Neutral Citation Number: [2012] IEHC 15

THE HIGH COURT

2011 1122 JR

Between:

P. L.

Applicant

And

The Clinical Director of St. Patrick's University Hospital

and Dr. Séamus Ó Ceallaigh

Respondents

Judgment of Mr Justice Michael Peart delivered on the 24th day of January 2012:

1. On the 26th August 2011 the applicant became a voluntary patient at St. Patrick's University Hospital ("the hospital") following a psychotic episode at home, arrangements having been made by his General Practitioner. He was accompanied to the hospital by his father and a family friend. He was admitted to the Special Care Unit there, where he was seen to display aggressive, violent and at times inappropriate behaviour, but nevertheless accepted medication, and appears to have settled. On the following day he was examined by a consultant psychiatrist, and a care plan was devised which involved close observation and a continuation of certain medication, and he consented also to histories being taken from family members and his General Practitioner.

2. He remained a voluntary patient and continued to be treated as such until the 13th September 2011, when he expressed a desire to leave the hospital whereupon the provisions of sections 23 and 24 of the Mental Health Act, 2001 ("the Act") were invoked whereby, following an examination by Dr Ó Ceallaigh and the forming by him of the opinion that the applicant was suffering from a mental disorder within the meaning of section 3 of the Act, the applicant was detained pursuant to section 23 (1) of the Act. As required, by section 24 of the Act he was on the following day examined by a second consultant psychiatrist who formed a view similar to that of Dr Ó Ceallaigh that the applicant should be detained, and an Admission Order was signed by Dr Ó Ceallaigh for that purpose on the 14th September 2011. That Admission Order was the subject of a review by a Mental Health Tribunal on the 27th September 2011 and was affirmed.

3. Áine Hynes, solicitor, represented the applicant before the Tribunal, and according to her affidavit she raised her concerns as to whether in reality the applicant was a voluntary patient from the 26th August 2011 as she had seen a reference in the applicant's admission notes to the effect that the applicant was perplexed and confused and that he had indicated that he wanted to leave. However, the admission order was affirmed. It is relevant at this point to say that section 2(1) of the Act defines a voluntary patient as *"a person receiving care and treatment in an approved centre who is not subject to an admission order or a renewal order",* and clearly the applicant was within this definition from the 26th August 2011, even if from time to time he expressed a wish to leave.

4. On the 27th September 2011, Dr Ó Ceallaigh, being still of the opinion on that date that the applicant required to be detained, signed a Renewal Order authorising the applicant's detention until the 26th December 2011. On the 11th October 2011, that Renewal Order was affirmed by a Mental Health Tribunal. Ms. Hynes has exhibited a copy of the Tribunal's record of the proceeding before the Tribunal on the 11th October 2011 which contains the reasons for the Tribunal's decision to affirm the Renewal Order. This document records that Dr Ó Ceallaigh stated that while the applicant was making progress, accepting his medication, was working with the care team and focussing on the future, he nevertheless indicated that he would prefer not to be in the hospital, and that on the previous day had expressed a wish to leave. Dr Ó Ceallaigh is noted as having given his opinion that the applicant's judgment and capacity *"remain significantly impaired"*, that the applicant required a further period in hospital for treatment, and that he could not be treated in a less secure environment. The record notes also that a forensic opinion had been sought in addition to an MRI scan and an EEG, both of which would be conducted when the applicant was considered to be clinically stable enough to tolerate any associated stress. Dr Ó Ceallaigh is noted also as having stated that the applicant fell within the criteria of section 3(1)(b)(i) and (ii) of the Act and that it was not possible to manage his care outside the Special Care Unit. He is noted also as having outlined his concerns about the risk which the applicant may pose to other persons, but that he nevertheless felt that as of that time those risks were not such as to come within section 3(1)(a) of the Act, and that the risks were not immediate and severe on that date.

5. This record notes also that the applicant indicated at the Tribunal that he did not want to be in hospital, but then indicated that he would stay on a voluntary basis for a couple of days, and then further indicated that he would not take his medication if he left the hospital. He is noted as denying that he had a mental illness and denied any difficulties with his family. Having heard legal submissions the Tribunal affirmed the Renewal Order.

6. An unusual feature of this case is that having expressed his opinions to the Tribunal as noted on the 11th October 2011, Dr Ó Ceallaigh on the following day, the 12th October 2011, revoked the Renewal Order having examined the applicant on that date at 16.55hrs, expressing the opinion on Form 14 pursuant to Section 28 of the Act that the applicant was no longer suffering from a "mental disorder" as defined in the Act and was being discharged pursuant to that section which provides:

> *"28.—(1) Where the consultant psychiatrist responsible for the care and treatment of a patient becomes of opinion that the patient is no longer suffering from a mental disorder, he or she shall by order in a form specified by the Commission revoke the relevant admission order or renewal order, as the case may be, and discharge the patient."*

The applicant was not discharged in the sense of leaving the hospital, or being invited or allowed to leave. He remained as previously in the Special Care Unit, which is a locked ward, and even though then a "voluntary patient" as defined was nevertheless not free to leave. So, in reality he was simply discharged from his status as a detained patient under a Renewal Order, rather than being actually discharged from hospital as such. He subsequently expressed an intention to leave, but was not permitted to do so, and no order to detain him under section 24 of the Act has been made to again detain him. I will come to that situation in more detail in due course, but it is this régime whereby although he is a voluntary patient, he is not permitted to leave and remains in the same locked unit

which is at the heart of the present case. Feichín McDonagh SC for the applicant submits that this is a régime without any statutory or other lawful basis, and ought not to be permitted to continue. He describes it as a twilight or penumbral régime, where, though for all practical purposes detained and not free to leave, the applicant does not have the benefit of the protections and safeguards afforded to detained patients under the Act, such as a review by a Tribunal and the nomination of a legal representative to look after his interests.

7. In his replying affidavit, Dr Ó Ceallaigh explains his decision on the 12th October 2011 to revoke the Renewal Order. Inter alia, he states that following the making of the Renewal Order on the 27th September 2011 he sought the views of Dr Mohan, a Consultant Forensic Psychiatrist attached to the Central Mental Hospital, and wrote to him on the 4th October 2011 seeking his advice. That advice had not been received by the 11th October 2011, and he states that even though such advice would be an important part of the overall assessment of the applicant's condition and future care needs, it would not be determinative of his future management, and that, as the applicant's responsible consultant psychiatrist the responsibility for his care and future management rests with him (Dr Ó Ceallaigh) both in relation to his transition within the hospital to a less restrictive environment and his eventual discharge from the hospital.

8. He goes on to state that in the period leading up to the Tribunal hearing on the 11th October 2011 he had conducted an ongoing assessment of the applicant's condition and had engaged with him both on a one to one basis as well as part of a multi-disciplinary review process. He was then of the view that the applicant had limited insight in relation to his illness and continued to require inpatient treatment. He states that the applicant's need for continuing care in the Special Care Unit was kept under ongoing review, and that the effective management of psychosis requires the maintenance of a safe, stable environment with the reduction of exposure to stressors and stimuli which have been associated with previous relapses into psychotic symptoms, and further, that the transfer of the applicant from this Special Care Unit would undermine the applicant's care management plan.

9. As for his decision on the 12th October 2011 to revoke the Renewal Order he states that on that date he had a lengthy consultation with the applicant who expressed disappointment and frustration at the outcome of the Tribunal's review and decision to affirm the Renewal Order dated 27th September 2011, but was apparently forthcoming enough to accept that he was delusional during the earlier part of his admission. The applicant apparently displayed no aggression and was warm and appropriate at the interview, and denied any thoughts of deliberate self harm or suicidal ideation. The applicant stated to Dr Ó Ceallaigh that he was intermittently refusing medication as he felt he did not need it, and accepted that his admission had benefited him, and indicated a willingness to remain in hospital and engage with treatment. Dr Ó Ceallaigh states that he told the applicant that he would reduce his dosage of Sodium Valproate and that he would assess his response to that. He goes on to state that on the 12th October 2011 he formed the opinion that given the improvement in the applicant's mental state, the applicant was able to balance the benefits and the disadvantages of remaining in hospital on a voluntary basis, and that he was capable of choosing to remain in hospital and had elected to do so. He informed the applicant of his decision that he should remain in the Special Care Unit, and the applicant apparently expressed his happiness with his change in status. It was following this consultation that Dr Ó Ceallaigh revoked the Renewal Order, whereby the applicant reverted to being a voluntary patient in the hospital and in the Special Care Unit there, a unit which Dr Ó Ceallaigh considers to be the appropriate clinical setting for the applicant's care.

