



HSE Legal Activity Project

Mental Health Acts 2001 - 2009
Index of Legal Cases 2006 - 2009



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

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Mental Health Acts 2001 - 2009
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Meeting the Determinants of a
Quality Mental Health Service



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Mental Health Act 2001 Court Judgements

2006- 2009 brief index

Set out in this document is a brief index of High Court and Supreme Court judgements issued between December 2006 and 1st November 2009 relating to the Mental Health Act 2001, spanning the first 3 years since the commencement of Part 2 of the Act. From a mental health service provision perspective the implementation of the legislation has been very welcome, providing as it does enhanced protections of the rights of service users and some additional leverage in assuring high quality in mental health services. It has also however been a challenging period for mental health services in terms of grappling with the legal dimensions of service provision as is illustrated by the scale and complexity of the cases referenced in this index.

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 to accessing any judgement that might be considered pertinent. The index also seeks to relate the outcome of court judgements to mental health service practices.

Please be advised that 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. The index has been put together by HSE mental health service personnel who have developed a working knowledge of the legislation from a mental health service delivery perspective. No legal advice has been sought or used in the compilation of the index.

High Court Decisions

NO	CASE	ISSUE	DECISION	IMPLICATION
1	O'Higgins 21st Dec 06 Q v St Patrick's Hospital and MHC and MHT (Unpublished)	Invoking S23 to effect S24	Detention unlawful as S23 must be invoked to effect S24	Holding powers policy
2	Clarke 21st Dec 06 (unpublished)	Invoking S23 to effect S24	S23 must be invoked to effect S24	Need to get legislative change to correct anomaly Holding powers policy
3	Pearl 28th Feb 07 AMC v St Lukes Clonmel	Signing of renewal order	Signing of renewal order is effective date that is used to calculate the date of review of the order for tribunal purposes	Renewal orders should be signed as near as possible to expiry of admission order or previous renewal order to avoid foreshortening the period within which the MHT review the order.
http://www.courts.ie/judgments.nsf/6681dee4565ecf2c80256e7e0052005b/a86e73f4d8800437802572ba003b1afa?OpenDocument&Highlight=0,2006				
4	Clarke 6th Feb 07 JH v CD Cavan and MHC	Lawfulness of detention and operation of S72	Detention deemed unlawful but order made to facilitate application for involuntary admission on grounds that person unwell	Requirement to check the lawfulness of detention orders preceding transition to MHA 2001 Only an issue under the transitional provisions for the implementation of the MHA 2001
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/e8537345bfe4c09e8025735600385640?OpenDocument				
5	O'Neill 2nd March 07 MR v CD Sligo and CB	The validity of the renewal order on the grounds that no mental disorder existed As there was no serious likelihood of causing immediate and serious harm to self or others	Upheld the validity of the renewal order on the basis that decision of Tribunal was warranted by the information before it	Opined that Form 8 should be amended to record decisions in relation to compliance with provisions of S 9,10, 12, 14,15 and 16 separately from each other. Suggests that it should not be necessary to make a choice between 3.1.a and 3.1.b in terms of criteria
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/5c90249cd4da16f280257356003b4691?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
6	Finlay Geoghan 20th March 07 JD v CD of CMH	Enquiry relating to Section 189 of the Mental Treatment Act 1945	Unlawful detention as period of detention not specified as requested by Section 189	Importance of adhering to statutory requirements
7	Peart 24th April 07 AM v CD CMH and MHC and MHT	The effect of an early renewal under Section 184 of the Mental Treatment Act 1945 is to have the renewal expire six months from the date the renewal order was signed (18th Feb 07) rather than six months from when the previous renewal order would have expired (24th Feb 07) thus invalidating a renewal order made on 19th February 07 and affirmation of said renewal order by Tribunal on 20th Feb 07	The effect of early renewal was to foreshorten the initial renewal period under the 1945 Act and invalidate a further renewal period made after the expiry of the foreshortened renewal period	Indicates the importance of giving accurate notification to the patient about when the period of detention expires
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/b8b5b34d01f1c379802572d6003a39e0?OpenDocument				
8	Charleton 25th April 07 TOD v Clinical Director CMH and MHC	Gaps in valid detention orders	Validity of current detention order is provided by the Mental Health Tribunal order as per S18.1 "I would specifically hold that the purpose of S18(1) of the Act is to enable the Tribunal to affirm the lawfulness of a detention which has become flawed due to a failure to comply with relevant time limits." "I would expressly hold that if at a time when the High Court considers an application for habeus corpus, a period of unlawful detention has been cured validly by a decision of the Mental Health Tribunal under S18(1) of the MHA 2001 that the remedy is no longer available."	The powers of a Mental Health Tribunal to make decisions and validate admission/ renewal orders is affirmed.
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/c4304062dc043f68802572d50038e526?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
9	McGovern J 04 May 2007 JB v Director of CMH	Lawfulness of a second consecutive Order for the detention of a patient under S 184 of the 1945 Mental Treatment Act	<i>"On the particular facts of this case I am satisfied that the resort to a second order under S184 and the extensions made there under were permissible and justified and I therefore hold that the applicant's detention under the said orders, as extended, was lawful."</i>	None at this stage
