Neutral Citation Number: [2008] IEHC 262

**THE HIGH COURT**

**Record Number; 2008 No. 1038 SS**

**IN THE MATTER OF AN INQUIRY PURSUANT TO ARTICLE 40.4.2 OF BUNREACHT NA H-EIREANN**

**BETWEEN**

**M. Z.**

**APPLICANT**

**AND**
**ABID SAEED KHATTAK**
**AND**
**TALLAGHT HOSPITAL BOARD**

**RESPONDENTS**

**Judgment of Mr Justice Michael Peart delivered on the 28th day of July 2008**

1. The applicant is currently detained as an involuntary patient at a psychiatric unit within what I shall refer to simply as Tallaght Hospital, pursuant to an Admission Order signed on the 5th day of July 2008. It is not disputed by him that he suffers from a mental illness, but he denies that he has a mental disorder.

2. The applicant has sought an inquiry into the lawfulness of that detention and, if necessary an order for his release under Article 40.4.2 of Bunreacht na h-Eireann.

3. A number of grounds are put forward on his behalf as being sufficient to require his release, and I will come to those in due course. I will, however, set out first of all the relevant facts and chronology of events which have led to the making of the Admission Order and, consequently, his present detention.

4. The affidavit grounding this application has been sworn by the applicant's solicitor who was appointed by the Mental Health Commission to represent the applicant's interests, and in it he states that the applicant has a history of bipolar affective disorder, and on the 2nd July 2008 and again on the 4th July 2008 he sought to be admitted for treatment to St. Vincent's Hospital, Fairview as a voluntary patient but was refused admission on the basis that he was not living within the catchment area of that hospital. It would however appear that staff at that hospital made contact with Tallaght Hospital and spoke to a consultant psychiatrist there, namely Dr Yolande Ferguson at about 11.45am on the 4th July 2008. Dr Ferguson as a result of what she was told faxed a letter to Mountjoy Garda Station, being the station with responsibility for the area in which the applicant was then residing, to inform them that the applicant was a patient at Tallaght Hospital, and requested that if the applicant came to their attention, they should arrange for him to be assessed and transferred to Tallaght Hospital.

5. At around the same time, the applicant's brother, EZ also spoke to Dr Ferguson and informed her that the applicant was not taking his medication and was in possession of a Samurai sword, and he had fears for his safety and the safety of others.

6. EZ later attended at Mountjoy Garda Station and discussed these concerns with members of the Gardai on duty, and informed them that the landlord of the premises in which the applicant was residing was not happy to have him there as a tenant. EZ has last seen his brother at about 2pm on the 4th July 2008. Further information was obtained that the applicant was in fact at that time residing with a friend within the same area, and EZ appears to have indicated to the Gardai that he was content that nothing should be done by the Gardai until the following morning, the 5th July 2008.

7. At about 7.20am on the 5th July 2008, EZ again called to Mountjoy Garda Station and spoke to Sgt. Reynolds who was by then on duty at the station, and who had by then seen the faxed letter from Dr Ferguson. EZ has ascertained that the applicant was by then back in his own flat in Leo Street, Dublin 7 and could be located there of the Gardai called. He knew also that access to the premises would be facilitated by another tenant in the premises. In these circumstances, Sgt. Reynolds dispatched Garda Ryan and Garda Barker to the premises to take the applicant into custody under powers contained in s. 12 of the Mental Health Act, 2001 ("the Act"), and EZ followed independently.

8. Garda Ryan gave evidence before me, and has stated that he and his colleague went to the house in question, arriving at about 8.15am, and were let into the house. They made their way up to the applicant's flat and were admitted by him without any difficulty. They explained that they were concerned for his safety and welfare and that he was not taking his medication. Apparently the applicant stated that he was in fact taking his medication, but nonetheless he was asked to accompany the Gardai back to Mountjoy Garda Station. He co-operated fully, and was not placed in hand-cuffs, and accompanied them to the Garda Station without incident. On arrival, Sgt Reynolds spoke to him and it was agreed that he would not be placed in a cell and was allowed to remain seated in a lobby area at the station while Sgt Reynolds telephoned a registered medical practitioner so that the latter could call to the station for the purpose of carrying out the examination of the applicant required by that section, that examination being a necessary pre-requisite for the making of a recommendation for the involuntary admission of the applicant to an approved centre.