10. Ms. Hynes in her affidavit states that she became aware of the revocation of the Renewal Order on the 18th October 2011 following receipt of correspondence from Messrs. Arthur Cox, solicitors for the Mental Health Tribunal, though she did not receive the Revocation Order itself until the 28th October 2011. She visited the applicant in hospital on the 21st October 2011, and she noted that he was then still within the locked Special Care Unit. She states that the applicant asked to leave that unit so that he could go to the coffee shop with Ms. Hynes but was told that his consultant would have to be contacted for such permission. That permission was refused, and she was apparently informed that he could not be permitted to leave the Unit until such time as a risk assessment sought by Dr Ó Ceallaigh from Dr Mohan had been carried out. There was some delay in having that assessment carried out by Dr Mohan, and it was not carried out until 21st November 2011. Ms. Hynes has stated that she was informed by the applicant that he had on many occasions asked to leave the Special Care Unit but had been refused permission. She spoke to the applicant again on the 24th October 2011 and the situation remained unchanged whereby he was not permitted to go from the locked Special Care Unit to an open unit within the hospital. She spoke to him again on the 3rd November 2011 by telephone and again the situation was unchanged and the applicant told her that he had still not been seen by Dr Mohan. She wrote a number of letters to Dr Ó Ceallaigh about the delay in having this assessment carried out, and those letters are exhibited by her, as are the responses thereto.

11. Returning to the affidavit of Dr Ó Ceallaigh, he proceeds at paragraphs 19 to 28 to detail events from the 12th October 2011 to the 21st November 2011, and states that during this period the applicant had been permitted to leave the Unit and go under supervision to the hospital garden, but that *"it is frequently necessary as in this case for the clinical team to be directional in their interaction with the patient and in their response to a patient's request where the patient seeks to push the boundaries of the care plan which has been agreed by the patient with the clinical team".* He goes on to state that from time to time the applicant has sought to move out of the Special Care Unit or to be transferred from it, but that the risks attached to leaving the unit have been discussed with him, those risks being that he might relapse and may be exposed to stresses, and that having asked the applicant to continue his treatment in the Unit he agreed to do so in the knowledge that this involves limiting his movement and limiting his exposure to stress. He states that such limitations are necessary as part of a therapeutic programme and are not inconsistent with the applicant's status as a voluntary patient. He refers to a multi-disciplinary meeting on the 17th October 2011 at which the applicant expressed happiness with being a voluntary patient and again committed to following his care plan, and in particular to his continuing treatment in the Special Care Unit. A similar meeting was held on the 21st October 2011 when the applicant again committed to this régime on a voluntary basis.

12. He refers to the request by the applicant on the 21st October 2011 that he be permitted to go with Ms. Hynes to the coffee shop when she visited him on that date, and states that this would have been an unplanned move from the Unit and would have involved exposure to stressors and an increased risk of relapse, and that it was for this reason that permission was refused, and not because the risk assessment by Dr Mohan had not been carried out. He describes the applicant as having become frustrated by the 28th October 2011 at the slow progress in the completion of Dr Mohan's assessment, but that he was allowed to go off unit to the hospital garden accompanied by a nurse, and goes on to state that on the 1st November 2011 he is noted to have attempted to jump over the garden wall but that he was encouraged by staff to remain and agreed to do so, and continued thereafter to agree to accept treatment on a voluntary basis. The applicant apparently expressed a wish to be transferred to another ward but following a discussion with Dr Ó Ceallaigh again agreed to remain in the Special Care Unit as before.

13. By the 7th November 2011 the applicant was noted to have been aggressive towards staff, with poor impulse control, threatening harm to staff on one occasion, though he was accepting treatment. Dr Ó Ceallaigh again explained to him that he needed to be treated in the Special Care Unit and he again agreed to this. Further aggressive behaviour by the applicant was explained by him as being in response to his frustration at remaining in the Special Care Unit and the delay in the forensic assessment by Dr Mohan, but he again agreed to remain in the Unit.

14. On the 11th November 2011 Dr Ó Ceallaigh had a discussion with the applicant and told him on that occasion that he was seeking his transfer back to Sligo Mental Health Services. The applicant was agreeable to that, and to continuing his current treatment. On the 15th November 2011 Dr Ó Ceallaigh wrote to Dr Adam, a Consultant Psychiatrist at Sligo, and requested that hewould accept an in-patient transfer back to local services, stating that the applicant was fit for such a transfer but that a report from Dr Mohan was awaited and would be forwarded in due course when received. Dr Ó Ceallaigh states that the applicant remained anxious and frustrated about the completion of the risk assessment and was on occasion non-compliant about taking his medication, and was irritable but denied thoughts of self harm or suicidal ideation. He was encouraged to continue his medication and to remain in the Special Care Unit, and did so.

15. The events of 21st November 2011:
Before setting forth the events of the 21st November 2011, I should state that on that date an application for leave to seek reliefs by way of judicial review was made and granted by this Court based on events up to that point in time. The reliefs for which leave was granted were:

> (i) a declaration that the respondents are not entitled to refuse the applicant permission to leave the Special Care Unit save their having first lawfully detained the applicant pursuant to the provisions of the Act;
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> (ii) a declaration that on the 21st October 2011 the respondents or either of them unlawfully detained the applicant;
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> (iii) a declaration that on the 21st October 2011 the respondents or either of them unlawfully refused to allow the applicant to leave the Special Care Unit of the hospital;
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> (iv) A declaration that on the 24th October 2011 the respondents or either of them unlawfully detained the applicant;
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> (v) A declaration that on the 24th October 2011 the respondents or either of them unlawfully refused to allow the applicant to leave the Special care Unit of the hospital;
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> (vi) A declaration that the Second named respondent breached the provisions of Section 28 (3) of the Act by failing to give to the applicant's legal representative in a timely fashion a copy of the Form 14, the "Revocation of an Involuntary Admission or Renewal Order" dated the 12th October 2011;
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> (vii) A declaration that the delay in the proper consideration of the applicant moving to an open unit and/or arranging for a risk assessment to be carried our in this regard, constitutes a breach of the applicant's right as to privacy and/or to receive medical treatment in the least restrictive environment as guaranteed by the Constitution of 1937 and the European Convention of Human Rights 1950;
>
> (viii) Damages, subject to a grant of leave to pursue same pursuant to Section 73 of the Mental Health Act 2001 (as amended);
>
> (ix) Costs of the proceedings.

Arising from the events of the 21st November 2011 leave was extended to include similar declaratory reliefs in relation to the refusal by the respondents to permit the applicant to leave the Special Care Unit on the 21st November 2011 when he expressed and demonstrated a desire to leave on three occasions that day.

16. Ms. Hynes in her second affidavit states that following the grant of leave by this Court on the 21st November 2011 she telephoned the hospital at 1.50pm and asked to speak with the applicant but was informed that he was asleep and unable to come to the phone. She was informed that the applicant had become violent that morning and had to be restrained and sedated, hence he was asleep. She asked that the applicant would telephone her whenever he wanted to after he awoke. Having inquired if there had been other such incidents in the recent past she was informed that this was the first such incident in a long time and was informed also that his status as a voluntary patient remained unchanged. It appears that at about 4pm the applicant telephoned Ms. Hynes and indicated a strong desire to leave the hospital, and told her that he had attempted to leave earlier that day but that he had been "held down". He complained that even though he was a voluntary patient he was not being allowed to leave, and he asked her if she could help him. Ms. Hynes informed him that she would try and see him later that evening, and she telephoned the hospital at about 6pm to make such arrangements. She was informed that at that time the applicant was with the forensic psychiatrist being assessed and was not free to speak with her. She enquired if the applicant was being "held" and was informed that he remained a voluntary patient.

