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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between

MH

Applicant

and

THE MENTAL HEALTH REVIEW TRIBUNAL FOR NORTHERN IRELAND

Respondent

HORNER J

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Summary

[1] The applicant, MH, a paranoid schizophrenic, was detained under the Mental Health (NI) Order 1986 ("the Order") after he had attacked Dr X, a consultant psychiatrist while driven by his paranoid psychotic ideation. He was detained in hospital under Article 77 of the Order following a decision of the MHRT on 3 May 2013. The President was Ms Ruth Lavery.

[2] The applicant's detention was considered by a differently constituted MHRT presided over by Mr Fraser Elliott QC on 6 and 22 November 2013. It gave its decision on 26 November 2013. The applicant has challenged this decision on a number of grounds. The two advanced at the hearing were:

(i) The approach of the MHRT was unlawful and that the MHRT had not adopted the narrow focused based approach required under Article 77(1) and Article 2(4) of the Order and,

(ii) The MHRT had misunderstood the meaning of "discharge" and had failed to take into account the applicant's stated intention which was to remain in hospital as a voluntary patient if discharged from detention.

The court rejects both these challenges. The approach of the MHRT had been within the strict confines of Article 77 and 2(4) of the Order. Further, although the MHRT did not expressly find that the applicant would leave hospital if discharged from detention, this was the overwhelming evidence before the MHRT. No person could have been in any doubt. Indeed, if on the evidence, the MHRT had reached a different conclusion then that conclusion would have been wholly unreasonable in the light of all the evidence before it.

[3] The court granted leave for the judicial review application so that the merits of the 2 issues raised by the applicant could be considered. However, in light of the findings of the court, it would have refused to grant relief because an application could have been made to the MHRT in March 2014 seeking a discharge from detention. No application was made. Furthermore, if the case had been remitted to a differently constituted MHRT, the new tribunal on the evidence before the original tribunal, would have been bound to conclude that the applicant should continue to be detained pursuant to the Order.

Introduction

[4] The applicant MH seeks leave for judicial review and relief arising out of the decision made by the MHRT which ordered the applicant to remain in detention under the Order. It was agreed by both parties that this would be a "rolled up" hearing. The MHRT had been required to make a determination in accordance with Article 77(1) of the Order once the applicant made an application to be discharged from his detention in hospital. The MHRT consisted of three members, one of whom

was Dr Scott, a consultant psychiatrist. It was presided over by Mr Fraser Elliott QC. Evidence was provided to the MHRT by way of expert reports complemented by oral evidence from Dr McGarvey, the applicant's responsible medical officer and Ms J McQuitty, a social work practitioner. The applicant did not give evidence and indeed no expert evidence was adduced on his behalf. The hearing took place over two days.

[5] The applicant sought to challenge this decision and the grounds for relief are as follows:

(a) The MHRT acted in a manner which was ultra vires and Wednesbury unreasonable, in particular, by failing to consider evidence relating to the applicant's prospective accommodation;

(b) In directing that the applicant remain in detention in accordance with the provisions of the Order MHRT acted in a manner that was procedurally unfair, unreasonable and in particular by:

(i) failing to correctly apply the law with regard to the appropriate standard of proof in accordance with Article 77(1) of the Mental Health (NI) Order 1986;

(ii) failing to correctly apply the law with regard to the appropriate test in accordance with Article 77(1)(b) of the Mental Health (NI) Order 1986;

(iii) failing to reach a rational decision, in light of the evidence referred to by the decision maker, in accordance with Article 77(1) of the Mental Health (NI) Order 1986;

(iv) failing to reach a decision based on a misunderstanding of the evidence put before the Tribunal and the submissions made by the applicant's counsel at the hearing before the Tribunal;

(v) paying attention to evidence that falls outside the definition of relevant evidence pursuant to Article 2(4) of the 1986 Order when reaching a decision in respect of the tests under Article 77(1)(b) of the 1986 Order; and

(vi) failing to give adequate reasons for reaching their decision so as to enable the reader to understand why and how the finding was decided.

