

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

**BETWEEN:**

**BIJAN SHAYEGH**

**Plaintiff;**

**-and-**

**SOUTH EASTERN HEALTH AND SOCIAL SERVICES TRUST  
FORMERLY KNOWN AS ULSTER COMMUNITY AND HOSPITALS  
TRUST**

**-and-**

**NORTHERN HEALTH AND SOCIAL SERVICES TRUST  
FORMERLY KNOWN AS HOMEFIRST COMMUNITY TRUST**

**Defendants.**

**COGHLIN LJ**

[1] The plaintiff, Bijan Shayegh, claims damages for false imprisonment in relation to his detention by the defendants at Newtownards and Holywell Hospitals for a period of some 22 days and a further period thereafter of home supervision terminating upon his discharge by the Mental Health Review Tribunal (the "Tribunal") on 7 January 1999. The plaintiff is a personal litigant who represented himself while Mr Michael Stitt QC and Mr Michael Lavery appeared on behalf of the Trust.

**Background facts**

[2] The factual background to the plaintiff's claim has been set out in some detail in the course of the judgment that I delivered at first instance on 14 November 2008 together with the judgments of the Court of Appeal delivered by Higgins LJ, Girvan LJ and Treacy J on 18 March 2010.

[4] On 4 November 1998, on the advice of his GP, Dr Armstrong, the plaintiff attended Newtownards Hospital for an assessment of his mental condition. He remained in the hospital overnight and, in the late afternoon of 5 November 1998, his compulsory detention commenced when Dr Armstrong completed a medical recommendation for admission for assessment in accordance with Form 3 of the Mental Health (Northern Ireland) Order 1986 ("Mental Health Order"). On the same afternoon Mr McIntosh, as the approved social worker, completed Form 2. A medical examination after admission for assessment was completed by Dr Moynihan and recorded on Form 7 at approximately 6.00 pm. The plaintiff was thereafter transported by ambulance to Holywell Hospital where he was accepted as a patient under the care of Dr Lynch as Responsible Medical Officer ("RMO"). At some stage medication was prescribed for the plaintiff but that decision was reversed when the plaintiff adamantly refused to comply. On 26 November 1998, after a team meeting at Holywell Hospital, it was agreed that there was no further need for a secure bed and the plaintiff was transferred back to the Psychiatric Unit at Newtownards Hospital. Dr MacFarlane became the plaintiff's RMO at Newtownards. On 27 November Dr MacFarlane agreed that the plaintiff could leave the Psychiatric Unit at Newtownards on a weekend pass and, thereafter, although he was reminded of his "detained status" in the course of a number of telephone calls, the plaintiff was not required to return to formal detention. It is not without significance that Dr MacFarlane was fully aware that the plaintiff was returning to live with his wife and family notwithstanding the fact that the only evidence of violence on his part related to his wife. The Tribunal ultimately noted that the plaintiff had been left "entirely to his own devices" in the family home for the four weeks prior to the hearing.

[5] The plaintiff claims that he is entitled to general damages, aggravated damages and exemplary damages.

### **The plaintiff's character**

[6] At the time of his detention the plaintiff was 41 years of age and a man of good character without any criminal record. He had been married for some 13 years and was the father of two children. As I recorded in the course of my judgment at first instance, he has long been concerned with the development of some beliefs and theories including "Blue Science" which would probably be regarded as somewhat unconventional. However, his mental health had never previously been questioned and he had never needed to attend his GP or any other medical specialist in relation to his mental health.

### **Background to the detention**

[7] Mr and Mrs Shayegh were registered with a medical practice in which Dr Armstrong and his wife, Dr Stelfox, were partners. The plaintiff was a patient of Dr Armstrong while his wife was a patient of Dr Stelfox. During the course of a consultation with Dr Stelfox on 30 September 1998 it seems that Mrs Shayegh complained of being physically abused by her husband. As a consequence, Dr Stelfox contacted the Community Mental Health Team on the following day with a view to a referral. She did not tell the plaintiff of the referral. As a result of that referral Ms McDonald, the relevant social worker from the Community Health Team, arranged a home visit with both the plaintiff and his wife on 20 October. The visit was also attended by Mr Gilmore, a community psychiatric nurse. It seems that the plaintiff believed that Ms McDonald was acting in her capacity as a marriage guidance counsellor. Subsequent to the home visit there was a discussion between Ms McDonald and Dr Stelfox about the possibility of arranging for a mental health assessment and both the plaintiff and his wife agreed that this should take place. On 21 October 1998 Dr Stelfox then referred the plaintiff to Dr Harbinson a consultant psychiatrist who was present at Newtownards Hospital. It is to be noted that Dr Harbinson was not the area psychiatrist and it would seem that Dr Stelfox did not tell her that she was not the plaintiff's GP.