17. She called to see the applicant on the following day, the 22nd November 2011, when the applicant expressed happiness that the assessment had been carried out. She apparently discussed with the applicant his various attempts to leave the hospital. He appears to have indicated a wish not to be in the secure Special Care Unit and told her that he had attempted to push through the office part of the unit the previous day while that door was open, and that he had been held down by what he described as "loads of nurses", and was sedated. He apparently told her also that his hand had been hurt during this incident and his nail had been bent backwards, and showed her various cuts and bruises to his hand and his nail. She states that having been able to peruse the clinical notes for the applicant it appears that even though a voluntary patient the applicant has been forcibly restrained on about 30 different occasions. She submits that the current so-called voluntary régime at the hospital is manifestly involuntary and yet he does not have the benefit of the safeguards provided for in the Act for patients who are involuntarily detained. She had by the time she swore that affidavit had sight of Dr Mohan's report from which she believes it is clear that Dr Mohan does not consider that the applicant has capacity to make a decision to remain as a voluntary patient. Neither does she believe that there is any lawful basis for the applicant to be considered a voluntary patient, in circumstances where whenever he attempts to leave the Special Care Unit, he is restrained and if necessary sedated.

18. Dr Mohan's opinion as to the applicant's capacity is contained at paragraph 21.10 of his report and is expressed as follows:

> "Having assessed [the applicant] it is my opinion that his inconsistent consent to remain as a voluntary patient in hospital reflects an underlying lack of capacity on his part to make an informed decision with regard to him remaining in hospital as a voluntary patient".

Dr Mohan also considered that the applicant fulfils the criteria for admission to the hospital under the Act, and recommended that this be done.

19. In his replying affidavit, Dr Ó Ceallaigh deals with the events of the 21st November 2011. He states that between the 18th November 2011 and the 21st November 2011 the applicant had not been taking his medication, and that this was associated with a deterioration in his condition. He goes on to state that on the 21st November 2011 the applicant had attempted to jump over the garden wall on three separate occasions and was reported as having been aggressive with staff, but when encouraged by staff had agreed to return to the ward. This was followed by further aggressive and threatening behaviour requiring the use of approved CPI (Crisis Prevention Institution) techniques, which resulted in the applicant agreeing to remain in the Special care Unit. On the 22nd November 2011, Dr Ó Ceallaigh again saw the applicant and discussed the previous day's attempts to jump the garden wall. The applicant apparently explained that he had been concerned that he had contracted a disease and wanted to leave hospital to see his GP, but, according to Dr Ó Ceallaigh, agreed to resume his medication and to remain in the unit under restraints. He appears to have again expressed a wish to leave but Dr Ó Ceallaigh explained to the applicant that it was his opinion that his treatment should continue in the unit to which the applicant again agreed, and also to take his medication. However, he again stated that he wished to leave the hospital that day. At that point Dr Ó Ceallaigh believed that following a period of not taking his medication, acute symptoms of psychoses were re-emerging. The applicant indicated that he was withdrawing his consent to remaining on a voluntary basis, and it appears that at 10.10am Dr Ó Ceallaigh decided to make an order under Section 23 of the Act in order to allow an assessment to be made for the purposes of Section 24 of the Act. He completed Part 1 of the Admission Order form pursuant to Section 24 noting that the applicant was expressing a wish to leave the hospital that day without any established support, and that he continues to require the therapeutic environment of the Special Care Unit. The required second assessment was carried out by Dr Power, but Dr Ó Ceallaigh states that *"[Dr Power] did not form the view that the applicant required to be admitted pursuant to Section 24"*.

20. Thereafter, Dr Ó Ceallaigh discussed the matter with Dr Power, who told him that the applicant was agreeing to take his medication and also to remaining on the Special Care Unit with a view to a gradual process of moving to another ward and an eventual discharge from the hospital, and that the applicant wanted to be given a chance to engage further in treatment as a voluntary patient. Following that conversation, Dr Ó Ceallaigh spoke to the applicant on the 22nd November 2011 to discuss his care plan. He says that the applicant was calm and appropriate throughout the interview, and agreed to remain on his medication and to remain in the Special Care Unit, and he was in agreement with the plan that he may in due course be returned to local services in Sligo, even though he expressed a preference to remain in Dublin. Dr Ó Ceallaigh formed the opinion that the applicant had capacity to give his consent to his treatment continuing in the Special Care Unit as a voluntary patient, and considers that the nature of the applicant's illness is such that treatment in the Special Care Unit is necessary in order to provide a safe environment for his treatment, given that his illness is associated with significant harm to others.

21. I should set out what is contained in the clinical notes for the 21st November 2011 which were made by the nurse who was with the applicant in the garden of the hospital when the applicant made three attempts to jump over the wall. Those notes were made at 17.15hrs. It appears that there had been a multi-disciplinary team review meeting earlier in the day, following which the applicant went to the garden area and attempted to jump the wall on three occasions. According to the note he became threatening in manner towards staff, but settled again and agreed to return to the ward following encouragement and reassurance. It is noted that at 11.55am the applicant had attempted to leave the Special Care Unit by forcing his way past staff members and threatening violence. It is noted that verbal de-escalation was unsuccessful and that the applicant was restrained "using approved CPI techniques", and was escorted back to his room. He remained restrained for seven minutes. It is noted also that he agreed to remain as a voluntary patient and accepted oral medication, following which he is noted to have been more settled, and that he was reviewed by a named doctor and that he disclosed to that doctor that his attempt to abscond was due to *"a fear that he had contracted something prior to admission and needed to speak with G.P"*. It is noted also that the applicant was anxious to move to the main ward and that he remained somewhat unsettled and irritable at that time, though he was not hostile or aggressive. However, he was continuing to *"push boundaries, requiring redirection at times"*.

22. As I have already stated, it was following those episodes that on the following day Dr Ó Ceallaigh considered that, given the fact that the applicant told him that he was withdrawing his consent to remaining there on a voluntary basis and wanted to leave, he should be detained, and for that purpose signed the Part I form so that the applicant could be assessed by Dr Power for the purpose of Section 24 of the Act. As I have already stated, however, Dr Power did not form the necessary view that the applicant should be detained under section 24 of the Act.

23. I have referred to the fact that eventually on the 21st November 2011, Dr Mohan, the consultant forensic psychiatrist attached to the Central Mental Hospital, assessed the applicant, and prepared a report in which, inter alia, he considered that the applicant met the criteria for a "mental disorder" for the purposes of Section 3 of the Act, and fulfilled the criteria set forth in Section 3 (1) (a) and (b) of the Act. In his report, having set forth the applicant's personal and clinical history, and the risk factors for violence both past and current, including suicide risk, he states that he has taken into account the best interests of the applicant with due regard to the interests of other persons who may be at risk of serious harm, as well as having regard to the applicant's right to dignity, bodily integrity, privacy and autonomy, these being factors which must be had regard to regard to when decisions concerning the care or treatment of a patient are being made. Having so stated, Dr Mohan goes on in his report to explain why he was of the opinion that the applicant met the criteria for a mental disorder as defined in Section 3 of the Act.

Section 3 provides:

> *"3.— (1) In this Act "mental disorder" means mental illness, severe dementia or significant intellectual disability where—*
>
> *(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*
>
> *(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."*

24. In relation to Section 3(1)(a) above, Dr Mohan states in his report that the applicant suffers from a mental illness as defined in the Act, that illness being paranoid schizophrenia. He goes on to state that the acute phase of the illness was in remission, but that the chronic symptoms are prominent in his presentation, most notably cognitive deficits whereby he has poor insight into his illness with an associated risk of violence, as well as difficulty organising and making realistic plans for his future and grossly impaired judgment. He considers that the applicant's understanding of his mental health problems and related risk issues is at best superficial, and that his expressed desire to be discharged and his willingness to engage with services on a voluntary basis are inconsistent with

his history of poor engagement with local services at Sligo, and further that his engagement at St. Patrick's University Hospital has been minimal. He notes also in this regard the applicant's attempts to abscond from the locked ward. He concludes that part of his opinion by stating:

> *" … the likely consequence of discharging [the applicant] from hospital at this time would be non-compliance with treatment and a rapid deterioration in his mental state. The associated risks would be serious violent behaviours in addition to the risk of self harm. These risks would be immediate in that they would be unpredictable."*

25. As for Section 3 (1) (b) Dr Mohan states:

> *"The severity and degree of this impairment is such that he is currently unable to make decisions that would maintain the stability of his mental illness and ensure his safety and the safety of others outside an inpatient hospital setting.*
>
> *Maintenance of remission from acute illness has only been possible under conditions of close professional supervision and therapeutic security as provided by Dr Ó Ceallaigh and his team and the nursing staff at St. Patrick's University Hospital. In my opinion, failure to admit [the applicant] to hospital would lead to a serious deterioration in his condition and prevent the administration of appropriate treatment.*
>
> *Admissions to hospital have alleviated his condition to a material extent and he now is in a position to benefit from psychological therapies aimed at helping [the applicant] maintain his mental health and manage the associated future risk of harm to others."*

26. As to the applicant remaining as a voluntary patient, Dr Mohan stated that it was his opinion that his inconsistent consent to remain as a voluntary patient in hospital reflected an underlying lack of capacity on his part to make an informed decision with regard to remaining in hospital as a voluntary patient.