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/ca2c362c6070f65e80257360004d5786?OpenDocument				
10	O'Neill 15th May 07 WQ v MHC and Director of CMH	Defects in the lawful detention of the patient i.e. no tribunal held as provided for in S72 (transition arrangements) which rendered subsequent renewal orders invalid	<p>S19 provides for curing of "insubstantial" defects only. Three defects in this case:</p> <ul style="list-style-type: none"> • No review of S184 detention as provided for in S72 • No tribunal convened as provided for in S17 to conduct review • Dr did not have right to make a renewal order as she was not member of staff of Approved Centre <p>While the defects invalidate the detention the fact that the defects were not brought to attention of either a Tribunal or the HC at the time effectively renders their later challenge inimical to good order and ultimately not in the best interests of a person suffering from a mental disorder</p>	<p><i>"...best interests of the person... are secured by a faithful observance of and compliance with the statutory safeguards put into the 2001 Act..."</i></p> <p>Query of right of CP to make a renewal order when not a member of staff of the Approved Centre</p>
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/917f04e2bf59d61f802572ea002d487d?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
11	Peart 22 May 07 RW v ST JOG	Relates to interpretation of transitional arrangements provided for in Section 72 of the Act	<i>"I am satisfied that the relevant provisions have been complied with, and that the detention of the applicant is in accordance with law."</i>	None at this stage
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/33a48b2c709c993c8025730000555e09?OpenDocument				
12	Peart 24 May 07 MD v St Brendans Hospital and MHC and MHT This decision was appealed to the Supreme Court	A renewal order in accordance with S15 was made 5 days before the Tribunal to review the Admission Order had sat. Questioned the jurisdiction of the Tribunal to review admission order in such circumstances. Notice given to patient of renewal order fails to state under which order he is being detained.	A renewal order takes effect only at the end of the previous order (ie no overlapping of orders), where the previous order has been reviewed and confirmed. The patient retains the right to the review of the admission order even if a renewal order has been made ahead of the MHT and still has a right to review of the new renewal order.	Renewal orders only come into effect on the expiry of previous valid order of detention.
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/71bfc9b75409c49980257300005b6f7b?OpenDocument				
13	Peart 25th June 07 JH v Jonathan Swift Clinic, St James's Hospital	Not listed		
14	MacMenamin 15 June 07 JB v CD CMH and MHC and MHT	Renewal order can only be made pursuant to S15 (2) [or (3)] by the consultant psychiatrist responsible for the care and treatment of the patient. Contention that the consultant who made the order was not the consultant responsible for the care and treatment of the patient	Renewal order valid. Legislation does not preclude the involvement of more than one consultant psychiatrist in responsibility for the care and treatment of the patient provided: <i>"that consultant psychiatrist making an order must be truly engaged in the care and treatment of the patient, that is involved in the administration of physical, psychological and other remedies relating to that patient's care and rehabilitation in accordance with the definition under S2 of the Act of 2001."</i>	Requirement to provide evidence that the consultant psychiatrist making an order is engaged in the ongoing care and treatment of the patient, or that the consultant psychiatrist was caring for the patient during the absence of the consultant psychiatrist ordinarily responsible for the care and treatment. (O'Neill)
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/13262b1d83366fae802573150035692e?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
15	Sheehan 15th August 07	Not listed		
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/ca2c362c6070f65e80257360004d5786?OpenDocument				
16	Peart 29th Nov 07 McG v Medical Director Mater Hospital	Non compliance with S22 invalidated detention	In the particulars of the case the transfer of the patient was done as a matter of medical necessity in the patients best interests and though not arranged by the clinical director did not render the detention unlawful	When it is necessary for a detained patient to be moved to a hospital or place which is not an approved centre for medical treatment this must be arranged by the clinical director.
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/e89ab61e1a6000ea802573cb0052ec3f?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
17	<p>Feeney 17th January 2008 RL v St Brendans Hospital and MHC</p> <p>This decision was appealed to the Supreme Court</p>	<p>Irregularities in the removal of the person to the approved centre under Section 13</p> <ol style="list-style-type: none"> 1. Request for assisted admission not made by RMP who made the recommendation 2. Lack of evidence that applicant could not remove the person to the A Centre 3. Removal not conducted by staff of the approved centre 	<p>Admission order was properly made and the patient validly detained</p>	<p>A breach of section 13 does not invalidate a correctly made admission order.</p> <p>Care should be taken to ensure that as per S13 (2) where the applicant is unable to arrange for the removal, the registered medical practitioner who made the recommendation requests the clinical director or a consultant psychiatrist acting on his behalf to arrange the removal of the person to the approved centre. The issue of who constitute "staff of the approved centre" was interpreted in O'Keefe 21st May 2009 EF v Clinical Director, St Ita's Hospital. On foot of this judgement an amendment was introduced to the MHA 2001 in the Health (Miscellaneous Provisions) Act 2009 making provision for "authorised persons" who are not members of staff of the approved centre to remove a person to an approved centre (Section 71 A MHA 2001).</p> <p>See also Dunne 26th February 2009 SC v Clinical Director, St Brigid's Hospital Ardee, McMahon 20th January 2009, CC v Clinical Director, St Patrick's Hospital and Hardiman 15th Feb. 2008, RL V's Clinical Director, St. Brendans</p>
