of costs to a client in respect of the provision of legal services and the client disputes the amount (or any part thereof) of that bill of costs, the solicitor shall-

(a) take all appropriate steps to resolve the matter by agreement with the client, and

(b) inform the client in writing of-

(i) the client's right to require the solicitor to submit the bill of costs or any part thereof to a Taxing Master of the High Court for taxation on a solicitor and own client basis, and

(ii) the client's right to make a complaint to the Society under *Section 9* of this Act that he has been issued with a bill of costs that he claims to be excessive.

(9) In this section "charges" includes fees, outlays, disbursements and expenses.

(10) The provisions of this section shall apply notwithstanding the provisions of the Attorneys and Solicitors (Ireland) Act, 1849 and the Attorneys and Solicitors Act, 1870.

## Appendix 7: Giving Evidence

(1) When called to give evidence you will be asked whether you wish to 'swear' (an oath) or make an affirmation. If you choose to swear you will be asked either to take the holy bible and hold it up in your right hand or place your right hand on it and repeat the clerk's words. If you chose to make an affirmation you will not be given the bible. Once you have sworn or affirmed you may be liable to perjury if you lie.

**Oath:** *"I swear to almighty God that my evidence shall be the truth, the whole truth and nothing but the truth"*

**Affirmation:** *"I do solemnly, sincerely and truly declare and affirm that my evidence shall be the truth, the whole truth and nothing but the truth".*

(2) You will be asked by the court Clerk to give your full name and address. The address you give should be your work address in this instance. You may also be asked to state your job title.

(3) The Lawyer who called you as a witness may then ask you to give details of your qualifications and experience. Alternatively, he may state your qualifications and experience and ask you to confirm that these details are correct.

(4) There then follows **Examination in chief**: this is where the Lawyer who called you as a witness asks you questions. Listen to the question and keep your answers simple and to the point. You should look at the Lawyer when he is asking you the question, however when giving your answer you should face the judge.

(5) When addressing a Judge in any court you address him as "Judge".

(6) When the Examination in chief is finished the opposing Lawyer will conduct the "**Cross Examination**".

(7) Finally, the Lawyer who conducted the Examination in chief may wish to **re-examine** you to clarify matters that came up during the cross examination.

(8) The judge may also like to question you to clarify some points.

(9) A witness will be permitted to take a copy of the report they are giving evidence about into the witness box. They can also bring contemporaneous notes into the witness box to refer to. The Lawyer will likely question you about the notes, i.e. when and how they were made.

(10) If you do not understand a question or you are unclear about what is being asked then say so. Don't be afraid to ask for it to be repeated or clarified. If you do not know the answer to the question being asked don't be afraid to say so.

(11) It is important to discuss matters with the Solicitor prior to attending court, address any questions or concerns you have about reports and notes and what you will be required to do on the day.

## Appendix 8: Useful Websites and Contacts

Mental Health Commission –promotes high standards in the delivery of mental health services and ensures the interests of those involuntarily admitted to Approved Centres are protected.

Mental Health Commission  
St. Martin’s House,  
Waterloo Road,  
Dublin 4.  
Tel 01 636 2400  
[www.mhcirl.ie](http://www.mhcirl.ie)

Irish Advocacy Network – employs regional advocates to meet and advise clients and provide advocacy services to all acute psychiatric units on the island of Ireland.

Irish Advocacy Network  
C/o Health Care Unit  
Rooskey  
Monaghan  
Co. Monaghan  
Ireland  
Tel 047 72863  
[www.irishadvocacynetwork.com](http://www.irishadvocacynetwork.com)

The Courts Service – responsible for the administration and management of the courts in Ireland

The Courts Service Information Office  
15/24 Phoenix Street North  
Smithfield  
Dublin 7  
Tel: 01 8886462  
[www.courts.ie](http://www.courts.ie)

The Law Society of Ireland – responsible for representing and regulating the solicitors profession in Ireland

The Law Society of Ireland  
Blackhall Place  
Dublin 7  
Tel: 016724800  
[www.lawsociety.ie](http://www.lawsociety.ie)

The Bar Council is the professional body for barristers in Ireland

The Bar Council

Law Library

Four Courts

Dublin 7

Tel: 01 817 5000

[www.lawlibrary.ie](http://www.lawlibrary.ie)

John Redican

National Executive Officer

National Service Users Executive

91 Leopardstown Avenue

Blackrock

Co Dublin

[johnredican@hotmail.com](mailto:johnredican@hotmail.com)

[www.nsue.ie](http://www.nsue.ie)

Amnesty International Irish Section,

First Floor,

Ballast House,

18 – 21 Westmoreland Street,

Dublin 2.