27. Dr Mohan then states that having carried out his assessment he informed Dr Ó Ceallaigh that it was his opinion that the applicant's risk of harm to others could best be managed by detaining him under the Act, and went on to state that he by then understood that Dr Ó Ceallaigh had initiated the procedure for detaining the applicant but that Dr Power, who was asked to provide a second opinion for that purpose, was not satisfied that the applicant fulfilled the criteria to be detained. He makes no comment on that opinion formed by Dr Power.

28. Dr Ó Ceallaigh has sworn a further affidavit on the 28th November 2011. He deals with a number of matters, including by describing the nature of the Special Care Unit, and the nature of care provided therein. He states, inter alia, that there are no restrictions on visiting the patient during normal visiting hours, that the applicant's parents have been able to visit without restriction, and that visits are encouraged. In addition the patient may see a lawyer at any time provided prior contact is made with the hospital by the lawyer. Dr Ó Ceallaigh then describes the care and treatment which the applicant has received since August 2011, and his response thereto. He deals with the events on the 22nd November 2011 again, including the restraint and sedation of the applicant as already described following the attempts to leave by jumping the wall. In addition, he states that following the restraint and sedation of the applicant on the 21st November 2011, he was reviewed by a Dr. Kelly, Senior Registrar, and that where a voluntary patient expresses a wish to leave it is the hospital's practice for the clinical team to engage with the patient immediately *"in order to establish their wishes".* He goes on to state that on this occasion the applicant had indicated an intention to remain in the hospital as a voluntary patient, albeit he was anxious to move to a different ward within the hospital

29. He refers again to the initiation by him of the Section 23 procedure on the 22nd November 2011 and to the second opinion of Dr Power to the effect that the applicant did not meet the criteria for admission, and that thereafter the applicant remained as a voluntary patient, as defined. He refers to the opinion of Dr Mohan that the applicant met the criteria for admission as of the evening of the 21st November 2011, and states that by the time Dr Power examined the applicant on the following day at 4pm the applicant had made sufficient improvement in his condition and his insight had improved sufficiently to give a commitment to adhere to his medication and to remain in hospital as a voluntary patient in the Special Care Unit, and that it was this improvement which led Dr Power to conclude that he did not meet the criteria for admission at that time. Finally, Dr Ó Ceallaigh states:

> *"The philosophy of the Mental Health Act, 2001 supports patients, even those who are acutely ill with mental illness, being treated as voluntary patients within approved institutions wherever possible. Sections 23 and 24 of the Mental Health Act 2001 require an expression by a patient of their wish to leave hospital before a patient status can be changed to that of a detained patient if the criteria in section 3(1)(a) or (b) are [met]."*

Legal submissions:

30. Mr McDonagh for the applicant does not dispute that the applicant is suffering from a mental illness for which he needs care and treatment. At issue, rather, is whether there is any lawful basis for the applicant's de facto detention in the hospital, in circumstances where on the 12th October 2011 the Renewal Order was revoked and the applicant was "discharged" though not permitted to leave, where he initially thereafter agreed to remain and be treated as a voluntary patient, but has on several occasions thereafter expressed a wish, and has in fact attempted, to leave the hospital, has verbally indicated a withdrawal of his consent to remain as a voluntary patient, has been physically restrained from attempting to leave and forcibly sedated, but has not been detained pursuant to the provisions of Sections 23 and 24 of the Act because he was not considered by Dr. Power to be a person who fulfilled the criteria for admission under those sections.

31. Reference is made also to the fact that the circumstances under which the applicant remains in the hospital and his treatment there in the secure Special Care Unit are in all respects identical to those pertaining when he was detained under the Admission Order and subsequent Renewal Order up to the 12th October 2011, yet since that date he has been deprived of the protections provided to those who are detained under the Act. Mr McDonagh submits that there is no lawful basis for the applicant, as a voluntary patient, to be detained in the hospital where he wishes to leave and has expressed that wish both verbally and by direct action such as his attempts to leave, most particularly on the 21st November 2011, absent any order detaining him.

32. It is submitted that the régime under which the applicant remains cannot be reconciled with voluntariness, and that if the hospital has accepted, as it did, that the applicant has the capacity to give his consent as he has done on occasions, it must equally accept his capacity to withdraw that consent, and allow him to leave the hospital, unless circumstances are such that at the time that the wish to leave is expressed or demonstrated it is deemed appropriate to detain him under the provisions of sections 23 and 24 of the Act, and he fulfils the necessary criteria for that purpose.

33. A difficult aspect of the present case is that following the assessment of the applicant on the 21st November 2011 by Dr Mohan, who considered that the applicant should be detained and fulfilled the necessary criteria on that date, Dr Ó Ceallaigh invoked the power to detain under Section 23 of the Act in view of the applicant's attempts to abscond on the 21st November 2011, and arranged for the applicant to be examined by Dr Power for the purposes of Section 24, but by the time Dr Power examined the applicant on the 22nd November 2011 Dr Power was not of the view that he met the criteria for detention under the section in view of the improvement in his condition and his willingness to remain as a voluntary patient and to continue to take his medication. This of course begs the question as to whether, if Dr Power had had the opportunity to examine the applicant on the 21st November 2011, he would have come to the same opinion, even if that opinion would have differed from that of both Dr Mohan and Dr Ó Ceallaigh on the 21st November 2011. One way or the other, however, the fact remains that the applicant could not be, and was not, detained under Section 24, and therefore remained as a voluntary patient, as defined in Section 2 of the Act. The withdrawal of consent, or even the lack of capacity to decide to remain or not remain as a voluntary patient, does not affect the status of "voluntary patient" given the terms of the definition, which, as already set forth, is "a person receiving care and treatment in an approved centre who is not subject to an admission order or a renewal order". The Act does not regulate or make any provision relevant to the treatment of voluntary patients, save for the power to detain such a patient in circumstances coming within Section 23 of the Act, and the provision in Section 29 of the Act which provides:

> *"29.—Nothing in this Act shall be construed as preventing a person from being admitted voluntarily to an approved centre for treatment without any application, recommendation or admission order rendering him or her liable to be detained under this Act, or from remaining in an approved centre after he or she has ceased to be so liable to be detained."*

Subject to those two provisions the Act applies only to detained patients, and the term "patient" is, as stated in Section 2, to be construed in accordance with Section 14, i.e. a person to whom an Admission Order relates.

34. There is no statutory régime of protection applicable to voluntary patients, as there is for detained patients. But they will of course be cared for and treated in accordance with professional practice norms and any applicable Codes of Professional Conduct, and with due regard to the patient's best interests. A person who is admitted in the first instance as a voluntary patient, as was this applicant on the 26th August 2011 is present in the hospital without any of the statutory safeguards to which a detained patient is entitled, in particular a review of the relevant detaining order, and the nomination of a legal representative. Presumably the voluntary nature of such a patient's presence in the hospital is considered to render statutory safeguards unnecessary in circumstances where such a patient, who is there only on a voluntary basis, may choose to leave the hospital, unless prevented from doing so under Sections 23 and 24 of the Act, whereupon the statutory safeguards must be provided. What the present case focuses on is the situation of a voluntary patient such as the applicant who, following a voluntary admission, was made the subject of a detention order under section 24 but which was later revoked, and who, though considered at relevant times capable of giving consent to remaining voluntarily, is considered not to have capacity to decide to withdraw that consent and leave the hospital, and is prevented from leaving the hospital whenever he attempts to do so because it is considered that he would present a risk of causing serious harm to other persons outside the hospital, particularly where no measures or safeguards may be in place to ensure that he takes his medication.