(c) The MHRT, its servants and agents, failed to adequately comply with the duty under Article 83(2)(h) of the Mental Health (NI) Order 1986 and Rule 23(2) of the Mental Health Review Tribunal (NI) Rules 1986, and their decision was therefore unlawful and ultra vires and did so in particular by

giving reasons that give rise to substantial doubt that the decision maker effectively applied the law and regards to the appropriate test and Article 77(1) of the Mental Health (NI) Order 1986.

[6] It is important to remember that the present application is a judicial review of a decision of the MHRT. It is not, and cannot be allowed to become, a merits based appeal. The court in this judicial review is simply looking at whether the process was lawful. It is a disappointing statement of affairs, to put it as neutrally as possible, that there is no right of appeal in Northern Ireland in these types of case. Twelve years ago in Regina (H) v Ashworth Special Hospital Authority [2003] 1 WLR 127 Dyson LJ at paragraph [88] said:

> "It is not satisfactory that the only means of challenge to these important decisions is by Judicial Review."

[7] In England and Wales the legislature responded. But the position in Northern Ireland is still that judicial review is the only method by which a decision of an MHRT can be challenged. This is a most unhappy state of affairs, especially as it affects the rights of some of Northern Ireland's most vulnerable members of society.

Background Facts

[8] The applicant is a 33-year-old man who is currently in Tobernaveen Lower Ward of Holywell Hospital, Antrim ("The Hospital"). The applicant has suffered from a personality disorder which according to the reports from the healthcare staff probably would have been present from childhood. He has been diagnosed as a paranoid schizophrenic. A previous MHRT decision of May 2013 had concluded that the applicant should remain detained in hospital. This conclusion was reached on the basis of medical evidence from Dr Collins. This decision was not challenged.

[9] For a period of about five years before that the applicant had been living in supported accommodation provided by Praxis. His records indicated a deterioration in his mental health following him ceasing to take his anti-psychotic medication. This led to difficulties and ultimately resulted in the provision of his accommodation with Praxis being terminated in October 2012. From that point the applicant resided in temporary supported accommodation and was also treated in Holywell Hospital at times as both a voluntary and as a detained patient.

[10] Between 13 November 2012 to 7 February 2013, while detained in the Hospital, the applicant, who is HIV positive, began to refer to a delusion that a named member of the medical staff, Dr X, (a consultant working within the Trust's Home Treatment Team) had sexually assaulted him in the public toilets when he was 17. Acting on this delusion one day the applicant lunged and hit the consultant psychiatrist, Dr X, on the side of the head. He was subsequently arrested on 14 March 2013. The following day he was detained for assessment under Article 4 of

the Order. A further incident took place on 8 April 2013 when the applicant stated he believed that a fellow patient, Y, was a 'plant' and involved in a conspiracy with Dr X. An attempt was made by the applicant to assault Y. A member of staff sustained a fractured thumb in trying to restrain the applicant.

[11] An application was made by the applicant to MHRT on 26 March 2013 to consider his case for release and a decision of the Tribunal dated 3 May 2013 directed that the applicant remained detained.

> "The Tribunal is also entirely satisfied that the consuming nature of his delusion in relation to a particular consultant creates a substantial likelihood of serious physical harm to that person, if he were to be discharged. His detention was precipitated by a serious physical assault on this person. Dr Collins' account that there is a real risk of such harm is accepted as consistent with the recent physical assault, and consistent with the patient's current presentation."

The President went on to comment in respect of the detention that it was "a proportionate response to the degree of illness suffered".

[12] The applicant commenced anti-psychotic medication in April 2013 and this improved his mental health. He was moved to an open ward in September 2013. A renewal of the applicant's detention under Article 13 of the Order was issued prompting the applicant to seek to have his case to be referred once again to the MHRT in late September 2013.

[13] The MHRT gave its decision on 26 November 2013. This is the decision which is now being challenged on the grounds as previously stated. The conclusion of the MHRT, following the hearing over two days in November, was that the applicant should continue to be detained under the Order.