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/a11314f6f1b96df4802573fe004f8b1d?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
18	Peart 1st February 2008 MM v CMH	Consultant other than the consultant psychiatrist responsible for the care and treatment of the patient had signed the renewal order invalidating his detention	Detention lawful. In the particulars of the case the consultant who signed the order had a close and ongoing involvement with the care and treatment of the applicant	<p>There can be more than one consultant psychiatrist responsible for the care and treatment of the patient provided that there is clear evidence of that consultants involvement in the ongoing care and treatment of the patient</p> <p>Distinguished between the WQ case and this case as the CP was at all material times involved with the care and treatment of the patient and not just a review of the patient (as in the WQ case).</p> <p>Where a RCP is on leave it is reasonable for another psychiatrist who was involved with the care and treatment of the patient could lawfully make an order.</p>
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/43d6d8a961c7e5b28025740500332d40?OpenDocument				
19	Charleton 30th May 2008 DH v President of the Circuit Court and a range of doctors and MHC and MHT	Challenge to decision of President of Circuit court to strike out appeal under S19	Decision of President of CC correct as appeal only relevant where patient still detained. Appeals should be heard promptly	Appeals need to be heard promptly while the patient is being detained.
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/3bdd0d17785f7f6e802574900034ff86?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
20	Pearl 28th July 2008 MZ v Tallaght Hospital Board	Detention unlawful on following grounds 1. S 12 process initiated and not concluded 2. Examination by RMP not as defined in the Act 3. Delay between arrival and admission – examination not carried out “as soon as may be” 4. Delay in notification of admission to MHC in breach of 16(1)	Detention valid – nothing impermissible in use of S9 following S12 detention	
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/c4cb27bb084e116d802574b100347b38?OpenDocument				
21	Hedigan 18th August 2008 FW v DoP James Connolly Memorial Hospital	Initial order found to be invalid due to the applicant (spouse) being disqualified from making an application under Section 9(8). Claim that the patient was not released in reality from the initial illegal detention and the Gardai or the RMP did not act independently due to they being contacted by the treating CP before being detained under Section 12 and the recommendation being made.	Detention found to be valid on the grounds that the CP had acted in the best interest of the patient and by contacting the RMP and the Gardai had not been deemed to affect the independence of their actions.	Patient informed of the possibility of a recommittal process does not invalidate their release. Patients being released should not “ depart into the night with no arrangements to ensure their safety and wellbeing ” (Hedigan, 2008). A discharge plan should be completed prior to all discharges to ensure arrangements are made for the safety and welfare of the patient. Plans may need to be put in place to recommence the involuntary admission process (outside of the approved centre) before a patient is discharged from the approved centre.
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/f30aaa2a3c3b6546802574c10047c43d?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
22	O'Keefe 24th October 2008 TS v Mental Health Tribunal, AG and Minister for Health and Children, MHC	Appeal of a MHT decision to the CC and a application to the High Court re the burden of proof being S19(4) with the patient to prove they do not have a Mental Disorder is unconstitutional.	Section 19(4) of the MHA 2001 not found to be unconstitutional.	
23	McMahon 31st October 2008 SM v MHC, MHT and St Patrick's Hospital Dublin	CP failed to specify the length of time the Renewal Order would last.	Renewal Order found to be invalid on the grounds that the CP did not specify the period of detention in accordance with section 15.	<ul style="list-style-type: none"> • Detention should be as long as is necessary to achieve the necessary result and not arbitrarily for the maximum period of detention. • The CP must specify (and document) the period of detention which must be within the range of the Renewal order concerned. • MHC forms amended
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/1ddc80309072af62802575bc002f8cc7?OpenDocument				
24	Peart 25 Nov. 2008 EJW v CD of St. Senan's and the MHC	<p>Patient did not have capacity to consent to allow access to the legal rep to the patient file.</p> <p>The hospital has a constitutional and statutory duty to ensure the legal rep has access to the patient record (where the patient does not have the capacity to consent). Not allowing access to the patient file is a breach of their human rights and fundamental freedoms.</p> <p>Argument that releasing the patient record without consent would constitute a breach of duty to the patient and a breach of ethical standards of the individual medical practitioner.</p>	<p>It would not constitute a breach of duty of confidentiality to release the file to the legal rep as soon as practicable after it is made aware of their appointment.</p> <p>Hospital may await the decision of a tribunal where they are concerned about third party information.</p>	<p>MHC must appoint a legal representative even if the patient refuses one.</p> <p>Can withhold file in cases where there is concern over 3rd party information (policy)</p> <p>Role of the Legal Rep. is not confined to the MHT review.</p> <p>Safeguarding of 3rd party information in the patient file needs to be the subject of a policy.</p> <p>In exceptional cases the hospital or treating consultant may await the decision of the tribunal in relation to the access of the legal rep to the patient's notes.</p>