[8] Dr Armstrong, who was the plaintiff's primary GP, discussed the pending assessment by Dr Harbinson with his wife and, having done so, visited the plaintiff at home on 3 November. He said that the purpose of this visit was to confirm whether formal detention was required, a possibility apparently raised by Dr Harbinson. The plaintiff described himself as being both "surprised and shocked" by the visit from Dr Armstrong. Dr Armstrong agreed that the plaintiff appeared "taken aback" by the suggestion that he might require hospital treatment for mental illness, a reaction which Dr Armstrong accepted was "quite understandable in the circumstances". Dr Armstrong persuaded the plaintiff to attend Newtownards Hospital for an assessment of his mental health on a voluntary basis and he specifically noted that:

"I decided that he did not present a risk to himself or others and did not authorise a formal admission."

[9] After a telephone conversation with Dr Stelfox and seeing the social history report produced by Ms McDonald, Dr Harbinson saw the plaintiff at her outpatients centre on 3 November 1998. In a letter dated 4 November 1998 Dr Harbinson, after making a diagnosis, advised Dr Stelfox that the plaintiff posed a substantial risk of serious physical harm to his wife and ought to be detained compulsorily under the Mental Health Order in the secure facility at Holywell Hospital.

[10] Pursuant to his agreement with Dr Armstrong the plaintiff attended at Newtownards Hospital on 4 November 2008 after being given a lift by his wife. He was seen by Dr Moynihan a Senior House Officer training under Dr Harbinson at the hospital. The plaintiff says that he was told by the nursing staff that he could not leave the hospital and that he was detained. He again saw Dr Armstrong at the hospital on the evening of 4 November who told him that he would be attending a group meeting on the following day. Dr Armstrong told him that, after the meeting, he would probably be discharged because there was nothing in his report.

[11] The plaintiff said that, after the group meeting on the 5th, he believed he could leave the hospital and was about to do so with his brief case when he was again seen by Dr Armstrong who introduced Dr MacFarlane. After a conversation, both left and the plaintiff was subsequently told that he had been detained. When he left the room he was met by two policemen who then escorted him, together with some nurses, by ambulance to Holywell secure hospital.

[12] It appears that during the team meeting on 5 November 2008 Dr Harbinson had contacted Dr Armstrong emphasising that, in her opinion, the plaintiff should be the subject of compulsory detention for assessment. As noted in my original judgment it is clear that Dr Armstrong did not agree with this recommendation and that he communicated his disagreement to Dr Harbinson. She then recorded that:

“In the light of Dr Armstrong’s refusal to detain him,  
I felt obliged to discharge him.”

I recorded in my original judgment that it seems that strong words may have been exchanged between Dr Harbinson and Dr Armstrong. Dr Harbinson’s own note indicated that Dr Armstrong had told her that “he considered he was entitled to his opinion”.

[13] In completing the Form 3 recommendation, as required by Article 4(2)(a) of the Mental Health (Northern Ireland) Order 1986 (the “1986 Order”), Dr Armstrong committed himself to the opinion that the plaintiff was a person who appeared to suffer from mental disorder of a nature and degree warranting his detention in hospital for assessment and that failure to detain him “would create a substantial likelihood of serious physical harm to himself or other persons”. Despite having done so, Dr Armstrong confirmed in evidence that his belief when completing the certificate relating to the risk of violence was that:

“I could not be 100% sure if you were not detained  
you would not be a risk to your wife.”

The majority of the Court of Appeal has held such a view fell far short of a substantial likelihood of serious physical harm to himself or other persons.

### **The relevant legal authorities**

[14] I was referred to a number of authorities by both parties in their oral and written submissions including Thompson v Commissioner of Police of the Metropolis [1998] QB 498, Dodds v Chief Constable of the RUC [1998] NI 393, Lunt v Liverpool City Justices (unreported) March 5, 1991, R v Governor of HMP Brockhill ex parte Evans [2001] 2 AC 19, Clinton v Chief Constable [1999] NI 215 and Hussey v Brent Kensington and Chelsea NHS (taped transcript 26 February 2001). Of these cases it seems that only Hussey involved compensation for wrongful imprisonment in a psychiatric hospital. In that case the plaintiff had been unlawfully detained between 30 July and 24 October 1996, a total of 87 days, and was awarded £24,000 compensatory damages together with £2,000 aggravated damages by a jury. It appears that the element of aggravated damages may have been awarded as a consequence of the difficulty encountered by the plaintiff in being able to visit his terminally ill mother.

