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THE HIGH COURT JUDICIAL REVIEW

A.X. AND THE MENTAL HEALTH TRIBUNAL AND THE CLINICAL DIRECTOR OF ST. JOHN OF GOD'S HOSPITAL

JUDGMENT of Mr Justice David Keane delivered on the 19th of December 2014

Introduction

1. In these proceedings, the applicant seeks to challenge the decision of a Mental Health Tribunal ("the tribunal") to affirm an order directing her involuntary admission to St. John of God's Hospital ("the hospital") for the treatment of a mental disorder, on the ground that the tribunal failed to provide proper or adequate reasons for that decision. The tribunal, which denies that it failed to provide proper reasons for its decision, contends that the applicant's case is, in any event, moot.

The admission

2. On the 27th April 2014, a member of An Garda Síochána took the applicant into custody under s. 12 of the Mental Health Act 2001 ("the 2001 Act"). Section 12 permits that step to be taken where the member concerned has reasonable

grounds for believing that the person concerned is suffering from a mental disorder because of which there is a serious likelihood of that person causing immediate and serious harm to herself or to others.

3. As he was required to do under s. 12 (2) of the 2001 Act, the member concerned immediately applied to a registered medical practitioner for a recommendation that the applicant be involuntarily admitted to a specified approved centre.

4. The registered medical practitioner concerned, having examined the applicant and being satisfied that she was then suffering from a mental disorder, made a recommendation under s. 10 of the 2001 Act in the appropriate form that the applicant be involuntarily admitted to the Elm Mount Unit of St. Vincent's University Hospital in Elm Park, Dublin 4.

5. A consultant psychiatrist on the staff of that hospital carried out an examination of the applicant that evening and thereupon, being satisfied that the applicant was then suffering from a mental disorder giving rise to a serious likelihood that she would cause serious harm to herself or to other persons, made an order for the reception, detention and treatment of the applicant. In the box provided for setting out the reasons upon which that opinion was based, the

consultant psychiatrist wrote:

"Thin, unkempt, thought disorder, persecutory delusions, erratic unpredictable behaviour, and non compliance with medications."

6. I interrupt the narrative here to note that Section 3 of the 2001 Act states:

"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 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, and

(ii) the reception, detention and treatment of the person concerned would be likely

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to benefit or alleviate the condition of that person to a material extent."

7. As a form of convenient shorthand, these two grounds for the involuntary admission of a patient to an approved centre are frequently referred to as "the risk ground" (at s. 3(1)(a)) and "the therapeutic ground" (at s. 3(1)(b)). The admission order in this case records the opinion of the admitting consultant psychiatrist that the applicant was then suffering from a mental illness requiring her involuntary admission on the risk ground.

8. The clinical director of the Elm Mount Unit then arranged for the immediate transfer of the applicant to the hospital, in accordance with the terms of s. 20 of the 2001 Act, on the basis that the applicant would be under the care of her previous consultant psychiatrist, and in a secure setting, there.

Post-admission

9. Section 17 of the 2001 Act imposes three specific obligations on the Mental Health Commission ("the Commission"): first, to refer the matter to a tribunal; second, to ensure legal representation for the person detained; and third, to have an independent consultant psychiatrist examine the patient, review the patient's records, and interview the consultant psychiatrist responsible for the patient's treatment and care.

10. In this instance, the tribunal was convened on

the 15th May 2014. The Commission assigned the applicant's solicitor to represent her on or about the 28th April 2014 and he met with her on the 1st May 2014 and on the day of the hearing. An independent consultant psychiatrist examined the applicant; interviewed the consultant psychiatrist responsible for the applicant's care and treatment; and reviewed the applicant's records on the 8th May 2014.

The independent psychiatrist's report

11. The independent consultant psychiatrist's report, prepared in accordance with the requirements of s. 17(1)(c) of the 2001 Act, ticks the box reflecting the opinion that the applicant was then suffering from a mental disorder within the definition of that term incorporating the provisions of s. 3(1)(b)(i) and (ii) of the 2001 Act.

12. The independent consultant psychiatrist gave the following clinical description of the applicant's mental condition at that time (in pertinent part):

"[The applicant] presents as an emaciated lady who was a little unkempt. ...