NO	CASE	ISSUE	DECISION	IMPLICATION
25	Feeney 9th December 2008 AR v Clinical Director, St Brendan's Hospital	Challenge that a RR/O made under the 2008 act was void for uncertainty due to incorrect completion by the CP of paragraph 11 (specifying the period of detention) of the replacement R/O	Detention lawful on the grounds that the period of detention (despite an error in paragraph 11) was in fact specified by a date in this paragraph.	Highlighted the scope for inconsistencies between phrases and dates on MHC forms. MHC forms subsequently changed to account for this.
26	McCarthy 12th December 2008 PG v Clinical Director, St Michaels Unit, South Tipperary	Replacement renewal order (under MHA 2008) expired before being reviewed by a MHT	Review could not take place due to the short period of time and the subsequent renewal order was found to be valid.	This is a once off situation relating to the 2008 Act.
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/a3d4f458301cdb608025757e0041bd58?OpenDocument				
27	McMahon 20th January 2009 CC v Clinical Director, St Patrick's Hospital	Patient was illegally detained by Gardai before being brought to the Approved centre. Therefore the detention was illegal.	Detention found to be legal as what happened before the admission did not affect the making of an admission order and the MHT had no jurisdiction to review Gardai action. Also the admission order was completed in accordance with the MHA 2001.	<i>"Had the staff of the AC embarked on an enquiry of how the patient came to the hospital instead of her medical condition, they would have failed in their statutory duties which they owed to the applicant". (McMahon, 2009)</i> See also Dunne 26th February 2009 SC v Clinical Director, St Brigid's Hospital Ardee, Feeney 17th January 2009 RL v Clinical Director, St Brendan's Hospital, and Hardiman 15th Feb. 2008, RL V's Clinical Director, St. Brendans Duty of care established where a patient has been detained illegally may not be released immediately if they are deemed to be vulnerable or suffering from an incapacity until arrangements have been made for their safety and welfare. i.e. transport home and handover of care to a responsible person. See also Hedigan 18th August 2008 & Peart 15th May 2009
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/84bc6a2accf7600580257559004ddb94?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
28	<p>Hedigan 6th February 2009 CC v Clinical Director, St Patrick's Hospital</p> <p>This decision was appealed to the Supreme Court</p>	<p>MHT did not consider a previous revoking of an A/O (5th Jan 2009) when reviewing a new A/O of the 15th Jan 2009 and therefore the detention was unlawful as the patient had not been considered to have a mental disorder on the 5th of Jan 2009.</p> <p>Claim that the second psychiatrist should not be staff of the approved centre rather an independent psychiatrist.</p>	<p>Detention lawful as the MHT decision does not effect future clinical decisions.</p> <p>There is no statutory provision for an independent psychiatrist under Section 24, and another consultant psychiatrist on the staff of the centre may certify a patient under this section.</p>	<p>No statutory provision for an independent psychiatrist under Section 24</p> <p>MHT decision does not influence future clinical decisions.</p>
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/84bc6a2accf7600580257559004ddb94?OpenDocument				
29	<p>O'Neill 6th February 2009 EH v Clinical Director, St Vincents Hospital, Elm Park</p> <p>This decision was appealed to the Supreme Court</p>	<p>Initial A/O was revoked by MHT as there was an error on the documentation.</p> <p>Patient was treated as a voluntary patient and she attempted to leave the approved centre. Section 23 invoked Submission was that the patient was not in fact a voluntary patient and was not free to leave and lacked the capacity to become a voluntary patient due to her illness.</p>	<p>Detention found to be valid</p>	<p>Patients whose A/O or R/O are revoked are considered voluntary patients (including those where capacity to consent is an issue).</p> <p>If it is clinically indicated the involuntary status can be reinstated in accordance with Section 23, 24.</p>
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/84bc6a2accf7600580257559004ddb94?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
30	<p>Dunne 26th February 2009 SC v Clinical Director, St Brigid's Hospital Ardee</p> <p>This decision was appealed to the Supreme Court</p>	<p>No family member available to make an application.</p> <p>Patient reviewed by two C.P. and recommended patient was a danger to self and others.</p> <p>Section 12 (Gardaí) used.</p> <p>On the A/O CP did not tick box indicating the patient is a danger to self or others.</p> <p>Issue was the use of Section 12 of the MHA 2001 as apposed to section 9 therefore detention was invalid.</p>	<ul style="list-style-type: none"> • Gardaí were correct to use Section 12 as they had information to indicate the patient was a danger to himself or others. • The fact that the Cp did not find the patient a danger to himself or others on completion of the admission order did not invalidate the order even if the Gardaí used Section 12. i.e "a breach of section 12 would not affect the subsequent process by which someone is detained" 	<p>A breach of sections of the act before a patient is presented for admission do not violate the making of an admission order.</p> <p>See also Peart 17th January 2008, RL v St Brendans Hospital and MHC, Feeney 17th January 2009 RL v Clinical Director, St Brendan's Hospital, McMahon 20th January 2009, CC v Clinical Director, St Patrick's Hospital and Hardiman 15th Feb. 2008., RL V's Clinical Director, St. Brendans</p>
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/a691f7a7b7a405878025758500420cbb?OpenDocument				
31	<p>O'Keefe 13th March 2009 AR v Clinical Director, St Brendan's Hospital</p>	<p>Due to the CP not ticking box to indicate the patient suffers a mental disorder where... The R/O form was invalid and could not be affirmed by the MHT</p>	<p>MHT could use section 18(1)(a)(ii) to correct the error on the form having considered all the other evidence.</p> <p>Detention lawful</p>	<p>MHC forms need to be completed diligently by the CP to ensure compliance with the MHA 2001.</p>