[14] The applicant has had a further opportunity to challenge his continuing detention in March 2014. He declined to take it. By letter of 25 March 2014 the applicant's solicitors said:

> "Until the law on this issue is determined by way of the Judicial Review proceedings our client's rights cannot be vindicated by way of further application to the same body, which, on his case, wrongly applied the law."

The court treats this explanation with some scepticism in the light of the uncontroverted evidence adduced by the Trust which demonstrated why the applicant should continue to be detained under the Order.

[15] In the course of the hearing before this court, it became clear that there was no discernible difference as to the proper legal principles between the respective legal teams. In particular, both counsel agreed that "discharge" under Article 77 of the Order meant discharged from detention and included the applicant remaining in hospital as a voluntary patient. Rather the central issue was whether the MHRT had applied the law correctly to the facts of this particular case.

[16] I have had the benefit of extensive written and oral arguments from counsel for both parties. I wish to record not only my gratitude for their industry but also to confirm that I have taken all their points into account, although for reasons of brevity, I have not dealt with each argument seriatim.

Relevant Legislative Provisions

[17] The relevant statutory provisions are contained in the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order"), as amended. Two particular provisions of this Order in Council arise for consideration. The first is Article 77(1). This provides:

> "Power to discharge patients other than restricted patients
>
> 77(1) Where application is made to the Review Tribunal by or in respect of a patient who is liable to be detained under this Order, the tribunal may in any case direct that the patient be discharged, and shall so direct if—
>
> (a) the tribunal is not satisfied that he is then suffering from mental illness or severe mental impairment or from either of those forms of mental disorder of a nature or degree which warrants his detention in hospital for medical treatment; or
>
> (b) the tribunal is not satisfied that his discharge would create a substantial likelihood of serious physical harm to himself or to other persons; or
>
> (c) in the case of an application by virtue of Article 71(4)(a) in respect of a report furnished under Article 14(4)(b), the tribunal is satisfied that he would, if discharged, receive proper care.
>
> A tribunal may under paragraph (1) direct the discharge of a patient on a future date specified in the direction; and where the tribunal does not direct the

discharge of a patient under that paragraph the tribunal may—

(a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship; and

(b) further consider his case in the event of any such recommendation not being complied with.

(3) Where application is made to the Review Tribunal by or in respect of a patient who is subject to guardianship under this Order, the tribunal may in any case direct that the patient be discharged, and shall so direct if it is satisfied—

(a) that he is not then suffering from mental illness or severe mental handicap or from either of those forms of mental disorder of a nature or degree which warrants his remaining under guardianship; or

(b) that it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.

(4) Paragraphs (1) to (3) apply in relation to references to the Review Tribunal as they apply in relation to applications made to the tribunal by or in respect of a patient.

(5) Paragraph (1) shall not apply in the case of a restricted patient except as provided in Articles 78 and 79."

The second material provision of the 1986 Order in the present context is Article 2(4), which provides:

"(4) In determining for the purposes of this Order whether the failure to detain a patient or the discharge of a patient would create a substantial likelihood of serious physical harm—

(a) to himself, regard shall be had only to evidence—

(i) that the patient has inflicted, or threatened or attempted to inflict, serious physical harm on himself; or

(ii) that the patient's judgment is so affected that he is, or would soon be, unable to protect himself against serious physical harm and that reasonable provision for his protection is not available in the community;

(b) to other persons, regard shall be had only to evidence—

(i) that the patient has behaved violently towards other persons; or

(ii) that the patient has so behaved himself that other persons were placed in reasonable fear of serious physical harm to themselves."

[18] As McCloskey J said in Re JR45's Application for Judicial Review [2011] NIQB 17:

> "Thus Article 77 merges with Article 2(4), to form a single statutory unit. In the context of these proceedings, the operative paragraphs are Article 2(4)(b)(ii). I shall consider the correct construction of all these provisions and the relevant governing legal principles presently."

[19] Both parties agreed that McCloskey J had correctly set out the way in which Article 77 and Article 2(4) of the Order had to be approached when he dealt with issues in Re JR45. This is set out at length in his judgment at paragraphs [1]-[15]. The proper approach can be briefly summarised as follows:

(i) The burden of proof rests on the detaining authority.