9. I will come to the detail of that examination in due course, but should first of all, for convenience, set out the provisions of s. 12 of the Act, and certain provisions of sections 10 and 11 thereof since they are relevant in view of the reference to them in s. 12 (3) of the Act.

10. Section 12 provides as relevant:

> *"12. – (1) Where a member of the Garda Siochána has reasonable grounds for believing that a person is suffering from a mental disorder, and that because of the mental disorder there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons, the member may either alone or with any other members of the Garda Siochána –*
>
> *(a) take the person into custody, and*
>
> *(b) enter if need be by force any dwelling or other premises or any place if he or she has reasonable grounds for believing that the person is to be found there.*
>
> *(2) Where a member of the Garda Siochána takes a person into custody under subsection (1), he or she or any other member of the Garda Siochána shall make an application forthwith in a form specified by the Commission to a registered*

*medical practitioner for a recommendation.*

*(3) The provisions of sections 10 and 11 shall apply to an application under this section as they apply to an application under section 9 with any modifications.*

*(4) …*

*(5) Where, following an application under this section, a recommendation is made in relation to a person, a member of the Garda Siochána shall remove the person to the approved centre specified in the recommendation."*

11. Sections 10 (referred to in sub-section (3) above), provides as relevant:

*"10. – (1) Where a registered medical practitioner is satisfied following an examination of the person the subject of the application that the person is suffering from a mental disorder, he or she shall make a recommendation 9in this Act referred to as "a recommendation") in a form specified by the Commission that the person be involuntarily admitted to an approved centre (other than the Central Mental Hospital) specified by him or her in the recommendation.*

*(2) An examination of the person the subject of an application shall be carried out within 24 hours of the receipt of the application and the registered medical practitioner concerned shall inform the purpose of the examination unless in his or her view the provision of such information might be prejudicial to the person's mental health, well-being or emotional condition.*

*(3) …[provision as to disqualification]*

*(4) A recommendation under subsection (1) shall be sent by the registered medical practitioner concerned to the clinical director of the approved centre concerned and a copy of the recommendation shall be given to the applicant concerned.*

*(5) A recommendation under this section shall remain in force for a period of 7 days from the date of its making and shall then expire.*

12. Section 11 has no relevance to the present application.

13. What occurred in relation to the applicant once the registered medical practitioner arrived at the Garda station and was introduced to the applicant is of relevance to the grounds put forward by the applicant for his release, given these provisions of sections 10 and 12 of the Act, since it is submitted that the required procedures which led to his admission to Tallaght Hospital were not properly followed and complied with.

14. In his evidence, Sgt Reynolds confirmed that at this time the applicant was in custody pursuant to s. 12 of the Act. The applicant's brother had arrived back to the Garda station at about 8.50am.When cross-examined he stated that the basis for his believing that the applicant was suffering from a mental disorder, and that because of it, *"there [was] a serious likelihood of the person causing immediate and serious harm to himself or to other persons*" was the contents of the faxed letter from Dr Ferguson and the information that the applicant was not taking his medication, and what he had been told by the applicant's brother, EZ. It was following the arrival of the applicant's brother at the station that Sgt. Reynolds telephoned Dr W.

15. Dr W has stated that he arrived at the Garda Station before 10am in order to carry out the examination of the applicant. Sgt Reynolds has stated in evidence that he himself did not, as required by s. 12(2) of the Act "*make an application … for a recommendation*", and that this application form was signed by the applicant's brother, EZ. That Form 1 (the prescribed form for an application for a recommendation under s. 9 of the Act) was signed by the applicant's brother, EZ, according to the form itself, at 9.44am on the 5th July 2008. It would appear that it was Dr W who got EZ to sign that application form, so it is safe to assume that he had arrived at the station at least before 9.44am. I will return to the evidence of Dr W in that regard. Such an application is permitted by a relative of the person under s. 9 of the Act. Nevertheless the applicant was at this time in custody under s. 12 of the Act, as confirmed by Sgt. Reynolds, and the fact that Sgt. Reynolds did not make the application for this recommendation is one of the grounds put forward as to why the applicant's detention is unlawful.

16. At any rate, Sgt. Reynolds has stated in evidence that when Dr W arrived at the station he introduced him to the applicant at a location outside the rere of the Garda Station where, apparently the applicant, Sgt. Reynolds and Dr W were smoking their cigarettes. Dr W chatted to the applicant at this location for a short period. Sgt. Reynolds cannot recall exactly how long that conversation lasted but stated that Dr W was at the station for between twenty five and thirty minutes, and the conversation would have lasted for about half of that time. He agreed that it might have lasted about ten minutes. Dr W stated in his evidence stated that the conversation lasted for however long it took them to smoke their cigarettes. Most of this conversation took place outside the station, and not in any interview room as such, although there may have been some conversation between the two while the applicant was seated on a bench in the lobby area referred to.