NO	CASE	ISSUE	DECISION	IMPLICATION
32	Peart 15th May 2009 M.McN v The HSE L.C. V The HSE	<ol style="list-style-type: none"> 1. Neither patient had the mental capacity to make a full and informed decision to remain in the mental health services on a voluntary basis. 2. De facto detained as a result of being in a locked unit. 3. Patient not free to leave the unit unless in the company of a family member. 	<p>Distinguishes between the L Case (BourneWood Gap)</p> <p>And these cases on the grounds that these patients were involuntarily admitted in the first instance.</p> <p>Patients were free to leave in the company of a responsible person.</p> <p>Treatment being provided was in the best interest of the patient and was a duty of care on behalf of the HSE.</p> <p>If a patients condition improves i.e. criteria for mental disorder is not met section 28 must be invoked by the treating consultant (i.e. revoke the admission/renewal order)</p> <p>Decisions to revoke are solely made by the treating consultant.</p> <p>The HSE has a Duty of care to vulnerable clients. Where clients are unable to look after themselves it is reasonable that they should be in part of a hospital where they cannot leave unnoticed.</p> <p>Vulnerable patients are allowed to leave secure units but only in the company of a responsible family member.</p> <p>Definition of Voluntary patient makes no reference to capacity.</p> <p>Section 29 Does not make any reference to capacity in respect of a determination that the patient stayed as a voluntary patient following the revocation of an order.</p>	<p>Form 14 amended.</p> <p>Case may be taken in the future in relation to a decision to revoke and discharge without reasonable medical or clinical basis.</p> <p>Decision affirms previous cases where duty of care arose.</p> <p>See Hedigan 18th August 2008</p> <p>FW v DoP James Connolly Memorial Hospital</p>
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/31a9fdf80733e686802575d2003bdc31?OpenDocument				