[15] I have also had regard to the decision of Girvan J in Udu and Nyenty's Application [No. 2] [2008] NIQB 157. Udu was a case of wrongful detention by the Immigration Service for a period of some eight days. The applicants were originally held at the normal Immigration Detention Centre at Belfast Crumlin Road Prison but, due to overcrowding, were transferred for some of that period to HMP Maghaberry. Girvan J observed that it followed from the authorities that compensation for days after the first day was not to be assessed by simple arithmetic multiplication. He accepted that the conditions under which a person was detained had to be part of the overall picture. In that case the applicants were detained in prison conditions for a significant part of the overall period of detention and treated in the same way of convicted criminals being subjected to demeaning strip searches and sharing cells in uncongenial and restrictive circumstances. Girvan J agreed that a sum of £12,500 would have been appropriate unless aggravated damages were justified. There was some evidence that one of the applicants suffered psychiatric symptoms which Girvan J assessed as at the lower end of moderate post traumatic stress disorder and, having done so, in his case he awarded a total of £20,000.

[16] Some recent and helpful guidance as to the appropriate levels of awards for false imprisonment may be found in R(B) v Secretary of State for the Home Department [2008] EWHC 3189 (Admin) and MK (Algeria) v Secretary of State for the Home Department [2010] EWCA Civ 980. In the

course of delivering the judgment of the Court of Appeal in the latter case Laws LJ observed at paragraph 8:

“There are three general principles which should be born in mind: 1) the assessment of damages should be sensitive to the facts and to the particular case and degree of harm suffered by the particular claimant: see the leading case of *Thompson v Commissioner of Police* at 515A and also the discussion at page 1060 in *R v Governor of Brockhill Prison*; 2) Damages should not be assessed mechanically as by fixing a rigid figure to be awarded for each day of incarceration: see *Thompson* at 516A. A global approach should be taken: see *Evans* 1060 E; 3) While obviously the gravity of a false imprisonment is worsened by its length the amount broadly attributable to the increasing passage of time should be tapered or placed on a reducing scale. This is for two reasons: (i) to keep this class of damages in proportion with those payable in personal injury and perhaps other cases; and (ii) because the initial shock of being detained will generally attract a higher rate of compensation than the detention’s continuance: *Thompson* 515 E-F.”

That case concerned an appeal by an Algerian national who had been unlawfully detained by the Secretary of State for a period of some 24 days. The Court of Appeal allowed the appeal on the issue of damages by substituting a figure of £12,500 general damages, together with £5000 aggravated damages, for an award of £8,500 restricted to general damages alone.

### **The parties’ submissions**

[17] Mr Stitt was at pains to emphasise during his submissions the stark contrast between being detained in prison surroundings and subjected to the prison regime and the plaintiff’s detention in the medical facilities at Newtownards and Holywell. He further submitted that only nominal damages should be awarded in respect of the period of some 43 days lasting from the date of the plaintiff’s release from Newtownards to his formal discharge by the Mental Health Review Tribunal. Mr Stitt submitted that the evidence did not justify an award of either aggravated or exemplary damages.

[18] Apart from general, aggravated and exemplary damage, the plaintiff also referred to a number of other claims in his written "Book of Quantification of Damages". These included compensation for the plaintiff's sons who have never been parties to these proceedings, compensation for loss and benefit in the matrimonial home subsequent to ancillary relief proceedings in 2005 and compensation for interference with his research into Blue Science.

[19] The plaintiff gave evidence before me relating to the allegation that he had sustained pecuniary loss in the course of the divorce settlement. His marriage was already in difficulty prior to the detention by the defendants and he had consulted a solicitor about divorce proceedings. He made the case that, as a consequence of the detention, his chances of obtaining residency orders in respect of the children were substantially reduced. He also claimed that rather than being entitled to 50% of the value of the matrimonial home in 2005 he had been compelled to sign an agreement with his wife in which he agreed to accept only £60,000. He referred me to a valuation of the relevant premises at £375,000 in January 2008. The plaintiff agreed that he had been legally represented during the negotiations leading up to and during conclusion of the ultimate agreement of the ancillary relief proceedings. In the circumstances I was not persuaded that he had called sufficient evidence to persuade me on the balance of probabilities of any significant causal connection between the detention, the ancillary relief agreement and any specific financial loss sustained upon his part. In my view the written submissions advanced by the plaintiff with regard to research, literary output and potential consultancy income was essentially speculative and fell far short of establishing any quantifiable financial loss.