(ii) The Tribunal must form an evaluative, predictive and rational judgment, based on the relevant available evidence.

(iii) "Substantial likelihood" means real probability

(iii) The question of whether there is a real probability falls to be determined in a narrowly focused and notably prescribed manner.

(iv) The harm must be of a serious physical variety.

(v) The evidence has to be that of violent behaviour to others or evidence that other persons were placed in reasonable fear of serious physical harm to themselves.

McCloskey J concluded by stating:

> "The analysis of Article 2(4) serves to highlight the exacting and intellectually challenging nature of the Tribunal's decision making under Article 77."

[20] Rule 23(2) of the Mental Health Review Tribunal (Northern Ireland) Rules 1986 provides:

> "The decision by which the Tribunal determines an application shall be recorded in writing by the Tribunal, the record shall be signed by the President and shall give the reasons for the decision and in particular, where the Tribunal relies upon any of the matters set out in Article 77(1) or (3) or Article 78(1) or (2) of the Order shall state as reasons for being satisfied as to those matters."

[21] As Lord Phillips said in English v Emery Reimbold and Strick Ltd [2002] 1 WLR 2409 at 2415 paragraph 17:

> "Justice will not be done if it is not apparent to the parties why one has won, and the other has lost."

[22] In JR45 McCloskey J made clear in paragraph [28] that a reviewing court must read the Tribunal's decision as a whole and in conjunction with the underlying evidence considered by it. In Re X (Mental Health) [2008] NIQB 22 Gillen J made clear that in such a case proper and adequate reasons must be given when dealing with substantial points which have been raised, sufficient for the parties to know whether the Tribunal made an error of law. It is unnecessary for the Tribunal to set out the evidence and arguments or the facts found by it detail: it is not generally essential to explain why one witness is preferred to another.

[23] Finally Article 133(1) of the 1986 Order provides that:

> "A person shall not be liable, whether on the ground of one of jurisdiction or on any other ground, at any civil … proceedings to which he would have been liable apart from this Article in respect of any act purporting to be done in pursuance of this Order … unless the act was done in bad faith or without reasonable care."

Approach to decisions of the MHRT

[24] In Martina O'Callaghan v Western Health and Social Care Trust [2014] NICA 19 the Court of Appeal set out at paragraphs 18 and 19 the approach which the court should take in relation to Industrial Tribunals. They quoted with approval

the passage of the judgment of Donaldson LJ in UCATT v Brain [1981] ICR 542 when he said:

> "Industrial Tribunal reasons are not intended to include a comprehensive and detailed analysis of the case, either in terms of fact or in law … their purpose remains what it has always been, which is tell the parties in broad terms why they lose, or as the case may be, win."

In TCM (A Minor's) Application [2013] NICA 31 Morgan LCJ said:

> "[33] The issues faced by the Tribunal were clearly within their expertise and the balance reached by them in terms of the assessment of the educational needs of the child against all the background facts is one that should not be lightly disturbed. The respect which should be shown to decisions of expert tribunals is clearly acknowledged by Lord Hope in Eba v Advocate General for Scotland."

This was a specialist tribunal which included a consultant psychiatrist, Dr Scott. However, as McCloskey J in JR45 at paragraph [19] said:

> "It is also important to recognise that the impugned decision should be subject to 'careful scrutiny'."

The Evidence before the MHRT

[25] The evidence before the MHRT included the following:

(i) On 3 May 2013 Mrs Ruth Lavery, President of MHRT, directed the patient to be detained. This MHRT had reached a number of conclusions about the applicant on this issue. They included:

(a) detention in hospital for mental health treatment is warranted because there is no other location where the effects of his medication can be monitored and the dose titrated to the best effect;

(b) the applicant's history of resistance to conventional medical and his belief in alternative treatment resulted in MHRT concluding that he would not comply with his medication regime other than in the context of detention;

(c) his suspicion of hospital is so intense he would leave if he were not detained;

(d) there was ample evidence that discharge would create a substantial likelihood of serious physical harm to the applicant; and

(e) there was a substantial likelihood of serious physical harm to another person.