Tel: 01 863 8300

[www.info@amnesty.ie](http://www.info@amnesty.ie)

## 2. Brief Index of Court Judgements relating to Mental Health Acts 2001 to 2009

### 3. Organisational Learning Strategy

*(See separate reports)*

#### 4. Development of a mental health micro-site and eLearning programmes

As part of the process of developing an organisational learning strategy and in consideration of the challenges pertaining to the development and delivery of workplace training in the current economic environment the project team explored the use of e Learning as an educational tool. The project team sought and received an extension of their brief to enable them to work with HSELand in developing a mental health micro site with eLearning programme content.

This site forms part of an organisational learning framework for the Mental Health Acts 2001-2009. It is designed to support HSE mental health services in delivering services in compliance with mental health legislation by facilitating the development of knowledgeable and capable practitioners in all relevant disciplines, thereby promoting high quality decision making, safe and supportive care and positive service user experiences.

Beginning with a number of programmes related to legislation this hub will provide the launch pad for mental health eLearning programmes and will offer a repository for useful information, resources and tools. It will offer an online space for discussions, knowledge sharing and collaboration for all HSE mental health and other associated staff. This facility is an important resource for achieving the blended learning that is a key feature of the organisational learning strategy.

The aim of the mental health eLearning hub is to provide accessible, flexible and high quality education and training, resources/programmes which will enable practitioners to achieve competencies for best practice. It will also provide linkages to personal development planning as recommended in national mental health policy **A Vision for Change** (DOH & C, 2006) and to a range of other eLearning training resources.

The hub promotes a competency based approach to learning through the use of blended learning. Learning is tiered and the framework outlines a minimum standard of competency commensurate with the individual's role within the organisation. Placing joint responsibility for learning on the individual and the HSE the framework identifies both optional and mandatory self directed eLearning modules and taught modules required to achieve competencies associated with a variety of service roles. These modules are enhanced by opportunities to share inter-professional knowledge and skills through joint education programmes and community of practice discussion forums which will be developed and hosted on the hub.

The availability of the site will open up other possibilities in due course. eLearning links with sites such as Mental Health Commission website, Irish College of General Practitioners website, Irish College of Psychiatry website, Garda Síochána website, National Service Users Executive website and other HSE and micro sites, would enable the currency of competencies and capabilities of mental health professionals to remain optimal. The possibility of developing common modules which could be shared on a number of these sites exists, e.g. Assisted Admissions (from different perspectives), or reusable learning units could be developed for use in other health or social care programmes, e.g. approaches to culture and diversity.

Over the past several months the project team has invested considerable time and effort in partnership with HSE and in the planning and design of the hub and the conversion of learning materials into eLearning formats.

## High Court and Supreme Court Case Costs

Listed below are details of HSE legal costs associated with the introduction of the Mental Health Act, 2001. We have tracked High Court and Supreme Court Decisions and have obtained whatever detailed information is currently available on the costs of these cases. Not all cases are listed and in many cases costs are incomplete, mainly due to the time delay in submission of applicant's costs or referral to legal cost accountants for determination. At this time we do not have a record of Circuit Court activity costs.

The range of costs is from €352,000 at the top end to €9,118 at the lowest end of the scale. This covers a period of two and a half years to May, 2009.

*\*\* Cases from both High Court & Supreme Court*

JUDGEMENT DATE	COSTS
02.2007	€352,276.94
02.2007	€25,005.62
03.2007	€9,118.00
03.2007	€60,831.30
04.2007	€187,593.30
04.2007	€66,218.69
05.2007	€106,685.95
05.2007	€125,834.87
05.2007**	€111,117.97
06.2007	€49,069.14
06.2007	€46,536.60
08.2007	€53,824.46
01.2008	€109,248.86
02.2008**	€166,279.76
Unreported 05.2008	€7,334.60
07.2008	€21,063.98
08.2008	€63,526.61
Unreported 10.2008	€62,875.78
Unreported 11.2008	€60,000.00 (€120,000 divided 50:50 – HSE : MHC)
12.2008	€127,443.59
12.2008	€62,686.42 (€125,372.83 divided 50:50 – HSE : MHC)
Unreported 01.2009**	Listed above
02.2009	€149,679.16
Feb 2009**	€28,535.67
03.2009	Listed above
05.2009	€77,751.25
<b>SUPREME COURT CASES</b>	
07.2007	Listed above
Unreported 02.2008	Listed above
05.2008	Listed above
12.2008	€4,835.70
<b>FINAL TOTAL : €2,135,374.22</b>	

## Conclusions and Recommendations

It is clear from the work undertaken in this project that the implementation of mental health legislation over the past number of years has had a significant impact on the delivery of mental health services and will continue to do so into the foreseeable future.