17. Dr W has stated that on arrival he was told that the applicant was present under s. 12 of the Act, and that as a result of what he called his "chat" with the applicant outside the rere of the station he was satisfied that he should be in hospital since he was not taking his medication, was elated and paranoid. He signed the Form 5 Recommendation at 10.10am. When cross-examined, Dr W confirmed that he had never previously met the applicant, but that before chatting to him he had spoken to the applicant's brother, EZ at the station who had told him that the applicant suffered from bipolar affective disorder, was not taking his medication, and that Tallaght Hospital had a bed available for him. Dr W was cross-examined as to the extent of his 'chat' with the applicant since he had kept no notes of what was chatted about. Dr W stated that he could not recall exactly what they spoke about, but confirmed that he did not carry out what is called a mental state examination as such. He stated that he is not a psychiatrist and was not even aware of what a mental state examination might entail. But he confirmed that as a result of his chat he was satisfied that the applicant was elated as it was obvious, was not taking his medication, was suffering from paranoia, and needed to go to hospital, even though the applicant denied that there was anything wrong with him. In fact, he stated that most people having the applicant's condition deny that they have anything wrong with them. He was not aware, and did not ask, what particular medication the applicant was on. He went on to say that he was satisfied to rely on the psychiatrist at the hospital taking in the applicant if the latter considered that he should do, which in fact turned out to be the case. Accordingly he was satisfied to sign the Recommendation on Form 5, which he did at 10.10am on that date. It was put to him that the conversation which he had had with the application for the purpose of examining him was a one-sided one, but Dr W stated that he had asked questions, albeit not very many, but he was able nevertheless to conclude his assessment that the applicant should go to hospital for treatment. He considered

that a chat for ten minutes or so was perfectly adequate for that purpose.

18. Under cross-examination Dr W stated also that he was unaware of what particular 'examination' was required to be carried out in accordance with the provisions of the Act, having been referred by Counsel to the definition of an 'examination' contained in s. 2 of the Act. That definition states in that regard:

> *"examination", in relation to a recommendation, an admission order or a renewal order, means a personal examination carried out by a registered medical practitioner or a consultant psychiatrist of the process and content of thought, the mood and the behaviour of the person concerned".*

19. Dr W went on to say that he had informed Sgt. Reynolds that the applicant needed to be brought to Tallaght Hospital by ambulance, and added that a person cannot get an ambulance if going as a voluntary patient.

20. Mr Craven asked him why the application for a recommendation had been signed by the applicant's brother rather than by a Garda, and he replied that if it had been signed by a Garda the applicant could have simply have walked out of the hospital at any time. He was unable to give any basis for such a belief, but added that he had heard several years ago that this was the case.

21. The first named respondent, Dr Khattak, also gave evidence. He stated that Dr Ferguson had told him that the applicant had been in possession of a Samurai sword, and that she was of the opinion that he was a danger both to himself and to others, and his own clinical knowledge confirmed this for him. From his evidence it appears that when the applicant arrived at Tallaght Hospital by ambulance, a junior registrar saw him at about 12 noon on the 5th July 2008, and contacted Dr Khattak by telephone at about 12.30pm after he had completed an assessment of the applicant which would have taken about half an hour. Dr Khattak told the registrar that the applicant should be admitted. It was some seven and a half hours later that Dr Khattak actually saw the applicant himself at the hospital. It appears that on this day he was the HSE sector consultant on call, and therefore was not present at the hospital at the time that the applicant was admitted. In any event, he stated that it is no harm to let some time pass before seeing a patient at the hospital as it allows the patient to settle. It was suggested to him under cross-examination that he could perhaps have seen the applicant sooner than he did, but he stated that being the consultant on call he would have had calls to take in relation to other patients, even though it had not been necessary for him to actually attend other patients at another hospital or otherwise. He stated also that he had been aware by the time he saw the applicant that he had arrived by ambulance from a police station, but he added that even if he had not arrived by ambulance, he would have admitted him regardless of how he had arrived.

