APPROVED **[2024] IEHC 408**

THE HIGH COURT

IN THE MATTER OF AN INQUIRY PURSUANT TO ARTICLE 40.4.2° OF THE CONSTITUTION OF IRELAND

2024 969 SS

BETWEEN

A.A. (ANONYMISED)

APPLICANT

AND

CLINICAL DIRECTOR OF THE ASHLIN CENTRE

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered *ex tempore* on 3 July 2024

1. This is my ruling in this matter. The ruling is obviously delivered today *ex tempore*. However, I will arrange to have it typed up and circulated to the parties in the next number of days. Given the sensitivity of the case, I am going to indicate the outcome now, rather than leaving the parties in suspense. I am going to make an order directing the release of the Applicant. I will now set out the reasons for that decision.

NO FURTHER REDACTION REQUIRED

2. This matter comes before the High Court by way of an application for an inquiry pursuant to Article 40.4.2° of the Constitution of Ireland. That procedure, which is an informal procedure, allows any person—either on their own behalf or on behalf of another person—to apply for an inquiry into the lawfulness of the detention of an individual. That applies equally to somebody who is detained under the Mental Health Act 2001 as it does to somebody who is detained in a place of incarceration or imprisonment.

3. In the present case the Applicant made an informal complaint to the High Court yesterday (2 July 2024). The application for an inquiry was assigned to me by the judge managing the Judicial Review List (Bolger J.).

4. At my direction, the High Court Registrar assigned to the case contacted the Approved Centre and asked, first, for confirmation that the Applicant was being detained there, and, secondly, the basis upon which that detention was being exercised. In response to that inquiry, the Registrar received a number of documents including, relevantly, the application for involuntary admission, the recommendation, and the ultimate admission order. Those documents were sent to me as the judge assigned to the case. Having considered same, I was satisfied that the low threshold for the opening of an inquiry under Article 40.4.2° was met. I had concerns, particularly in relation to the paucity of reasoning in all three documents, as to the lawfulness of the detention.

5. An order was, therefore, made opening an inquiry and an order made directing the production remotely, i.e. by video link, of the Applicant before the High Court this morning (3 July 2024). When the case was opened this morning, it became apparent that the Applicant wished to avail of the opportunity to obtain legal representation. As it happened, unbeknownst to her, the Applicant had

already had a solicitor nominated as part of the statutory process leading to a hearing before the Mental Health Tribunal. The solicitor attended at the Approved Centre this morning and was ultimately instructed in the matter and instructed to brief counsel. The application for an inquiry was made returnable this afternoon before me at 4 o'clock.

6. In relation to the procedure at the inquiry, I heard submissions from both sides from counsel and I am very grateful for those submissions. Counsel for the Respondent had prepared a very helpful book of authorities, including at least one significant judgment which has not yet been published on the courts.ie website: *[Name Redacted] v. Clinical Director of Jonathan Swift Clinic*, unreported, High Court, Ferriter J., 8 March 2024. I am very grateful to be directed to that judgment.

7. There was an application to adduce oral evidence on behalf of the Respondent. I agreed that evidence could be heard *de bene esse* from the consultant psychiatrist who had signed the Admission Order. I explained that in hearing that evidence I was not making any finding, at that stage, as to the *admissibility* of same. In particular, I was not making any finding as to whether it was open to the Respondent to mend their hand, as it were, in the event that the court decided that the paperwork was not in order. I heard oral evidence. I am grateful to the consultant psychiatrist for attending. I will refer to that evidence as necessary in due course.

8. It may be of assistance at this stage for those who are reading the typed version of this *ex tempore* judgment to set out, briefly, the key statutory provision which is at issue in this case. That is the definition of the statutory concept of "*mental disorder*".

9. The concept of "*mental disorder*" is defined as follows under section 3 of the Mental Health Act 2001:

> "In this Act 'mental disorder' means mental illness, severe dementia or significant intellectual disability where—
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> (a) 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
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> (b) (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
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> (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."

10. There is then a procedure set out for obtaining an admission order. In most cases—there may be exceptions in relation to certain cases of urgency—but in most cases it involves (i) an application, (ii) a recommendation, and then (iii) an admission order. It is relevant to this case to draw attention to the following provisions in relation to the application for a recommendation for an involuntary admission. That is provided for under section 9(1) of the Mental Health Act 2001 which provides, in relevant part, as follows:

> "(1) Subject to subsection (4) and (6) and section 12, where it is proposed to have a person (other than a child) involuntarily admitted to an approved centre, an application for a recommendation that the person be so admitted may be made to a registered medical practitioner by any of the following:
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> (a) the spouse or civil partner or a relative of the person,
>
> (b) an authorised officer,
>
> (c) a member of the Garda Síochána, or

> (d) subject to the provisions of subsection (2), any other person."