NO	CASE	ISSUE	DECISION	IMPLICATION
33	O'Keefe 21st May 2009 EF v Clinical Director, St Ita's Hospital	Patient admission was not arranged in accordance with section 13(2) of the MHA namely she was removed to the approved centre by persons not members of staff of the approved centre (Nationwide Health Solutions)	Patient was not brought to hospital by staff of the approved centre rather by staff of Nationwide Healthcare Solutions and this was not in accordance with section 13(2) of the MHA 2001	There has been an amendment to the legislation to allow assisted admissions to be completed by Kalbay and staff of the approved centre.
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/c2327e2c1874f94a802575e8003428c8?OpenDocument				

Supreme Court Decisions

NO	CASE	ISSUE	DECISION	IMPLICATION
1	Hardiman 27th July 2007 MD v Clinical Director, St. Brendans	<p>Renewal Order made before the A/O was reviewed by the MHC and the patient was not informed of this (patient notification form not ticked).</p> <ul style="list-style-type: none"> • When did the R/O become effective? • Was the A/O invalid due to the making of the R/O? • A/O not invalid as it lasts for a period of 21 days 	High Court decision upheld.	Patient has an absolute right to be informed of their detention
http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/6f95872fa20b3cb9802575de00362b06?OpenDocument				
2	Hardiman 15th Feb. 2008. RL v Clinical Director, St. Brendans	Do breaches of Section 13 prevent the making of an A/O	<p>If there was a breach to Section 13 it did not affect the A/O.</p> <p>High Court decision upheld.</p>	<p>Changes to legislation to enable outside providers effect removals.</p> <p>See also Dunne 26th February 2009</p> <p>SC v Clinical Director, St Brigid's Hospital Ardee, Feeney 17th January 2009</p> <p>RL v Clinical Director, St Brendan's Hospital, McMahon 20th January 2009, CC v Clinical Director, St Patrick's Hospital and Hardiman 15th Feb. 2008., RL V's Clinical Director, St. Brendans</p> <p>(Breach of MHA 2001 however <i>"it would seem ludicrous to provide by statute for a position that if no nurses or other staff were available, it could not happen at all"</i>)</p>