22. Dr Khattak signed an Admission order at 7.30pm on the 5th July 2008, stating it as his opinion that the applicant was suffering from a mental disorder, that there was a serious likelihood of him causing immediate and serious harm to himself or other persons, and that because of the severity of his illness, his judgment was so impaired that a failure to admit him would lead to a serious deterioration in his condition or would prevent the administration of appropriate treatment that could be given only by such admission. This opinion was based on the bipolar affective disorder, his elation, paranoia and thought disorder.

23. A final relevant fact is that although there is a requirement under s.16(1)(a) of the Act that a copy of the Admission Order be forwarded to the Mental Health Commission within 24 hours of its making, this was not done until the Monday 7th July 2008 at around 4.30pm. This non-compliance with s. 16 is also relied upon by the applicant.

**The applicant's submissions**

24. Four grounds are put forward as requiring the applicant's release from detention.

*Firstly* it is submitted that since the applicant was taken into custody by the Gardai under powers contained in s.12 of the Act, the process which led to his detention in Tallaght Hospital should have continued under the provisions of that section, by the application for a recommendation being made to Dr W by a member of the Garda Siochána under s. 12(2), whereas it was in fact made by the applicant's brother, EZ under the provisions of s.9 of the Act. It is submitted therefore that his continued detention by the Gardai under s.12, including by being taken to the hospital by the Gardai under the provisions of s.12, was unlawful, and that this fatally contaminates his continued detention on foot of the Admission Order subsequently made. In that regard, it is relevant to refer to the provisions of s. 13(1) and (2) of the Act which provide:

> *"13. – (1) Where a recommendation is made in relation to a person (other than a recommendation made following an application under section 12), the applicant concerned shall arrange for the removal of the person to the approved centre specified in the recommendation.*
>
> (2) *Where the applicant concerned is unable to arrange for the removal of the person concerned, the clinical director of the approved centre specified in the recommendation or a consultant psychiatrist acting on his or her behalf shall, at the request of the registered medical practitioner who made the recommendation, arrange for the removal of the person to the approved centre by members of the staff of the approved centre*." (my emphasis)

25. Ciarán Craven BL submits that the Act provides for three distinct methods by which a person suffering from a mental disorder may be detained in an approved centre on foot of an Admission Order – firstly under the provisions of s. 9 of the Act where an application for a recommendation may be made to a registered medical practitioner by (a) the spouse or relative of the person, (b) an authorised officer, (c) a member of the Garda Siochána, or (d) any other person (subject to subsection (2) which disqualifies certain persons); secondly under the provisions of s. 12 of the Act where the application for the recommendation is made by a member of the Garda Siochána following the taking of the person into custody under that section; and thirdly under the provisions of sections 23 and 24 of the Act which relates to the continued detention of a person who had previously been admitted as a voluntary patient, although Mr Craven has drawn a distinction between these provisions which permit the detention of such a person for a 24 hour period pending further examination, and the detention of the applicant which moved from detention under s.12 to a detention following a procedure commenced after 9.44am on the 5th July 2008 under s. 9 of the Act.

26. The third method of detaining a person under s. 23 and 24 of the Act is not relevant to the present application. But Mr Craven submits that in the present case neither the s. 9 nor the s. 12 procedure has been adopted, but rather a hybrid of the two, rendering unlawful the continued detention of the applicant after 9.44am on the 5th July 2008 (being the time at which EZ, the applicant's brother, signed the application for a recommendation under s. 9 of the Act. He submits that in a situation where a decision was taken to take steps to have the applicant admitted under the powers contained in s. 12, by taking the applicant into custody at his flat and bringing him to the Garda Station, it is mandatory that the procedures continue under that section.

27. Carmel Stewart BL for the respondents acknowledges that the provisions of s. 12 were not completed, and that following the direction of Dr W that the application for a recommendation be made by the applicant's brother rather than the Gardai, for the reason

which he gave in his evidence, the procedures continued otherwise than in strict compliance with s.12. But she submits nevertheless that this did not require that the applicant be released in any formal way before the applicant's brother completed the s.9 application, and is not a sufficiently grave matter to give rise to an order for the release of the applicant. Ms. Stewart in her written submissions characterises s. 12(2) as providing "for the taking of a person into custody only where an application will subsequently be made forthwith" and she submits that on the facts of the present case this is what occurred.