11. I pause here to note that, in this case, the application was made under that fourth category. The application was made, in fact, as I understand it by a nurse practitioner in the emergency department of Beaumont Hospital. The applicant was not somebody who falls within categories (a), (b) or (c) and that is significant for the following reason. Subsection 9(5) provides as follows:

> "(5) Where an application is made under subsection (1)(d), the application shall contain a statement of the reasons why it is so made, of the connection of the applicant with the person to whom the application relates, and of the circumstances in which the application is made."

12. That is significant because, as we will come to see, there is a paucity of reasons, in particular, in relation to the application under section 9.

13. It may be appropriate at this stage, before moving to the detail of the case, to say something about the proper limits of the role of the High Court on an application under Article 40.4.2°. It is important to note that there is a separate parallel remedy provided for under the Mental Health Act 2001. There is a procedure for review before the Mental Health Tribunal. There is an obligation that, in effect, any admission order must be reviewed by the Mental Health Tribunal within a period of 21 days and there is a process for that to happen. Thereafter, there is a statutory right of appeal from any decision of the Mental Health Tribunal to the Circuit Court. But it is also important to note that notwithstanding that careful statutory scheme, the High Court's jurisdiction under Article 40.4.2° is not displaced. It continues to remain available. It is open to an applicant—notwithstanding the fact that there is a statutory procedure—to make an application for an inquiry under Article 40.4.2°.

14. The proper limits and the scope of that inquiry procedure were considered by the Court of Appeal in *AB v. Clinical Director of St. Loman's Hospital* [2018] IECA 123, [2018] 3 I.R. 710. There, the Court of Appeal (*per* Hogan J.) held (at paragraph 104) that the jurisdiction of the High Court in Article 40 applications is confined to ensuring that the admission or renewal order is valid on its face and that there was no violation of constitutional rights or other serious legal error in the making of the order.

15. Hogan J. makes the point (at paragraph 99) that it is not for the High Court to set itself up as a surrogate decision-maker in relation to the mental health of the applicant; rather the High Court is concerned with the legality and constitutionality of the deprivation of liberty.

> "It is accordingly clear that the High Court could direct the release of an involuntary patient by way of an Article 40.4.2° application not only where the order in question was good on its face, but also where there had been a fundamental breach of constitutional rights or the existence of some other material defect in the process leading to the making of the detention order in question. But even no matter how brightly the beacon of liberty has heretofore shined to vindicate the constitutional rights of Article 40.4.2° applicants, an adjudication upon the purely medical merits of the detention of an involuntary patient under the 2001 Act seems to lie just outside the arc of that spotlight of review."

16. The principles in *AB v. Clinical Director of St. Loman's Hospital* were recently approved of by the High Court (Jackson J.) in *Clinical Director of the Department of Psychiatry XY Hospital* [2024] IEHC 169 (at paragraphs 3 and 4):

> "The important protections created by the Acts and the importance of such protections being created has been recognised in many decisions. In *I.F. v Mental Health Tribunal* [2019] IESC 44, [2020] 1 IR 604, Dunne J. stated:
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> > "It is important to emphasise that the thrust of the 2001 Act is the creation of significant protection for

> a patient who may be the subject of an involuntary detention. It has always been a hallmark of a constitutional democracy such as ours that the deprivation of the liberty of an individual is not to be lightly undertaken. This is so whether one is concerned with the situation of a person convicted of a criminal offence or a situation such as this where a person may be the subject of an involuntary detention by reason of the state of their mental health. It is not therefore surprising that the structure of the 2001 Act is predicated on the need to ensure that no one is deprived of their liberty without appropriate safeguards being in place which allow them to challenge the basis of their detention."
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> In this regard, it is important to recognise the whole scheme of the Acts which provide for a range of protections including the formation of professional opinions, the limitation of periods of detention, the completion of forms which include necessary information, the conveying of information concerning the statutory provisions invoked and the legal entitlements arising to the patient and review by an independent tribunal. The Acts comprise a suite of protections appropriate and necessary having regard to the nature of the individual rights being intruded upon. Over and above these statutory protections, is the protection afforded by the Constitution and, in particular, by the invocation of Article 40.4 in applications such as the present."