35. Looking at that situation somewhat differently, let us suppose that the applicant had been at home up to the 21st November 2011 and had, following some serious incident at home on that date been made the subject of a recommendation by a General Practitioner under section 10 of the Act, and had arrived at the approved centre and was examined under section 14 of the Act to see if he should be made the subject of an Admission Order, and, as Dr Power did on the 22nd November 2011, it was concluded that the criteria for an Admission Order were not met, there would not be any lawful basis for keeping the applicant in the hospital, absent his consent to being there as a voluntary patient, or even if he lacked the capacity to give a properly informed consent. Put more plainly, such a consultant psychiatrist could not decide on the one hand that the applicant did not meet the criteria for an Admission Order, and on the other hand decide to detain him anyway because he is mentally ill and in-patient treatment in a secure locked unit is considered desirable. The only basis for involuntary detention is where he/she is suffering from a mental disorder as defined, part of that definition being that the reception, detention and treatment of the person in the approved centre *"is **likely to benefit** or alleviate the condition"* (emphasis added).

36. I note in passing that this definition does not require that the detention is "necessary", and does not appear to exclude the possibility of a detention order being made even in circumstances where the patient may be willing to be treated as a voluntary patient, though Section 16 of the Act requires that upon an Admission Order or a Renewal Order being made, a notice in writing to that effect must be given to the patient and informing him/her of a number of matters including at paragraph (g) thereof that he/she *"**may be admitted** to the approved centre concerned as a voluntary patient if he or she indicates a wish to be so admitted"* (emphasis added). That would be consistent also with the requirement that the patient be detained in the least restrictive manner consistent with good medical practice and the best interests of the patient, and certainly respects the patient's right to dignity, bodily integrity, privacy and autonomy, when making a decision concerning the care and treatment of the patient as required by section 4 of the Act.

37. Nonetheless, it must be possible for a consultant psychiatrist faced with a patient in respect of whom he/she has made an Admission Order or a Renewal Order and who has given such a notice in writing to the patient who indicates following its receipt that he/she wishes to be admitted as a voluntary patient, to override or ignore such an expressed wish, if in his or her opinion the patient lacks sufficient insight into the illness, or otherwise lacks sufficient capacity to decide that he/she wishes to be a voluntary patient. Paragraph (g) of Section 16 uses the phrase "may be admitted" rather than "will be admitted" as a voluntary patient, thereby allowing a discretion in that regard. Such a scenario of course is entirely different to the present case though, since in my hypothetical case the patient has been found to meet the criteria for admission.

38. The present case, rather, is one where the applicant has on the 22nd November 2011 been found by Dr Power not to meet the criteria for admission as an involuntary patient, resulting in the applicant beiung a voluntary patient as a matter of law, since he is at that point and as a matter of fact a person receiving care and treatment in an approved centre who is not the subject of an admission or renewal order. On the other hand he on occasion states that he does not wish to be there, and has given expression to that wish by attempting to leave, albeit that he appears capable of changing his mind about this from time to time, especially when he has received encouragement and reassurance from staff. In the case of this applicant, it would appear that there is a difference of opinion between clinicians as to whether the applicant has the necessary capacity to make an informed decision to remain on a voluntary basis. Dr Power appears to accept that his wish in that regard on the 22nd November 2011 could be taken at face value such that an Admission Order was unnecessary, whereas on the previous evening Dr Mohan opined, as already set forth, that:

> *"Having assessed [the applicant] it is my opinion that his inconsistent consent to remain as a voluntary patient in hospital reflects an underlying lack of capacity on his part to make an informed decision with regard to him remaining in*

hospital as a voluntary patient".

Dr Ó Ceallaigh is not prepared to accept the applicant's reversal or withdrawal of his consent from time to time as capable of acceptance at face value, where following encouragement and reassurance from staff members the applicant reverts to agreement to remain voluntarily. He certainly considers that the applicant's illness is such that he requires treatment in a secure unit such as the Special Care Unit, and that he would be a danger to others if allowed to leave the hospital, and he has made reference to the fluctuations in the applicant's condition and his responses to drug treatment which are noted in the clinical notes for the 21st November 2011. He refers to the improvement in the applicant's condition to which Dr Power had referred on the 22nd November 2011, and that it was this improvement and his expressed willingness on that date to accept treatment on a voluntary basis in the Special Care Unit that led to Dr Power's opinion. Clearly, Dr Ó Ceallaigh considers it to be in the applicant's best interests to remain in that unit for the moment so that the recommended care plan can be followed through, with a view to his eventual transfer back to local services in Sligo, but not yet, since he still poses a risk to other persons. The question remains whether there was a lawful basis for the continuing of the applicant's presence in the hospital after the 12th October 2011 and/or after the 22nd November 2011 where the applicant had expressed a wish to leave, despite all concerned acting entirely in accordance with what they consider to be in the best interests of the applicant.

39. Caroline Costello SC for the respondents resists the reliefs sought by the applicant, and in doing so points to a number of factors. She submits first of all that all the medical personnel have at all times had regard to the best interests of the applicant, as they are obliged to do, and that they have at all times complied with their obligations under the Act. In that regard she has pointed to the fact that from 26th August 2011 to the 12th October 2011 the applicant was the subject of an Admission/Renewal Order which, as affirmed by a Mental Health Tribunal, would have justified the involuntary detention of the applicant until the 26th December 2011, were it not for the fact that the Renewal Order was revoked on the 12th October 2011 because Dr Ó Ceallaigh was of the view on that date that the applicant's condition had changed for the good, and he was indicating agreement to his care plan in the Special Care Unit and to taking his medication. As required by Section 28 of the Act he revoked the Renewal Order as the applicant no longer fulfilled the requirements for his detention under the Renewal Order. This, she submits, is clear evidence of strict compliance with the Act, and in recognition of the principle underpinning the statutory scheme that a person should be treated in hospital in the least restrictive environment, and that as far as possible they should be treated and cared for as a voluntary patient – in other words without being detained under an Admission Order.

40. It is worth noting that the Renewal Order made on the 27th September 2011 and affirmed by the Tribunal on the 11th October 2011 was made on the basis of Section 3(1)(b)(i) **and** (ii) of the Act, and not simply on the basis of Section 3 (1)(a) thereof. In other words, it was made not on the basis that because of the nature of the illness there was a serious likelihood of the applicant causing immediate harm to himself or others, but rather that because of the severity of his illness his judgment was so impaired that the failure to admit him would lead to a serious deterioration of his condition or would prevent the administration of appropriate treatment that could only be given by such admission, and that the reception, detention and treatment there would likely benefit or alleviate the condition of the applicant to a material extent. In paragraph 9 above I have set forth Dr Ó Ceallaigh's explanation for revoking the Renewal Order the day after it was affirmed by the Tribunal. He clearly had formed the view by then that the applicant's judgment was no longer so impaired that he needed to be subject to the detention order and therefore no longer fitted within the criteria in Section 3 (1)(b)(i) and (ii) of the Act. Ms. Costello submits that a pre-requisite to detention in this case was that the applicant should be within Section 3(1)(b) of the Act, and once he was indicating a wish to remain under the Care Plan and to taking his medication there was no basis for his continued detention, albeit that the continuance of his Care Plan to which he was indicating agreement required that he remain in the locked Special Care Unit.

41. Ms. Costello has submitted that there is nothing inconsistent in a patient who is a voluntary patient remaining in the hospital but subject to restrictions as required for his treatment, and has referred to the need, as stated by Dr Ó Ceallaigh, for the applicant to avoid what he describes as "stressors", and that it is inevitable that if this is to be achieved the applicant must be prevented from accessing or being exposed to those stressors. In so far as his condition was being managed in part by reducing his exposure to stressors and he was consenting to that régime of treatment, Ms. Costello submits that there is nothing unlawful about that, and that it is simply part of his treatment there as a voluntary patient. In so far as the applicant has on occasions expressed frustration at such restrictions, even to the point of indicating a wish to leave, she points to the fact that when dealt with appropriately upon expressing such a wish he has reverted to his previous position of agreeing to being there on a voluntary basis with the restrictions which are involved in his treatment plan. It is submitted, again, that this is an appropriate response to the applicant expressing frustration from time to time, rather than the staff simply taking him at his word and letting him out the door of the hospital and onto the public street when there is no dispute on anybody's part that he is ill and in need of treatment there. It is submitted that it would be irresponsible and breach of a doctors' duty of care to expose either the applicant or others to any risk associated with such an unplanned release onto the street, and that the responsible and proper course for all to adopt was to speak with the applicant, and give him encouragement and reassurance so that he could once again resume his treatment and care on a consensual basis, which is, it is submitted, what has happened.