28. First of all, I am completely satisfied from the evidence given in this case by Sgt. Reynolds, that the information which he had available to him both from the letter faxed to the Garda Station b Dr Ferguson on the evening of the 4th July 2008 and from the applicant's brother on the morning of the 5th July 2008, entitled him to form the opinion required under s.12(1) of the Act that the applicant was "*suffering from a mental disorder, and that because of the mental disorder there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons*". In those circumstances he was entitled to dispatch Garda Ryan and Garda Barker to the applicant's flat for the purposes of taking him into custody pursuant to the powers contained in that section. I am not, however, satisfied that Ms. Stewart's interpretation of s.12 is correct as submitted, namely that the section provides "for the taking of a person into custody only where an application will subsequently be made forthwith", in as much as this suggests that it does not matter who thereafter makes the application for a recommendation. The section is clear and precise as to its terms. There is no room for ambiguity. Where a person is taken into custody under s. 12 of the Act, the section mandates that for the purposes of continuing the process under that section, only a member of the Garda Siochána may make the application for a recommendation. That is not the same as saying that where the person is taken into custody under that provision, the process must continue under s.12. That point should be made. Clearly Dr W's view, resulting in him getting the applicant's brother to complete the application form for the recommendation, that where a Garda makes the application the patient can simply remove himself/herself from the approved centre following admission, has no legal basis, and is erroneous given the express terms of the legislation. But the fact is that he got the applicant's brother to sign the application. That is not disputed. It is clear, however, that if Sgt. Reynolds or another member of An Garda Siochána had completed the application, then there would be no room for the present complaint on this ground of objection. The procedures contained in sections 10 and 11, which I have set forth would have been applicable, and on the facts of this case were complied with, in particular that contained in s.12(5) which provides that following such a recommendation "a member of the Garda Siochána shall remove the person to the approved centre specified in the recommendation", albeit that Sgt. Reynolds, on Dr W's suggestion, called an ambulance to take the applicant to Tallaght Hospital, and the Gardai followed the ambulance in a Garda vehicle.

29. At the heart of the present application is whether the fact that an application for a recommendation under s.9 of the Act was made by the applicant's brother, the detention and the bringing of the applicant to the hospital on foot of that recommendation was unlawful to the extent of requiring the applicant's release from detention on foot of the Admission Order subsequently made. I am not satisfied that it does. However, in an ideal world, and in order to strictly adhere to the procedures clearly laid down by the Act, it would have been desirable that the applicant should have been informed immediately prior to 9.44am when the applicant's brother signed the application for a s. 9 recommendation, that he was no longer in custody pursuant to s.12 of the Act, and in that sense released and no longer detained under that provision. That was not done.

30. Nevertheless, I am not satisfied that the fact that the process had commenced under s. 12 precluded matters from proceeding further under s. 9. The Act does not state this. Alternative procedures are provided for. One must then regard the application for a recommendation under s.9 as the commencement of a fresh procedure under s. 9. Clearly the applicant's brother was entitled to make the application for a recommendation since he is "a relative of the person" as provided for in s. 9 (1) (a) of the Act. He made that application to DR W who is a registered medical practitioner, as required by s.9 (1) of the Act. That application was made on the appropriate form specified by the Commission as required by s. 9 (3), and since the applicant's brother had last seen the applicant at 2pm on the previous day, the requirement of s. 9 (4) is fulfilled. Section 10(1) of the Act was satisfied by the opinion formed by Dr W that the applicant was suffering from a mental disorder, and the recommendation was made on the prescribed Form No. 5, as required. Thereafter, s. 13 applies regarding the removal of the patient to the approved centre. As already stated, Sgt. Reynolds made arrangements for an ambulance to take the applicant to Tallaght Hospital, an approved centre, having been informed by Dr W that he should go to hospital in an ambulance. The fact that Dr Ws reason for suggesting an ambulance is erroneous, I am satisfied that his removal to Tallaght Hospital by ambulance arranged by Sgt. Reynolds is in compliance with s. 13, even though in s. 13(1) it is provided that in such circumstances it is "the applicant" (i.e. the present applicant's brother) who "shall arrange for the removal of the person to the approved centre". The applicant's brother was present in the Garda Station while all this was happening, and the fact that he himself did not lift the phone and himself request the ambulance, is of no material significance, even though there is contained in s.13 (2) of the Act a provision to deal with any situation where the brother was unable to make such arrangements by the clinical director of the approved centre making the arrangements for removal to the approved centre.