17. I respectfully adopt these passages as a correct statement of the law.

18. Turning then to the procedural history of the decision-making in this case, the application (for a recommendation for an involuntary admission) was made, in the first instance, on Sunday last (30 June 2024). That application was made, as I understand it, at 15.00 hours. The application, again as I understand it, was made by a nurse practitioner in the emergency department in Beaumont Hospital. The reason stated for making the application—which it will be recalled is a statutory requirement under subsection 9(5)—is as follows:

> "HUSBAND BROUGHT PATIENT IN TO ED, BIZARRE BEHAVIOUR PARANOID."
>
> *"ED" presumably stands for emergency department

19. In Box 9 of the statutory form, under the heading "*Circumstances in which the application is made*", the applicant for the admission order has written:

> "OBSERVED TO BE PARANOID AND PSYCHOTIC IN THE ED".

20. That is the extent of the reasons given for the application under section 9.

21. Thereafter, that application form seems to have been directed to a medical practitioner again in the same emergency department. He completes a recommendation form at 16.00 hours, i.e. an hour after the initial application. The reason stated is as follows at Box 11. The instructions in the form are: "*Give clinical description of the person's mental disorder*". There is then a pro forma opening statement: "*My opinion above is based on the following grounds*", followed by the handwritten text:

> "Presented with irrational and paranoid thoughts
> Evidence of psychosis on a background of schizoaffective disorder"

22. That is the extent of the detail provided in the recommendation.

23. It appears then that the Applicant was conveyed to the Approved Centre and arrived at 20:00 hours on Sunday 30 June 2024. The admission order is signed at 17.15 the next day (1 July 2024). Box 8 of the form requires the consultant psychiatrist to "*Give a clinical description of the person's mental disorder*". What is written there is as follows: there is a pro forma introductory sentence in print which reads "*My opinion above is based on the following grounds*." The consultant psychiatrist has then inserted the following in handwriting:

> "Grandiose & paranoid delusional beliefs, lacks insight into need for treatment"

24. That is the extent of the explanation provided in the admission order.

25. Before going on to consider the legality of those various steps, it is probably of

assistance to pause here, and to consider the nature and extent of the duty to give reasons in these types of cases. The leading authority on reasons in the context of the Mental Health Act 2001 is the judgment of the Court of Appeal in *F.C. v. Mental Health Tribunal* [2022] IECA 290. Now, it is important to emphasise that that judgment was delivered in respect of a challenge to a decision of the Mental Health Tribunal, which decision will have been reached following a formal proceeding. The decision-making in the present case occurred at a different stage in the statutory process. It is imperative that this distinction be borne in mind in reading the Court of Appeal judgment. Subject to that caveat, however, the following general principles are instructive.

26. The Court of Appeal emphasised that the answer to the question of whether the reasons given by a decision-maker are adequate is not only context-specific (in the sense of the legal context in which the decision is being made), but also case-specific in the sense that the issue turns on the specific language used in communicating the particular decision in the context of the hearing which has gone before, including the evidence adduced and the submissions made.

27. As to the first of these two matters, the Court of Appeal recalled that a decision which involves the involuntary detention of a mentally ill person is a decision which involves a serious restriction upon the fundamental right to liberty in respect of a vulnerable person. The Court of Appeal cited *M.D. v. Clinical Director of St. Brendan's Hospital* [2007] IESC 37, [2008] 1 I.R. 632 to the effect that the provision of reasons in the context of involuntary hospitalisation or detention is an "*absolutely essential part*" of the Mental Health Tribunal's functions.

28. As to the second matter, i.e. the language used in the decision itself in the context

of the evidence adduced at the preceding hearing, the Court of Appeal held that there is a balance to be struck. It is ultimately a question of substance and not form, and there must be an element of common sense and practicality in approaching the question of adequacy of reasons.