(ii) Dr McGarvey, consultant psychiatrist and the treating doctor, gave the following evidence, namely:

(a) The applicant was a paranoid schizophrenic with a history of non-compliance and dissatisfaction with his prescribed medication;

(b) She considered that he suffers from a severe mental illness of both a nature and degree that require ongoing treatment in hospital as a detained patient. She said:

> "Currently I do not believe management in a less restrictive environment is appropriate.";

(c) She believed failure to treat him as a detained person would result in deterioration of his mental state "and presents a substantial likelihood of risk or serious harm to both himself and others";

(d) When cross questioned by the Tribunal she said that she considered that there was only a possibility he would harm himself if he was discharged from detention but her view as to the risk to others remained unaltered ;

(e) His history involved an attack on Dr X in March 2013 and an attempted attack on another patient, Y, who the applicant believed was conspiring with Dr X on 8 April 2013;

(f) On 25 July 2013 he consumed a quantity of lavender oil and required transfer and treatment at Antrim Area Hospital;

(g) His mental state improved by 16 September 2013 but he still held his core delusional beliefs. He was reluctantly accepting prescribed medication, there were no recent instances of concern and he is availing of 30 minutes unescorted pass off the ward and engaging in an occupational therapy programme;

(h) On 26 September 2013 he was transferred to Tobernaveen Lower Ward. He was considered as being compliant with his medication. He expressed a desire to live independently and is "unrealistic at times about the level of support he will require";

(i) On 22 October 2013 he was noted to be attempting to obtain information on herbal supplements and a quantity of un-prescribed tablets believed to be herbal stimulant medication was uncovered in a search of the applicant's belongings. These were closely linked with a relapse in the applicant's mental state in the past. There was deterioration in his mental state by 30 October 2013 most likely secondary to the use of herbal stimulants. He had been more pre-occupied with Dr X and spoke of a 'conspiracy' involving others and a fear that people could read his mind;

(j) She concluded that continued treatment in the hospital was required given recent concerns about his mental state with increased paranoid ideation. She considered he was unlikely to remain as a voluntary patient. She said:

> "….I believe he would discharge himself to unsuitable accommodation, become non-compliant with medication and disengage from Community Health Team. I believe his mental state would deteriorate further. In this situation, (MH) would be unsupported and vulnerable and present a significant risk of physical harm to both himself and others, particularly those involved in his systematised delusions";

(iii) The risk assessment prepared on the applicant recorded an improvement in his mental state but that he continued to display "fixed delusional beliefs regarding named professionals but is no longer expressing any thoughts to harm others … His self-care and motivation is generally poor."

(iv) The report of the social worker recorded:

(a) His sister was unsure of his commitment to remain in hospital as a voluntary patient. She was also concerned that he would fail to comply with his medication and relapse quickly;

(b) His cousin was unsure if he would stay or leave hospital and was concerned that he may end up leaving hospital after wandering;

(c) He told the social worker that if he was made a voluntary patient he would remain in hospital "until suitable accommodation could be located";

(d) She noted that he had limited family support and few social outlets;

(e) He had gone AWOL from the ward on a number of occasions during his four admissions to hospital from October 2012 to date;

(f) She concluded that he needs to remain in hospital to be fully treated and for his medication to have maximum effect on his delusional beliefs; and

(g) She said "it is my opinion that due to ongoing limited insight if voluntary patient (sic) he would abscond or take his own discharge, be non-compliant with medication and may not engage with psychiatric services. In such circumstances, his mental state would deteriorate further and this would result in the substantial likelihood of his serious physical harm to himself and other people."

[26] The witnesses were cross-examined but there is no suggestion that they changed their opinions other than Dr McGarvey who accepted that there was only a possibility that the applicant would be a danger to himself if he was discharged from detention. This is recorded in the MHRT decision.