31. In all of these circumstances, I am satisfied that even though a somewhat unusual sequence of events occurred by the adoption of the s. 9 procedure instead of continuing the procedures under s. 12, there was nothing impermissible in what was done.

32. Following the applicant's arrival at Tallaght Hospital he was admitted by the Junior Registrar to await the arrival of and examination by the consultant psychiatrist. In my view, and subject to dealing with the issue raised in relation to the examination of the applicant by Dr W at the Garda Station, there was compliance with all necessary requirements under the Act up to that point. At the moment the applicant is detained there on foot of a valid Admission Order. He is of course entitled to have his detention reviewed in the normal way before a Mental health Tribunal in due course under the provisions of s.18 of the Act.

*Secondly*, it is submitted that the examination carried out by Dr W at the Garda Station and which on the evidence took the form of an informal 'chat' at the rere of the Garda station was not the type of examination envisaged by the Act, given the specific definition of 'examination' contained in s.2 of the Act to which I have referred. I have to say that I listened to Dr W's evidence as to the manner in which he conducted his examination of the applicant by having a chat for about ten minutes outside the back door of the Garda Station while he and the applicant smoked their cigarettes, with some disquiet. It seems to me to be a too informal manner in which to conduct such an examination, a consequence of which can be that the person is to be detained involuntarily at an approved centre. It is quite clear from his evidence, that Dr W does not appear to have any knowledge of the precise requirements specified in the Act for such an examination, although he did say that he may have read the legislation at some time in the past. His evidence tells me that he relies very much on a gut instinct honed over many years of experience, albeit as a general practitioner, as to whether a person is suffering from a mental disorder. It appears from his evidence that he had practised as a general practitioner for some thirty years before retiring about ten years ago. He stated that in recent years he has acted for the Gardai as a registered medical practitioner in what he called "thousands of cases". I am unclear whether that number of cases relates to mental health patients or whether it may include cases requiring his services for, perhaps, persons arrested under s. 49 of the Road Traffic Acts. But clearly he has a great deal of experience of attending at Garda Stations for the purpose of carrying out examinations required under the Act, and perhaps its predecessor, the 1945 Act.

33. He described the applicant as being "*up in the clouds and then was down again*", and in relation to the applicant's denials that he

was mentally ill or not taking his medication he stated that "*they are all the same*" and that "*like most of them they deny that anything is wrong*". By reference to the definition of an 'examination' in s. 2, Mr Craven asked him if he had carried out a Mental State Examination. He stated that he had not and was not aware of what was contained in s. 2 of the Act in that regard. In fact he admitted that he had never heard of a Mental State Examination as such, stating also that he was not a psychiatrist. As to the requirement of the s. 2 definition that the examination be in relation to "the process and content of thought, the mood and the behaviour of the person concerned", Dr W stated that he satisfied himself in relation to the applicant's "*elation and paranoia, and that's it*". He did not keep any notes of this examination.

34. In order to form his opinion that a recommendation should be made he stated that he relied upon what he had been told by the applicant's brother about his suffering from bipolar affective disorder, not taking his medication, and that Tallaght Hospital had a bed available for him. He stated pithily that "*these are the basics*" and "*that is all I needed to know*". Nevertheless he was satisfied from his 'chat' with the applicant and from what he had been told that the applicant needed to be admitted.

35. Mr Craven submits that this cursory type of examination falls short of what is required to be done in order to comply with the requirement of s.2 of the Act, and also that the manner in which DR W reached his conclusion that the applicant should be detained in an approved centre demonstrates significant pre-conceptions on his part. He characterises this 'examination' as a minimal assessment falling short of what was required under the Act, containing no clinical findings, and he distinguishes the very precise form of examination required under the 2001 Act from what was provided for in s.184 of the 1945 Act which required a certificate to accompany an application for detention that an authorised medical officer had examined the person within seven days prior to the application being made and stating that the person was "*suffering from mental illness and requires for his recovery not more than six months suitable treatment and is unfit on account of his mental state for treatment as a voluntary patient ….*". Mr Craven points to the very precise requirements for such an examination under the 2001 Act, indicating an intention on the part of the Oireachtas that under the new regime for admissions, a more focussed and detailed examination should be carried out. The 1945 Act contained no definition of what the examination should entail.

36. Ms. Stewart on the other hand submits that it would be normal for an examination of a psychiatric patient to take the form of a conversation, and that given that this is what actually occurred, it was sufficient in order that Dr W should form the view that a recommendation should be made. She submits that the form signed by Dr W indicates clinical findings as set forth therein, namely "*bipolar, not taking prescribed medication, elation/paranoia*", which supports his recommendation.