29. The Court of Appeal cited, with approval, the following extract from the decision of the UK Upper Tribunal in *HK v. Llanarth Court Hospital* [2014] UKUT 410 (AAC) (at paragraphs 12 to 16):

> "First, it would be helpful if tribunals were to set out their reasons by reference to the relevant criteria for detention. As Upper Tribunal Judge Jacobs observed in paragraph 9 of *JL v Managers of Llanarth Court and SOS for Justice* [2011] UKUT 62 (AAC), it might be better if tribunals were to set out their reasons under the headings provided by the legal questions they have to determine. I agree. Using headings within the statement of reasons makes it easier to show that the tribunal has dealt with each of the legal criteria it has to address. […]
>
> Second, the tribunal's reasons should address how the tribunal dealt with any disputes as to either the law or the evidence. If this is not done, the unsuccessful party might believe that the tribunal has ignored important issues. In particular, failing to address explicitly any applications made by one or other of the parties may render a set of reasons inadequate. Such an omission certainly makes it more difficult for a party to know why they have been unsuccessful and additionally raises doubt as to whether the tribunal has dealt fairly with that party's case. […]
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> Third, the reasons themselves must be clear and unambiguous. It is not for a party to deduce the reasons for a decision.
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> Fourth, rehearsing what each witness told the tribunal is, without more liable to render a set of reasons erroneous in law. What is required is to explain (i) what facts the tribunal found as a result of that evidence and (ii) what conclusions on those facts the tribunal reached.
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> Fifth, it is not necessary for the tribunal's reasons to mention all of the evidence in a case. It is entitled to be selective in its references to evidence in its reasons though it should, as I have indicated in paragraph 13 above, identify and resolve

evidence and applications which are in dispute."

30. The Court of Appeal stated its conclusions on the facts of the case before it as follows (at paragraph 68):

> "I am satisfied, therefore, that adequate reasons were not given in the present case albeit that only a little more by way of explanation would have been sufficient to satisfy the 'adequate reasons' requirement. Nonetheless, in a matter of such significance for the liberty of a vulnerable individual such as the appellant, an explanation should be explicit and unambiguous even if it is simple and short, in order to demonstrate that all the evidence was properly considered and ruled upon, and that the respondent was clearly satisfied from its conclusions on that evidence that the relevant legal criteria were fulfilled. Where persons suffering from mental illness participate in proceedings of the respondent by giving evidence, respect for not only their liberty but also their dignity, self-determination and autonomy requires that the decision-maker engage with their evidence and to explain, if it be the case, why it has not been accepted. Leaving inferences to be drawn is not sufficient. Accordingly, I would allow the appeal and grant a declaration that the decision was made in breach of the respondent's statutory duty to give reasons, pursuant to s. 18(5) of the 2001 Act. I am not satisfied that the existence of a Circuit Court appeal is a reason for refusing the declaration in circumstances where the central point in these proceedings was the communication of the reasoning of the tribunal and not the ultimate merits of the decision on the detention."

31. As I noted earlier, these principles, which govern the giving of reasons by the Mental Health Tribunal, cannot simply be "*read across*" to the duty to give reasons at an earlier stage in the decision-making process (including, in particular, the statutory duty to give reasons as required under section 9(5) of the Mental Health Act 2001). This is because the respective decisions (i) to apply for a recommendation for involuntary admission; (ii) to recommend a voluntary admission; and (iii) to make an admission order, are ones which are reached in a very different context. There will have been no formal hearing in advance. The legal effects of the respective decisions are short-lived: they eventuate in an

involuntary admission which is subject to mandatory review by the Mental Health Tribunal within a period of twenty-one days. Having regard to those factors, it is not to be expected that any of the decision-makers along the line under the Mental Health Act 2001 are required to engage in the same level of detailed reasoning as one would expect from the Mental Health Tribunal.

32. However, having said that, the decision-making is nevertheless part of a chain which potentially has profound effects for the person involved. It is also significant that the statutory requirement for reasons under section 9(5), at this point of the statutory process, is triggered in circumstances where the application is being made *other than* by (a) the spouse or civil partner or a relative of the person, (b) an authorised officer, or (c) a member of the Garda Síochána. It is clear that the Legislature mandated that an additional layer of protection was to apply in such a contingency, i.e. the express statutory duty to give reasons under section 9(5).

33. Whereas the reasons required need not reach the higher standard expected of the Mental Health Tribunal, they must nevertheless reach a minimal threshold. The reasons should indicate that the decision-maker has properly considered and applied the statutory criteria. It is not sufficient simply to recite the legislative provisions under the Mental Health Act 2001 without making some attempt to explain how the statutory criteria are met.