42. Ms. Costello has also referred to the fluctuating nature of the applicant's behaviour and desire to leave or not to leave, and that it has been seen to alter on a regular basis, but always returning to consent after he has been spoken to by staff. She submits that it must be appropriate to deal with the applicant in this way, without it being considered to be an unlawful detention, or that the régime under which he is being treated has no statutory basis, as Mr McDonagh has submitted, so that treatment continues appropriately and without interruption, and as a voluntary patient.

43. Ms. Costello has pointed to the fact that nowhere in the applicant's case is it sought to quash the Admission Order, or the Renewal Order, or the Decision by the Tribunal to affirm the Renewal Order, or indeed to quash the Order revoking the Renewal Order on the 12th October 2011. She points also to the fact that nobody on the applicant's side is disputing that the applicant suffers from a serious mental illness and that he needs to be treated in hospital. She notes that at all times since his admission in August 2011 he was properly afforded all the protections and safeguards to which he is entitled under the Act while the subject of a detention order, save for the error made in not providing the applicant himself with a copy of the revocation order. It was given to his legal representative however, and Dr Ó Ceallaigh has explained that error.

44. Ms. Costello submits that a voluntary patient can consent to a régime of treatment and care which involves being in a locked Special Care Unit, without this being considered to be detention. She suggests that the expression by the applicant on the 21st October 2011 to be allowed to leave that unit in order to go to the coffee shop should not be seen to be the expression of a wish to leave the approved centre, and she makes the same submission in relation to the attempts to jump a wall, which were explained by the applicant subsequently to Dr Ó Ceallaigh on the basis that he wanted to go and see his General Practitioner. She submits that this is not the expression of a wish to be discharged onto the street. She accepts that the applicant had to be physically restrained on the 21st November 2011 but says that this was for a very short period of time (seven minutes) while the applicant was calmed, and that thereafter he again reverted to agreeing to remain and to taking his medication. She submits that one should not discount the

clinical judgment of Dr Ó Ceallaigh in these matters also, or indeed that of Dr Power who on the 22nd November 2011 formed the view, contrary to that of Dr Ó Ceallaigh the previous day as it happens, that the applicant was well enough to weigh up and consider the situation and form a judgment that he was content to remain in the hospital as a voluntary patient, and that therefore he was not a person who should be made the subject of a detention order under Section 24 of the Act, even though he had on the previous day indicated a wish to leave as described.

45. Ms. Costello submits that restraint measures ought not to be equated with detention, and that such procedures clearly permit an opportunity whereby the patient may be spoken to and persuaded to resume taking his medication and remaining in the Special Care Unit. She refers to the clinical notes which indicate the extent of the engagement with the applicant and to the success achieved in persuading him that he needed to be in the hospital and to take his medication, and his agreement with that and to remaining in the Special Care Unit, and she submits that this Court should be slow to question clinical judgment, if at all.

46. Mr McDonagh has urged that this case is not concerned with questioning or second-guessing any clinical judgments made about the applicant's medical illness, or about whether or not it was appropriate to invoke powers under Section 23 of the Act to detain him pending assessment under Section 24, or whether the decision not to detain him under Section 24 was or was not correct. He urges that the case must be confined to the applicant's Statement of Grounds and the reliefs claimed therein, which by way of reminder are for declarations that, save for having first invoked the provisions of the Act to detain him, the respondents were **not entitled to refuse him permission to leave** the Special Care Unit while a voluntary patient; that on the 21st and 24th October 2011, and on the 21st November 2011, the respondents **unlawfully detained** the applicant, and that they unlawfully refused to allow him to leave the Special Care Unit. There are other reliefs which I have already set forth related to a breach of section 28, and to breaches of certain constitutional and Convention rights arising from the delay in Dr Mohan's risk assessment, and also damages. I will come to these in due course.

Conclusions:
47. From the 12th October 2011 the applicant has been and remains a voluntary patient as defined under the Act. His status in that regard is unaffected by whether he has the capacity to give an informed consent to being in the hospital on a voluntary basis, or even whether he has withdrawn his consent. A voluntary patient who withdraws consent by indicating a wish to leave or otherwise or by attempting to leave remains a voluntary patient until such time as that status is altered by the commencement and completion of the procedures under Sections 23 and 24 of the Act, whereby an order for detention is made. Only upon that occurrence does he cease to be a voluntary patient and become entitled to the procedures, safeguards, and protections provided by the Act, either again, as in this case, or, in other cases, for the first time. There are no procedure for a review before a Tribunal which can avail a voluntary patient who has expressed a wish to leave but who has been considered not to meet the criteria for admission under section 24 of the Act, yet has not been allowed to leave, because having been spoken to by the relevant staff including a consultant psychiatrist he has satisfied them that he will again remain in the approved centre and continue to take his medication.

48. For all practical purposes the applicant in the present case is in hospital in precisely the same locked ward and under precisely the same care and treatment plan which he was under while the subject of the Renewal Order prior to its revocation. He is not permitted to leave the hospital when he expresses a wish to do so, yet he has none of the protections and safeguards of an involuntary patient. His status as a voluntary patient appears to disadvantage him in this way, and arguably gives rise to the mischief that he could remain indefinitely in this locked ward as a "voluntary patient" with no recourse to a review or even access to a legal representative to assist him, since the latter is nominated only following the making of an Admission Order, whether under Section 14 or under Section 24. It is submitted that such a situation has no statutory or other lawful basis and amounts to unlawful detention. While it is accepted that the applicant is ill and in need of treatment, and that all concerned are acting bona fide and in his best interests as they see it, nevertheless it is submitted that any régime for his care and treatment in the hospital must have a basis in law, and he cannot simply be detained because the clinical opinion is that he needs to be there.

49. This situation raises an issue as to what if anything, beyond the statutory definition, the term "voluntary patient" means or implies. Does it mean that a patient who is regarded as having sufficient capacity to consent to remaining as a voluntary patient so that no Admission Order is required, ought to be equally regarded as having capacity to withdraw that consent and be allowed to leave the hospital, unless he comes within sections 23 and 24 of the Act? If that is correct, and if the applicant communicated such a withdrawal of consent and a wish to leave, it is certainly arguable that the applicant was unlawfully detained on the dates complained of, after he was refused permission to leave, or was prevented from leaving. If that argument is correct, then the fact that clinicians may be of the view that he needs to be treated as an in-patient would not override the requirement that he be permitted to leave.

50. An alternative argument is that a wide margin of appreciation ought to be allowed to clinicians when faced with a patient who expresses a wish to leave, to not immediately permit him to do so, in order to provide an opportunity to discuss matters with him with a view to persuading him to once again co-operate as a voluntary patient in his own best interests, rather than simply accepting the expressed wish at face value immediately, and discharging him there and then. Such a patient may well be considered to pose a danger either to himself or to others if he is simply discharged from the hospital pursuant to that expressed wish. That dilemma raises an issue as to the extent of the duty of care owed by doctors and nursing staff to not only the patient but to members of the public generally, and whether the statutory provisions must on occasion and in appropriate cases yield to that duty of care. It is by now well-established that this legislation is paternalistic in nature and should be interpreted accordingly, but that cannot justify so purposive an interpretation as to construe as lawful a detention which in truth has no basis in law, simply because it seems to all concerned that detention is in the patient's best interests even though there is no actual power under the Act to detain him. In the past the Court has been faced with such situations in applications under Article 40 of the Constitution, and has been obliged to hold that a detention is unlawful, yet not order an immediate release of a vulnerable person in order to allow the matter to be regularised, or to allow an opportunity for the release of the patient in a planned and structured way so that he or she does not come to harm.