## **Discussion**

[20] In terms of general damages the authorities emphasise the need to bear in mind that this type of case is fact-sensitive. While bearing in mind the distinction in environment and regime emphasised by Mr Stitt, I remain convinced that this period of detention under the Mental Health Order was embarrassing, confusing and humiliating for the plaintiff who, not without justification, perceived himself to be entangled in a set of Kafkaesque circumstances from which his efforts to extricate himself only seemed to result in deeper entanglement. He suffered loss of dignity and marked anxiety. During his evidence he described himself as shocked, shaking, upset, speechless and helpless not knowing who to turn to for assistance. Unlike the appellant in MK, who had been the subject of asylum/residence proceedings for some time, who apparently had failed to notify the Secretary of State of a change of address and who was aware from a relatively early stage that the mistake was being taken up by his solicitor, the plaintiff was unrepresented, detained in circumstances in which he had been led to believe that he would be discharged after voluntary attendance and thereafter confronted with a

battery of expert medical opinion. When giving his evidence about the detention I took care to observe his demeanour and I have no doubt that recalling this experience still causes him significant emotional distress. However, in my view, there is substance in the submission by Mr Stitt that general damages in respect of the period after which the plaintiff was permitted to return home on a "home pass" should be regarded as modest. In his written submissions the plaintiff described this as a period of "semi-detention" which, despite the fact that he was living at home, he found rather humiliating since he perceived that the respondents were placing his liberty "at the whim of his wife". The plaintiff was released on pass on 26 November 1998 to return to Newtownards Hospital on Monday 29<sup>th</sup>. On 29 November 1998, after a group interview, he was released again on pass until the hearing by the Mental Health Tribunal. During the latter period he returned on only one occasion on 1 December, and, indeed, perhaps understandably, he robustly refused to return thereafter despite invitations to do so. The plaintiff also emphasised that the diagnosis and detention had significantly reduced any prospect that he might have enjoyed of obtaining residency orders in respect of his children. However I bear in mind that I considered that his wife was an impressive witness and, while confirming that there was not sufficient evidence of a substantial likelihood of serious physical harm, the Tribunal did express the view that he appeared to suffer from a low grade psychosis with delusions.

[21] With regard to the claim for aggravated damages I remind myself that the manner in which false imprisonment is effected may lead to either aggravation or mitigation of damage but that aggravated damages should only be awarded were the basic award in respect of loss of liberty would not be sufficient compensation. While the plaintiff may not have known initially that it was Dr Stelfox who had referred his case to Dr Harbinson, he must have been aware that his wife had attended her GP and he both knew about and agreed to participate in the counselling/marriage guidance meeting with Ms McDonald. On the other hand Dr Stelfox was not his G.P. and she had not discussed the referral with her husband. The plaintiff was certainly entitled to rely upon the firm reassurance received from his own doctor, Dr Armstrong, that his attendance at Newtownards Hospital would be on a voluntary basis and that it would simply be a matter of release after assessment since there was nothing adverse in Dr Armstrong's report. When Dr Armstrong went to see the plaintiff at his home on 3 November 1998 he was aware that Dr Harbinson felt that the plaintiff would require formal detention and his visit was primarily to ascertain whether such a step was required. At that time he himself did not consider that the plaintiff's condition represented a substantial likelihood of serious physical harm to himself or anyone else. He considered that a voluntary admission for assessment would be adequate. Dr Armstrong remained of that opinion when he saw the plaintiff again in Newtownards Hospital on 5 November and it was only as a consequence of significant direct pressure from Dr



Harbinson that he was persuaded to sign Form 3. The Court of Appeal has held that when he did so he did not genuinely hold the relevant statutory opinion. While it was certainly open to Dr Harbinson to persuade Dr Armstrong that there were good reasons for altering his opinion, the plaintiff was entitled to expect his own GP to exercise independent judgment and, having done so, to come to a genuinely held and rational conclusion. The plaintiff's treatment whilst he was in detention was recorded by the Tribunal as being "patchy" and, in my earlier judgment, I have already remarked upon the difficulty in understanding Dr MacFarlane's approach to the management of the plaintiff after he was returned to Newtownards Psychiatric Unit on 26 November 1998. Dr MacFarlane gave evidence that he probably would have discharged the plaintiff around 9 or 10 December 1998 but that he thought that the "Tribunal had a part to play in putting patients' minds at ease." Notwithstanding that view Dr MacFarlane appears to have submitted evidence to the Tribunal in support of the plaintiff's continuing detention while not opposing that detention when he himself gave evidence to the Tribunal. The Tribunal recorded that Dr MacFarlane had described the plaintiff in his report as becoming so agitated during his assessment that the team had concerns about staff safety whereas, in evidence, he had admitted that he had only become aroused when the discussion turned to detention and conceded that such agitation would have been perfectly understandable in a rational person learning that his voluntary attendance was about to be converted into compulsory detention.

[22] I do not consider that an award of exemplary damages is appropriate in this case.

[23] For the reasons set out above I propose to award the following:

- (i) £17,500 in respect of the initial period of detention in Newtownards and Holywell Hospitals.
- (ii) £2,500 in respect of the further period of home detention.
- (iii) £7,500 in respect of aggravated damages.

The total damages award will therefore be one of £27,500.