[27] Accordingly, the overwhelming evidence before the MHRT both from the experts and from his family members was that:

(i) Despite his claim that he would remain as a voluntary patient, he would abscond from hospital;

(ii) He would fail to take his prescribed medication;

(iii) His mental health would deteriorate;

(iv) There was a real probability that he would act on his delusions and as a consequence there was substantial likelihood of serious harm to others.

Decision of the MHRT

[28] The decision set out the detailed evidence that had been given to the MHRT both in writing and orally. The MHRT concluded that he continued to hold the core delusional beliefs of sexual predatory behaviour toward him, directly and through the agency of others, and that there remained the very real potential for the applicant to act on these delusions resulting in serious physical harm to others.

[29] As a consequence the MHRT was:

> ".. satisfied on the evidence that the patient's delusions remain unabated, that they require the ongoing and further treatment which Dr McGarvey has prescribed and that if the patient were to be discharged at the present

> time while still suffering from these delusions there would be a substantial likelihood of the patient seeking to act out these delusions, as he has already done, on Dr X or on some other member of the public identified by the patient as acting or having acted in collusion with Dr X, the result in serious physical harm to Dr X or to such member of the public identified by the patient as acting or having acted in collusion with him."

Issue One

[30] Mr O'Donoghue asserted that MHRT did not adopt the narrow focused approach required by Article 2(4) of the Order. He complained that MHRT had resorted to speculation. I do not consider that there is any substance in this challenge. I consider that its judgment was "evaluative, predictive and rational". The MHRT was required to focus on the applicant's past behaviour and whether he had behaved violently towards other persons in past. This involved looking at any violent behaviour he had exhibited towards other persons and considering the precise catenation of circumstances which led to such behaviour. The MHRT had to consider whether there was a real probability that such circumstances would be replicated in the future.

[31] The evidence was that in the past the applicant had behaved violently towards others when he was not being closely supervised and as a consequence had failed to take his prescribed medication, preferring instead to self-medicate with herbal substances. This had led to a deterioration of his mental state and eventually to violent assaults on others driven by his paranoid psychotic ideation. It had involved high levels of stress and acting out behaviour. The overwhelming evidence before the Tribunal was that there was a substantial likelihood that those conditions would be replicated because the applicant, despite his stated intention, was likely to leave hospital as he had done in the past on at least 5 occasions, if he was not detained. Once he was living in the community he would fail to adhere to his treatment regime, to self-medicate with herbal substances, suffer as a consequence increased paranoid ideation and then act on those delusions by attacking Dr X or anyone he believed was assisting Dr X. On the basis of the evidence before the MHRT I considered that not only was it correct to reach such a conclusion, but to have reached a different one in the light of the totality of the evidence, and in particular the un-contradicted medical evidence, would have been wholly unreasonable.

Issue Two

[32] There can be no doubt that the MHRT in its decision did not expressly deal with the claim by the applicant that if he was discharged, he would remain as a voluntary patient in the Hospital. It would have been preferable if it had done so. The court has been provided with a decision of another President of another

Tribunal where this was done. However, in this case it is necessary to look at the decision of the MHRT in the light of all the evidence before it as McCloskey J advised in JR45. On one side of the scales is the expert opinion of Dr McGarvey, the treating consultant psychiatrist, the opinion of Ms McQuitty, the social worker, the views of the only two family members who appear to take any interest in the applicant and his history of going AWOL from hospital in the past. On the other side of the scales, to be weighed in the balance, is the stated intention of the applicant who recently had been suffering from increased paranoid ideation, unsupported by any expert opinion. In those circumstances, the scales do not just tilt in favour of the conclusion that if he were to be discharged from detention he would not remain as a voluntary patient, they come crashing down in favour of such an outcome. Indeed, in the light of all the evidence, it would have been wholly unreasonable for any MHRT on the evidence before it to have arrived at a different conclusion.

[33] The applicant has relied on a remark made by the President during the course of submissions. Apparently, when the applicant's counsel referred to the applicant's intention of remaining in hospital as a voluntary patient when discharged, the President is alleged to have said:

> "The Tribunal was not entitled to proceed on the basis that this man will not discharge himself from hospital."