34. So bearing those principles in mind, I turn, then, to the various stages in the decision-making chain. The decision of most immediate relevance is, of course, the formal admission order. That is the document which is relied upon as providing the lawful authority for the detention of the applicant. The form of an admission order is prescribed by the Mental Health Commission. It is a statutory

obligation under the Mental Health Act 2001 that the admission order be in this format. The *pro forma* admission order sets out what is, in effect, a quotation from section 3 of the Mental Health Act 2001 at Part 7 of the form. The person filling in or completing the form is required to indicate whether the criteria under subsection (a) or subsection (b) or both have been met. In the present case, the consultant psychiatrist filling in the admission order has indicated that it is subsection (b) alone that is of concern. In those circumstances, it was necessary to explain at the next question or the next box, that is Box 8, the clinical description of the person's mental disorder. It is appropriate to pause here and recall that "*mental disorder*" has a very specific and a somewhat artificial definition under the Act. It does not mean, for example, mental illness. It requires more than that. Built-in to the concept of mental disorder are the various criteria set out under section 3. In the present case, the involuntary admission is grounded on the second limb of the statutory definition, and the implication seems to be that the involuntary admission of the Applicant had been justified because the severity of her mental illness had impaired her judgement, such that failure to admit her to an approved centre would be likely to lead to a serious deterioration in her condition, or would prevent the administration of appropriate treatment that could only be given by such admission, and further that the reception, detention and treatment of the Applicant in the approved centre would be likely to benefit or alleviate her condition to a material extent.

35. It was necessary, therefore, for the consultant psychiatrist completing the admission order to diagnose the proposed patient with a mental illness (at least on a preliminary basis), and then to identify whether there would likely be a serious deterioration in her condition without an involuntary admission, or,

alternatively, that the administration of appropriate treatment would be prevented without an involuntary admission. This presupposes that the decision-maker must identify, again at least on a preliminary basis, appropriate treatment or the risk of serious deterioration. None of that is evident from the form of the admission order. The most that is done in the admission order is effectively to recite symptoms. It will be recalled that what it says is *"Grandiose & paranoid delusional beliefs, lacks insight into need for treatment"*. With respect, that comes nowhere close to meeting the statutory requirements. The admission order must be valid on its face. A Court or the Mental Health Tribunal considering the admission order must understand the basis upon which it has been reached. It is not sufficient simply to tick a box to indicate that certain statutory criteria have been met without in any way seeking to engage with or to explain how those statutory criteria have been fulfilled. As is apparent from the judgment of the Court of Appeal (cited above) in relation to decisions by the Mental Health Tribunal, it is essential that there be engagement, i.e. that a person reading the decision knows that the decision-maker has engaged with the statutory criteria. Otherwise, it literally becomes a box ticking exercise, and somebody can be deprived of their liberty by the ticking of a box without any proper explanation being provided. The reason that reasons must be stated is not merely to allow the High Court on an application for *habeas corpus*, or the Mental Health Tribunal, to exercise its jurisdiction, but also to allow the person who has been involuntarily detained to know the precise basis upon which their liberty has been taken away. That is essential to allow them to consider their legal options, to consider, for example, the making of an application to the High Court or, in most cases, to consider engaging with the process before the Mental

Health Tribunal. In the absence of any statement as to why it is that they are being detained, they are put at a distinct disadvantage and that is unfair. It is unfair to the point of being unlawful. The failure to give reasons also fails to respect the human dignity, self-determination and autonomy of the person who is being detained.

36. Now, I want to emphasise that this court is not suggesting that very detailed reasons need to be given. In that regard, I draw attention to what the Court of Appeal said in relation to context. Context is all but there must be some explanation.

37. As indicated earlier, I allowed on a *de bene esse* basis the calling of evidence from the consultant psychiatrist. I am not convinced—and I will explain presently why I am not convinced—that it is open to a respondent to mend its hand by producing evidence *ex post facto*, but in any event the evidence in the present case does not reassure the court: if anything it's a cause of greater alarm. The consultant psychiatrist indicated that, when asked, the Applicant said that she would be prepared to stay overnight in the Approved Centre as a voluntary patient but would leave the next morning. Now, that is immensely significant in the context of the statutory test with which the consultant psychiatrist was required to engage. She had to be satisfied, not merely that the Applicant could be diagnosed with a mental illness, but rather that the statutory criteria of "*mental disorder*" had been met, a key component of which is whether *involuntary* admission is necessary. The failure to make reference to this at all in the admission order would be sufficient, in itself, to invalidate it. It fails to disclose to the court or to the Mental Health Tribunal a very significant fact, and one which could, ultimately, have resulted in the admission order being set aside. As

I say having heard the evidence, it does not reassure me. (The consultant psychiatrist had not brought her clinical notes to the hearing).