37. I have indicated a certain disquiet about the manner of this examination having heard the way in which Dr W's evidence was given. But having said that, there is no question but that Dr W is a registered medical practitioner, and thus a qualified person to have examined the applicant for the purpose of the s.10 recommendation. It also could not be gainsaid that the examination carried out for the purpose of an application under s.9 or indeed under s. 10 is not to be equated with the later examination to be carried out by a consultant psychiatrist under s. 14 of the Act within 24 hours of any admission of the patient, even though the definition of 'examination' covers an examination in relation to a recommendation. It must, I would have thought, be an examination which is less detailed and thorough, and therefore of shorter duration than one carried out by a consultant psychiatrist following admission, in particular since there is no requirement under the Act that the registered medical practitioner have any particular psychiatric qualification or other expertise.

38. In these circumstances, even though I would have reservations about the appropriateness of such an examination taking place in such an informal way while both the doctor and patient smoke their cigarettes at the rere of the Garda Station, nevertheless one cannot discount completely the probability that Dr W's thirty years' experience as a general practitioner and his later experience of examining patients in a Garda Station, enables him to reach the necessary conclusions, for the purpose of making this recommendation, quite rapidly both from observation and conversation with the person, armed as he was, and was entitled to be, with necessary background information provided to him by the applicant's brother and Sgt. Reynolds at the time.

39. In spite of my stated reservations, I cannot doubt the basis on which Dr. W made his recommendation. This complaint does not invalidate the applicant's detention on foot of the Admission Order on foot of which he is detained.

*Thirdly,* it is submitted that the delay of seven and a half hours which occurred between the applicant's arrival and admission to Tallaght Hospital, and his examination by the first named respondent, Dr Khattak was not carried out "as soon as may be" as required by s.14 (1) of the Act which provides as relevant:

> "14. -- (1) *Where a recommendation in relation to a person the subject of an application is received by a clinical director of an approved centre, a consultant psychiatrist on the staff of the approved centre shall, as soon as may be, carry out an examination of the person and shall thereupon either ……*". (my emphasis)

40. There is little doubt on the evidence before me from Dr Khattak himself that there was nothing occurring while he was acting as consultant psychiatrist on call on the 5th July 2008 which was of such a pressing nature that he could not have arrived at Tallaght Hospital sooner than he did, some seven and a half hours after the applicant was first admitted there. The phrase "as soon as may be" is difficult to precisely interpret. It is conceptually different to a word such as "forthwith", or even as soon as possible" or as soon as practicable". It seems to permit of some more latitude that any of these. Mr Craven referred to the judgment of Geoghegan J. in *McCarthy v. Garda Siochána Complaints Tribunal* [2002] 2 ILRM 341 where some consideration was made of the meaning to be given to the phrase "as soon as may be" and similar phrases in various statutory provisions. The learned judge concluded that "*as soon as may be means as soon as may be reasonably possible in all the circumstances*". In the Act under scrutiny in the present case there is clearly an imperative that following a patient's admission to an approved centre as an involuntary patient, he/she must be examined quickly; but it must be borne in mind also that s. 10 (2) of the Act itself at least contemplates that such an examination may not occur for up to 24 hours following admission. That is not to say that in all cases this must be taken as permitting of a 24 hour delay, but in the present case a delay of seven and a half hours, no matter what the reason or the lack of it, does not seem to be to offend against the concept of "*as soon as may be reasonably possible in all the circumstances*". It certainly did not mandate that Dr Khattak should immediately drop whatever he was doing while acting as consultant on call, and attend immediately or forthwith upon being told of the applicant's arrival at Tallaght Hospital. It is certainly no basis for a finding of unlawfulness of detention.

*Fourthly*, it is submitted that there has been a further breach of the requirements of the Act by the delay from the 5th July 2008 until the 8th July 2008 on the part of the respondents in sending a copy of the Admission Order to the Mental Health Commission, given the requirement in s. 16(1) of the Act that a copy of same be sent to the Commission "*not later than 24 hours*". In my view, while there has been a breach of a technical requirement in this regard, it has not affected any right of the applicant in any fundamental way or at all.

41. In all these circumstances I am satisfied that the applicant is lawfully detained under the Admission Order made on the 5th July

2008, and I refuse the application made for his release.