It is clear that context is everything in construing a remark of this nature. However against the background of the evidence that has been led in this case, the President was almost certainly referring to the preponderance of the evidence which established that the applicant would discharge himself from hospital, if he was free to do so and the remark should be understood in this context.

[34] It must have been crystal clear to all those reasonable persons appearing or present at the hearing that the MHRT on all the evidence before it had no option other than to reject the claim that the applicant, if discharged, would remain in hospital as a voluntary patient. It must have been apparent to the applicant and his legal team that in the light of all the evidence, his stated intention to remain as a voluntary patient after discharge, was bound to be rejected. In those circumstances I do not consider that the omission of an express statement reciting that the MHRT had rejected the assertion that the applicant would remain as a voluntary patient, if discharged from detention, makes the decision unlawful.

Delay and alternative remedy

[35] This was a "rolled up" hearing and issues of delay and alternative remedy were raised by the respondent at the outset. It is true that the application was delayed and only just issued within the 3 month period. The respondent claims that in those circumstances the application for judicial review was not commenced

promptly. I consider that given the problems with legal aid and the Christmas period that it was issued in accordance with Order 53 Rule 4.

[36] A preliminary point was taken by the respondent on the first day of the hearing on 8 May that the court should decline to hear the application because an adequate alternative remedy remains open to the applicant. The applicant's detention was subject to further review on 14th March 2104 by the detaining authority when it was renewed on that date. The applicant had declined to challenge the renewal of his detention before the MHRT. Mr McQuitty for the respondent relied on the well-known authority of R v Secretary of State for the Home Department, ex parte Salem [1999] 2 All ER 42 where Lord Slynn said:

> "The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point to statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

[37] Mr O'Donoghue QC for the applicant asserted that there was value in a judgment clarifying the issues raised in this judicial review. I note the comment of Carswell LCJ in Re McConnell's Application [2000] (NIJB 116 at 120):

> "It is not the function of the courts to give advisory opinions to public bodies, but if it appeared that the same situation was likely to recur frequently and the body concerned had acted incorrectly they might be prepared to make a declaration, to give guidance which would prevent the body from acting unlawfully and avoid the need for further litigation in the future."

I consider that the law in this area is not only clear, but well trampled. There is nothing that this court can usefully add to the Judgment of McCloskey J in JR45 on the construction of Article 77(1) and 2(4) of the Order.

[38] Obviously the applicant can have no claim for damages against the MHRT unless he can prove bad faith or lack of reasonable care on its behalf: see Article 133(1) of the 1986 Order. He also requires the leave of the High Court to make such a claim. For the reasons I have given I do not consider that the MHRT was guilty of bad faith or lack of reasonable care and, if asked, I would have refused leave. If a claim is to be made against the Trust, fresh proceedings will be required in any event.

[39] The other relief claimed was to have this matter referred to a differently constituted Tribunal. But there is no point in doing so given that time has sped and the applicant could have since applied to the MHRT in the interim but declined to do so because of an alleged loss of confidence in the system. If there had been a change of circumstance, or indeed if there had been no change of circumstance, he still had an opportunity to challenge his continuing detention in March 2014 before the MHRT. Yet he refused to take it. Further, as I have said, on the basis of the evidence adduced it would be wholly unreasonable for a differently constituted Tribunal not to reach the same conclusion as the MHRT under consideration. There was a substantial probability that the applicant, if he was discharged from detention would cease to remain as voluntary patient in hospital, fail to take his prescribed medication and "would experience delusions about Dr X and those whom he might unreasonably regard as acting in concert with or as agents of Dr X." There would thus remain "a very real probability, so long as the delusions continue, that he will seek to attack such other individual or Dr X himself". So, even if the court is wrong on the two central issues which the court has had to address in this judicial review, the court would have refused to grant relief in any event.

[40} For the avoidance of doubt the court granted leave because it said it would rule on the merits of the 2 grounds canvassed before it. But if the court is wrong in its conclusion on either issue, the court would still refuse to grant a remedy because any Tribunal, on the evidence before it, was bound to have ordered the applicant's continuing detention.