38. But in any event, I am not satisfied that it is open to correct an error or to fill a paucity of reasons *ex post facto* by calling evidence. As I said I only allowed the evidence in *de bene esse*. I did so in circumstances where I was anxious that if there be an appeal in the matter, the appellate court would have the benefit of whatever evidence the parties wanted to call rather than me deciding the case on a narrow basis resulting in the possible remittal to the High Court and further delay. This is a case under Article 40.4 and it deserves the highest urgency and priority that the court can give it. That is the reason I took in the evidence. But it seems to me that it is essential that the paperwork be correct. The admission order must be right. It must display jurisdiction on its face and it must indicate that the consultant psychiatrist has understood and engaged with the statutory criteria. That is a minimum before a non-judicial person could be allowed to deprive somebody of their liberty for up to 21 days (and longer if further orders are made). Given that this is a basic, essential, and fundamental requirement, it is not open to correct the matter subsequently. It is not good enough to seek to mend a respondent's hand once they are called on to explain the position in the court. They must get the paperwork right. This is not the court being pedantic or obstructionist, rather it is the court upholding the fundamental right to liberty.

39. These are forms which are prescribed by the Mental Health Commission, they must be completed in accordance with their terms. As I say, it is clear that what is required at Box 8 is a description of the "*mental disorder*" which carries a very specific meaning: it is not a mental illness, it is not symptoms of a mental illness, it is a "*mental disorder*" with all of the baggage that the test under section 3 of

the Mental Health Act 2001 requires.

40. So for that reason I am satisfied that the admission order is deficient, and I would be prepared to direct a release on that basis alone. However, there is a further difficulty in this case as adverted to earlier: the initial application was made by a person other than a person identified under subparagraphs (a), (b) and (c) of section 9(1). That fact triggered the *additional* obligation, under section 9(5), to state reasons. The reasons given on the form completed on 30 June 2024 come nowhere close to meeting the statutory requirement. They simply do not explain at all why an involuntary admission may be required. They refer, again, to symptoms only. There is no explanation or no potential justification offered as to why the Draconian step of applying for involuntary admission has been taken.

41. In this regard (what I am going to say next is relevant to both the failings in the admission order and in the application), my colleagues in the High Court, Ferriter J. and Hyland J., have each given very important recent decisions which emphasise the importance of complying with statutory procedures. Hyland J. in the decision in *K. v. Clinical Director of Drogheda Department of Psychiatry* [2022] IEHC 248 said as follows at paragraph 26 of her judgment:

> "Before analysing what happened during those minutes, it is important to recall that the power under s.23 and s.24 to detain a person in an approved centre despite their desire to leave is one that impacts upon one of the most significant fundamental rights protected under the Constitution, i.e. the right to liberty. Any curtailment of that right must be considered very carefully. Where it is done pursuant to a statutory regime, that regime must be followed to the letter and any review of the exercise of that power must take care to analyse each and every step and to ensure that the regime has been followed."

42. Ferriter J. in *[Name Redacted] v. Clinical Director of Jonathan Swift Clinic*, stated as follows:

> "In my view, the principle that emerges from the authorities is that substantive non compliance with mandatory safeguards contained in the Act may justify invalidation of a detention made following on from such non-compliance if the substantive non compliance is of a sufficiently serious nature, viewed in the round, to materially undermine the statutory intent and purpose of those safeguards."

43. To similar effect, Ferriter J. stated as follows at paragraph 44:

> "As the process of applying for a recommendation is a solemn statutory process with potentially far reaching consequences in terms of its initiation of a process that could lead to a person being deprived of liberty, it is in my view a process that needs to be faithfully complied with absent compelling justification."

44. For all of those reasons, I am satisfied that the purported detention of the Applicant for the last number of days under the admission order is unlawful. Therefore, in the exercise of the powers conferred upon me as a judge of the High Court under Article 40.4.2° of the Constitution, I direct her immediate release. I will now hear the parties on the issue of costs.

Appearances
Julia Fox for the applicant instructed by Daly Lynch Crowe & Morris Solicitors LLP
Donal McGuinness for the respondent instructed by Byrne Wallace LLP