There is a requirement on all those who work in mental health services to have a good working knowledge of the legislation, the structures and processes governing the operation and delivery of mental health services and the procedures for involuntary admission and detention. As is evidenced by the level of court activity over the past three years failure to operate strictly in accordance with the provisions of the legislation in respect of involuntary admission and detention can lead to significant consequences for service users and families particularly in terms of distress suffered. It also impacts greatly on services in terms of staff time and exposure to considerable legal costs and can contribute to a preventable loss of confidence by the general public in mental health services. Failure by services to meet the requirements of rules and regulations associated with the legislation could lead to the loss of registration of their approved centre.

One of the features of the initial implementation of the legislation over the past three years has been the way in which the interpretation of some of its provisions, particularly in respect of involuntary admission and detention, is developing through case law. This has required HSE mental health services to keep abreast of these legal developments and to constantly review its operational and clinical practices in the light of new findings. It is therefore important for HSE mental health services to ensure that there is an ongoing mechanism for tracking and analysing mental health case law and using the results to inform the operation and delivery of services.

After initial scoping of the project brief and subsequent dialogue with key stakeholders the project team considered that an organisational learning strategy was a key requirement and invested considerable time and resources in its development. As part of this process and in consideration of the challenges pertaining to the development and delivery of workplace training in the current economic environment the project team explored the use of eLearning as an educational tool. The project team sought and received an extension of their brief to enable them to work with HSELand in developing a mental health micro site with eLearning programme content. This micro site is now available and decisions will be required in relation to its operation, maintenance and development.

It is an established pattern that new legislation attracts legal action to test the robustness and interpretation of its provisions. In the first three years of the full operation of the Mental Health Act 2001 over 30 High Court judgements have been recorded in relation to it and 6 of these were appealed to the Supreme Court. Two of these judgements have led to amendments to the legislation in 2008 and 2009. A considerable amount of learning has accrued from this activity and

the project team has sought to provide a pathway into that learning through the development of an index of court judgements.

This is being made available as a stand alone document and should prove a very useful companion guide for all mental health staff closely involved in procedures for involuntary admission and review of detention.

There are significant costs involved in the kind of legal activity that has been associated with the Mental Health Act. The project sought to determine what costs had accrued to the HSE in respect of the High Court and Supreme Court cases and has achieved a partial determination of case related costs. There are however other legal costs that have not been determined because the scope of the task proved prohibitive. These include the cost of Circuit Court hearings and the cost of a range of legal advices sought, either corporately on behalf of HSE or locally in respect of the legal aspects of care of individual service users.

There is a broad consensus that the implementation of the Mental Health Act 2001 has enhanced the status of users of mental health services through the establishment of the Mental Health Commission and the various provisions made in respect of involuntary admission and the review of detention of those so admitted. As this report illustrates the implementation of the Act is presenting considerable challenges to the mental health delivery system and these challenges will continue into the foreseeable future. To ensure that mental health services continue to be properly equipped to meet these challenges the project team makes the following recommendations to the HSE:

1. Adopt the Organisational Learning Strategy proposed in this report as the most efficient means of ensuring an ongoing programme of education
2. Develop and maintain an ongoing programme of education for all mental health staff in mental health legislation to include induction and refresher programmes and tailored programmes for those undertaking specialist roles as outlined in the legislation
3. Identify and plan for emerging education and training needs arising from Mental Health Act legal activity
4. Support and expand the mental health micro-site and eLearning programmes developed during this project
5. Implement **Guidance on seeking legal advice and going to court** as developed by the project and contained in this report

- 6.** Develop a mechanism for tracking mental health case law and ensuring that it continues to inform the operation and delivery of mental health services
  
- 7.** Actively engage in workforce planning to ensure an ongoing cohort of suitably trained personnel commensurate with the needs of the service
  
- 8.** Monitor existing education and training programmes to ensure that they contribute positively and add value to service user experience and service delivery
  
- 9.** Establish a group with appropriate authority and skill mix to lead on the implementation of these recommendations







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Health Service Executive