NO	CASE	ISSUE	DECISION	IMPLICATION
3	Geoghegan 7th May 2008 MM v Clinical Director, Central Mental Hospital	<p>No family member available to make an application.</p> <p>Patient reviewed by two C.P. and recommended patient was a danger to self and others.</p> <p>Section 12 (Gardaí) used.</p> <p>On the A/O CP did not tick box indicating the patient is a danger to self or others.</p> <p>Issue was the use of Section 12 of the MHA 2001 as apposed to section 9 therefore detention was invalid.</p>	<ul style="list-style-type: none"> • Gardaí were correct to use Section 12 as they had information to indicate the patient was a danger to himself or others. • The fact that the CP did not find the patient a danger to himself or others on completion of the admission order did not invalidate the order even if the Gardaí used Section 12. i.e "a breach of Section 12 would not affect the subsequent process by which someone is detained" 	<p>A breach of sections of the act before a patient is presented for admission do not violate the making of an admission order.</p> <p>See also Peart 17th January 2008, RL v St Brendans Hospital and MHC, Feeney 17th January 2009 RL v Clinical Director, St Brendan's Hospital, McMahon 20th January 2009, CC v Clinical Director, St Patrick's Hospital and Hardiman 15th Feb. 2008, RL V's Clinical Director, St. Brendans</p>
4	Hardiman 5th December 2008 SC v Jonathan Swift Clinic, St James's Hospital	<p>Due to the CP not ticking box to indicate the patient suffers a mental disorder where... The R/O form was invalid and could not be affirmed by the MHT</p>	<p>MHT could use section 18(1)(a)(ii) to correct the error on the form having considered all the other evidence.</p> <p>Detention lawful</p>	<p>MHC forms need to be completed diligently by the CP to ensure compliance with the MHA 2001.</p>
5	Kearns 23rd January 2009 CC v CD of St Patrick's Hospital	<p>Challenging High Court decision of Justice Hedigan that the patient was in lawful detention where, subsequent to a finding of a MHT that a patient is no longer suffering from a mental disorder, the person is subject to involuntary detention and admission in accordance with S23,24</p>	<p>Appeal refused because applicant conceded that detention order was valid and court thought the matter should be enquired into by way of judicial review rather than habeus corpus</p>	<p>Power to detain and admit under S23 and 24 unaffected</p>
6	Hardiman 13th March 2009 SC v Clinical Director, St Bridget's Hospital, Ardee	<p>Appealing the High Court decision of Justice Dunne (see No. 30 - High Court Index)</p>	<p>Upheld decision of Justice Dunne that SC was been detained in accordance with law</p>	

NO	CASE	ISSUE	DECISION	IMPLICATION
7	Kearns 28th May 2009. EH v Clinical Director, St Vincents Hospital	Appeal of EH V's Clinical Director, St Vincents Hospital 24th Feb 2009 to the Supreme court ie the patient was not truly a voluntary patient following revoking of the A/O due to her medical condition	High Court decision upheld.	<p>Judge Kearns stated that the HSE "have at all times acted in the best interests of E.H. within the meaning of S4 of the Mental Health Act 2001."</p> <p>Furthermore Judge Kearns stated that <i>"These proceedings were initiated and maintained on purely technical and unmeritorious grounds. It is difficult to see in what way they advanced the interests of the applicant who patently is in need of psychiatric care. The fact that S17(1) (b) of the Act of 2001 provides for the assignment by the commission of a legal representative for a patient following the making of an admission order or renewal order should not give rise to an assumption that a legal challenge to that patient's detention is warranted unless the best interests of the patient so demand. Mere technical defects, without more, in a patient's detention should not give rise to a rush to court, notably where any such defect can or has been cured -as in the present case. Only in cases where there has been a gross abuse of power or default of fundamental requirements would a defect in an earlier period of detention justify release from a later one."</i> (Kearns, 2009).</p>



Feidhmeannacht na Seirbhíse Sláinte
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