51. The general scheme of the Act envisages, even requires, such an approach in the interests of patients who are clearly vulnerable and requiring a careful and caring approach where the Court may fashion a remedy if one be required which takes these factors into account, and yet is in accordance with law. For example, Section 28 (1) mandates the revocation of an admission order or renewal order **and the discharge of the patient** when the consultant psychiatrist responsible for the care and treatment of the patient becomes of opinion that the patient is no longer suffering from a mental disorder. However, Section 28 (2) provides:

> *"(2) In deciding whether and when to discharge a patient under this section, the consultant psychiatrist responsible for his or her care and treatment shall have regard to the need to ensure:*
>
> *(a) that the patient is **not inappropriately discharged**, and*
>
> *(b) that the patient is detained pursuant to an admission order or a renewal order **only for so long as is reasonably necessary** for his or her proper care and treatment." (emphasis added)*

It will be evident that the revocation of the admission order or renewal order by the consultant psychiatrist once he/she has formed the opinion that the patient no longer suffers from a mental disorder is the first step in a two step process, that second step being the discharge of the patient. It follows that a detention order may be revoked, yet the consultant may decide not to discharge the patient forthwith (in the sense of allowing him/her to leave), in favour of ensuring that even though the detention order has been revoked the patient remains in the approved centre, even against his wishes, until he/she is satisfied that his discharge is not inappropriate. There is no guidance in the Act as to what would constitute an inappropriate discharge, but I presume that it at least encompasses a situation where a patient has no accommodation available to him at the point in time when the detention order is revoked. The section empowers the hospital not to discharge the patient until such time as it is appropriate that he be discharged in the sense of being allowed to leave the hospital. The patient may very well in such circumstances wish to be allowed leave, and indeed attempt to leave. He is at that point in time a voluntary patient as defined under the Act, but yet is unable to actually leave. There is no order detaining him at that point in time, and neither could be detained at that point in time under the provisions of Section 23 and 24 of the Act, because the opinion has been formed by the consultant psychiatrist that he no longer suffers from a mental disorder. It may take some time for circumstances to exist whereby a discharge from the hospital would be appropriate. A wide discretion seems to be given to the consultant psychiatrist. Presumably it could take even some weeks to ensure that arrangements are made for a patient's accommodation or other necessary arrangements are put in place, even though there is no detention order in place. In such a situation, as I have said, the patient is a voluntary patient, as defined, even though he may not be expressing consent and may in fact be expressing objection to not being discharged in the strongest possible terms. As a voluntary patient in such circumstances the patient, just as the applicant, has no protections or safeguards available to him under the Act. Yet it could not be said that he is being unlawfully detained given the clear paternalistic and protective intention of the section. As I have referred to already at paragraph 50 above, the Courts have on occasions declared a patient's detention to be unlawful, yet in the exceptional context of this Act, have delayed making an order for the release of the patient, even though in other contexts release would be mandated following a finding of unlawful detention. That delay is for the very same reason as a consultant psychiatrist may, if appropriate, delay the discharge of the patient even though he/she has revoked the Admission Order or renewal order having formed the requisite opinion for the purpose of section 28 (1) of the Act.

52. This discretion to keep a 'voluntary patient' in hospital against his/her will in certain circumstances seems counter-intuitive or contradictory. There is a similarity to the present applicant's situation who is now a voluntary patient, as defined, yet is not permitted to leave. However, he is also a voluntary patient because those in whose care he is are of the view, or at least were so as of the 21st and 22nd October 2011 and the 22nd November 2011 that despite the fact that he had expressed a wish and demonstrated an intention to leave the hospital, he became again willing to remain as a voluntary patient and to take his medication. The reason Dr Ó Ceallaigh revoked the renewal order on the 12th October 2011 was that by that date the applicant had become compliant and was willing to accept his treatment and take his medication, and it was not considered that he should be the subject of an involuntary order.

53. On the 22nd November 2011 Dr Power was of the view that the applicant did not fulfil the criteria for admission under Section 24 of the Act because he was by then indicating a willingness to comply with his care plan, remain on the Special Care Unit and take his medication. But for that indication by the applicant, there is little doubt that the procedure under Section 24 would have been completed, as whether he is a voluntary patient or a detained patient has in this case nothing to do with the severity or nature of his mental illness. In either situation he suffers from the same illness. What is determining his status is his expressed willingness to comply with the Care Plan which includes being treated in the Special Care Unit and taking his medication, all with the ultimate objective of his being able to return to local services at Sligo. But it must be borne in mind that he is not a voluntary patient by reason of any decision by him to be voluntary. He is a voluntary patient because following the revocation of the renewal order on the 12th October 2011 he came within the definition of a voluntary patient provided for in the Act. I say that in view of the applicant's submission that if the applicant can decide to be a voluntary patient, his decision to the contrary should be respected too.

54. It is not being argued that the best interests of the applicant required on the relevant dates that the applicant be discharged onto the street. It could not be so argued, I would imagine. Nobody on the applicant's side is arguing that he does not need to be treated in hospital, even though they are working towards a situation whereby the applicant may improve to the extent that he may be discharged back to local services in Sligo. It must be appropriate, and in my view this is envisaged by the scheme of the Act, that even though a patient such as the applicant might on occasion, perhaps because he has stopped taking his medication, express a wish to leave, his treating consultant or other appropriate staff can attempt to talk to the patient, and provide reassurance and encouragement to persist with his care plan and take his medication, so that the patient would be reassured to the point of again expressing a willingness to remain. I cannot consider such a caring way of handling a difficult situation by which his agreement was sought and obtained to a continuation of the recommended care plan as resulting in an unlawful detention on the dates complained of. In my view the clinicians must be permitted a wide margin of appreciation in how they might consider that the best interests of the patient are served.

55. I am not satisfied that the actions of staff on the 21st October 2011 and the 24th October 2011, when the wish expressed by the applicant to leave the Special Care Unit was not immediately acceded to, should be declared to constitute an unlawful detention of the applicant on the basis that he was a voluntary patient, as defined. On the 21st October 2011 he had wanted to leave the unit and go to the coffee shop with his solicitor, and on the 24th October 2011 he had apparently expressed a wish to leave the locked Special Care Unit and go to an open ward but in the same hospital. On neither occasion had he expressed a wish to leave the "approved centre", which, as defined by reference to sections 62 and 63 of the Act is the hospital as a whole and not a particular ward within the hospital. Section 62 makes it clear that a "centre" for the purposes of the Act means *"a hospital or other in-patient facility for the care and treatment of persons suffering from mental illness or mental disorder"*. It is a specialist facility therefore, and because of the nature of the illnesses sadly endured by patients therein it is inevitable that the régime for patients, whether voluntary or involuntary, may be more restrictive of a patient's freedom of movement than one would find in a general hospital treating illness and disability of other kinds.

56. Patients are permitted to receive visits from family and friends in both types of hospital, and may consult with a lawyer if desired, but in the case of an approved centre such as the respondent hospital such visits will be made by prior arrangement, whereas in a general hospital such visitors may simply arrive without prior arrangement, albeit during certain defined visiting hours. The fact that a patient in an approved centre is within the definition of a voluntary patient does not mean that he or she must be permitted to come and go as he/she pleases. That voluntary status is a matter of statutory definition and not a consequence in all cases of an informed consent to being voluntary, even if in a particular case the only reason for the non-existence of a detention order is the fact, as in this case, that the relevant psychiatrist is satisfied that the patient will agree to take his medication and be cared for without the necessity to be the subject of a detention order. The absence of such willingness to comply, or changes of mind in that regard, may be considered to be a symptom of the mental illness itself, where there can be mood fluctuations, and other fluctuations in the patient's condition.

57. As I have said, regardless of whether the patient is voluntary or involuntary the nature and extent of the mental illness is the

same, and does not determine the status of the patient within an approved centre. That is very evident from the statutory definition, and, as I have referred to already, the fact that even after an Admission Order has been made the patient must, within 24 hours of the making of the Admission Order, be given a notice in writing stating various matters, including that he/she *"may be admitted to the approved centre concerned as a voluntary patient if he or she indicates a wish to be so admitted"*. In other words, after it has been decided that an Admission Order is required the patient may nevertheless be allowed to remain as a voluntary patient. But that pre-supposes that if such a willingness is not forthcoming or that there was a change of mind by a withdrawal of that willingness, the patient would be again detained. The distinction in that scenario is of course that following a withdrawal of consent to voluntary status on the 21st November 2011, the Section 23 procedure was invoked but could not be followed through on the 22nd November 2011 because by then Dr Power had concluded that the criteria for admission were not met by the applicant. But I give that scenario just to demonstrate again, if that be necessary, that voluntary status is not determined in all cases by the nature or extent of the mental illness.

58. As for the events of the 21st and 22nd November 2011, and the reliefs sought in respect of them, my conclusion is the same as for the events of the 21st October 2011 and the 22nd October 2011. It was within the margin of appreciation to be permitted to treating staff to not simply release the applicant from hospital upon his attempt to jump the wall even where he made three attempts to do so. He was within the care of the hospital albeit as a voluntary patient, that status having been achieved, as I have said, by operation of law, and not dependent on his consent, though his willingness to co-operate was what determined that the renewal order should be revoked. That seems at first glance to be a somewhat contradictory, as I have said already, but in my view it is not. I do not believe that by taking an opportunity to talk to the applicant after his attempts to jump the wall, and even restraining him in order to calm him down thereby facilitating such a conversation, the respondents should be considered to have detained the applicant in an unlawful manner. I will not repeat the reasons for that view since I have already expressed them in relation to the previous events complained of. I consider that what was done was done in the applicant's best interests, as mandated by the Act, and so that he could be persuaded again to remain as a voluntary patient under the recommended care plan which included being within the secure Special Care Unit. I am satisfied that he did indicate his agreement to so remaining, and from the evidence adduced, that he was considered to have the capacity to so decide.

59. It is relevant that nobody is attempting to argue on this application that he does not need that treatment régime. Neither is the applicant attempting to argue or even to suggest that the relevant care and treating personnel are acting other than in a completely bona fide way and in his best interests. The argument is simply that the present régime to which the applicant, a voluntary patient, is subject, and where he is not permitted to simply leave when he expresses a wish to do so, has no statutory or other lawful basis, absent being detained under section 23 or 24 of the Act. I do not consider that to be correct in the present case for the reasons which I have set forth.

60. I should conclude by saying that I am not for a moment to be taken as indicating that in all cases where a voluntary patient expresses a wish to leave the hospital his wishes should simply be ignored so that he remains within the hospital, no more than it would be appropriate for the personnel concerned to instantly upon such a wish being expressed open the gate of the hospital and allow the patient to depart. These patients are vulnerable by virtue the nature of their illness, some to a greater degree than others, but all to some extent. It is a very specialised skill to care for and treat them appropriately, and I have no doubt that it is an extremely demanding task on occasions, given the complex and chronic nature of mental illness. To proscribe a rigid statutory régime by which such care and treatment should be conducted would be to interfere with ability of professionals to decide from day to day and perhaps from hour to hour how best a patient should be treated and cared for, often I suspect in fluid situations where there are fluctuations of mood and behaviour as a consequence of the very illness being endured by the patient. The Act of 2001 was passed in order to provide better protections to such vulnerable patients than existed under the Act of 1945, but I do not discern within the Act of 2001 any desire, express or implied, to interfere with, control or constrain the ability of professionals to make clinical and other decisions in relation to the care and treatment of patients, either voluntary or involuntary, and it would be surprising if it had.

61. What the Act of 2001 provides are safeguards to ensure that persons who do not need to be in an approved centre are not so kept, and protections for those who are detained. The voluntary patient does not have the benefit of statutory safeguards, except in so far as Section 28 of the Act provides that where a consultant psychiatrist decides that an admission order or renewal order should be revoked (which thereby renders the patient a voluntary patient) and the patient is discharged, the patient and his/her legal representative must be notified of, inter alia, his/her entitlement to have his/her detention reviewed, or where one has commenced, to have it completed. But the absence of protections such as benefit an involuntary patient detained under an admission order or a renewal order does not in my view place a voluntary patient in some sort of penumbra as submitted by Mr McDonagh. Once a voluntary patient, as defined, expresses a wish to leave, that wish may be respected and the patient may be allowed to leave under an appropriate discharge, or a procedure may be initiated under Section 23 by the consultant psychiatrist responsible, and if the requirements of Section 24 are met, then the patient will become entitled to the statutory safeguards and protections. This is a matter for clinical judgment at the time. In the case of the applicant he did not meet the criteria for detention under Section 24, but, as I have said, only because by the time Dr Power examined him for the purpose of Section 24, he had improved to the extent of indicating a willingness to co-operate with his medication and care plan in the secure unit. That conclusion led to a requirement for him to issue a certificate stating his opinion that the applicant should not be detained. That provision goes on to state that "the person shall thereupon be discharged". But where at that point in time the patient is again indicating a willingness to remain as a voluntary patient, then it would be nonsensical, irresponsible and even absurd that the treating consultant should be required to ignore that willingness to be treated voluntarily by actually discharging the patient, particularly where it is considered by all that in-patient care and treatment is in his best interests. If on the other hand, Dr Power had concluded on some other basis that the applicant did not meet the criteria for admission on the 22nd November 2011, and there was no renewed indication of a willingness to remain and receive treatment voluntarily, then the section would have to be complied with and the patient discharged, albeit that some additional period may have to be spent in hospital as a voluntary patient, as defined, in order to ensure that the patient was not discharged inappropriately.

62. I repeat once again that I am satisfied that the applicant expressed on the relevant occasions a willingness to remain and to be treated in the hospital, even though he had earlier on the same days expressed a wish to leave, and that it was appropriate for the personnel involved to handle the situations in the way they did, rather than simply discharge him upon the expression by him of a wish to leave, notwithstanding that he was a voluntary patient, as defined.

63. The applicant raised an issue arising from the fact that following the revocation of the renewal Order on the 11th October 2011 Dr Ó Ceallaigh failed to provide the applicant's legal representative with a copy of the revocation order made on the 12th October 2011. The applicant seeks a declaration that this omission was a breach of the provisions of Section 28(3) of the Act which requires him to do so. Dr Ó Ceallaigh in his affidavit sworn on the 23rd November 2011 states at paragraph 17 thereof that upon making the revocation order he completed Form 14 as required and informed the Mental Health Commission by faxing a copy to it. That fax was apparently acknowledged. He believes that thereupon the Commission notifies all relevant parties, including the applicant's legal representative. But he accepts that he himself did not provide a copy to the legal representative or the applicant. But in relation to

the latter he states that when he made the revocation order and decided that the applicant should remain on the Special Care Unit he informed the applicant of that decision and he states that the applicant was happy with his change of status. Ms. Costello submits that while it has been accepted that Dr Ó Ceallaigh failed to give a copy of the revocation order to the legal representative, the applicant has not pointed to any prejudice or injustice which has resulted from that failure to strictly adhere to the provision of Section 28(3) of the Act. I am satisfied that this is correct, and I do not consider it necessary to make any declaration in that regard.

64. In addition, the applicant seeks a declaration that the delay in the proper consideration of the applicant moving to an open unit and/or arranging for a risk assessment to be carried out, constitutes a breach of the applicant's right to privacy and/or right to receive medical treatment in the least restrictive environment as guaranteed by the Constitution of 1937 and the European Convention on Human Rights 1950. It will be recalled that a delay in Dr Mohan carrying out his assessment occurred and that the applicant became frustrated and stressed by this, and that this was a reason given to him for not being permitted to visit the coffee shop in the hospital on the 21st October 2011. It was something needed also before the applicant would be considered for a move back to local services in Sligo. I have no doubt that in an ideal world such an assessment should take place without any avoidable delay. But delays do happen for all sorts of reasons. In this case it appears to have resulted from the heavy workload endured by Dr Mohan who apparently is one of only four consultant forensic psychiatrists in this State. I have no evidence from which to conclude that during that period of time the applicant was treated other than appropriately in the Special Care Unit which is where it was considered that he should be treated and where he had agreed to be treated, save for the few occasions where he expressed the contrary. I am not satisfied that it would be appropriate to make any declaration that such delay as occurred breached the applicant's rights referred to in the applicant's Statement of Grounds.

65. For all these reasons, I refuse to grant any of the reliefs sought on the present application.