She explained that she had been brought to the hospital against her will by the gardai and that prior to her admission she had noticed unusual "patterns" in the community. She did not wish to elaborate on these in much detail but her medical records refer to her noticing colours that she

believed related to her personally. When asked during the interview if these patterns continued to occur in hospital, she explained an unusual "pattern" in great detail. This consisted of a log, recorded on the back of a brown envelope, of staff entering her room at night, what they were wearing and how they behaved towards her. She asked me if I thought their behaviour was unusual and was circumspect about her own view. She checked in with me if she was appearing to me too talkative and expressed the view that she could not "play the games" as well as other patients. She appeared to have paranoid delusions regarding staff and also her neighbours. She explained that, prior to admission, she had stopped going out of her home due to the strange patterns she had observed, which frightened her, as a result she had been unable to go to the shops for food, and had eaten far less and lost weight. She denied having any dispute with her neighbours however and rapidly changed the subject. The form of the [the applicant's] speech did not indicate the presence of thought disorder. She was subjectively and objectively euthymic. She had no suicidal intent and her insight into her illness was partial. She accepted that she had a mental illness and in the past had accepted medication for this but she felt unhappy taking the medication prescribed for her and suspicious of it, indicating that it

had not been explained to her. She was unhappy to be in hospital and, in particular, on St Peter's ward."

13. The independent psychiatrist's report records goes on to describe the diagnosis of the psychiatrist responsible for the applicant's treatment and care ("the responsible consultant psychiatrist") as one of paranoid schizophrenia.

14. In the section of the report dealing with the previous history and duration of the applicant's illness, the report continues:

"[The applicant] has a long history of psychiatric illness and has had multiple previous admissions to St John of God's Hospital from 1990 to the present time.

...

[The applicant] was discharged from hospital in Dec 2013 and her notes indicate that she was not adherent to medication since this time. She did not attend outpatient appointments subsequently. Her present admission was precipitated by an episode where [the applicant] was seen by her neighbours to be brandishing a knife; they called the gardai and she was brought to St. Vincent's University Hospital. She was extremely agitated and aggressive there and needed to be restrained and to receive intramuscular sedative medication.

Her previous admission to hospital was precipitated by an episode where [the applicant] set fire to furniture in a communal area of the building where she lives."

15. The independent psychiatrist's report goes on to record that, since her admission, the applicant's eating and drinking patterns had improved and there had been a slight improvement in her presentation, in that she was more articulate and showing some insight into her situation. After detailing the treatment that the applicant was then receiving, the report addresses the applicant's attitude to treatment and her likely compliance with it in future in the following terms:

"[The applicant] has a long history of poor compliance with medication and, to date, has not developed a trusting relationship with her treating team, has limited insight and does not wish to be in hospital or to receive psychotropic medication. At present, the likelihood of her adhering to her psychotropic medication is low."

16. The report contains a section that deals with risk factors to the applicant and to others. In it, the independent psychiatrist states:

"Risk of non-compliance with treatment and medication

[The applicant] has a long history of poor insight

and non complicance with treatment.

Risk of harm to others:

As described, [the applicant] prior to admission was brandishing a knife. Prior to her previous admission she set fire to furniture in a communal area of her building.

Risk of self neglect:

[The applicant] was emaciated on admission as a result of neglecting her diet as a direct consequence of her psychotic symptoms.

Her notes indicate that during this admission, [the applicant] was of the belief that her appetite was under an external influence or control."

17. The independent psychiatrist concludes her report by expressing the opinion that "a further period of detention is warranted and is in the best interest of the patient."

The review

18. The tribunal reviewed the applicant's detention on the 15th May 2014.

19. In the affidavit that he swore on the 30th May 2014 to ground the present application, the applicant's solicitor avers that the applicant instructed him to apply to the tribunal to revoke the admission order.

20. The only material before the Court concerning the hearing that took place before the tribunal is the note of that hearing taken by the applicant's solicitor and exhibited to his affidavit. From that note, a number of pertinent facts emerge. The persons present were the three members of the Tribunal, the responsible consultant psychiatrist, the applicant and her solicitor. The responsible consultant psychiatrist gave evidence to the Tribunal and was questioned by its members (though not, it would appear, in any detail by the applicant's legal representative).

The evidence of the responsible consultant psychiatrist

21. In material part, the evidence of the responsible consultant psychiatrist was broadly as follows. The applicant had a long history of mental health problems and had been in contact with mental health services for about 30 years. Her diagnosis was one of paranoid schizophrenia and she was on a number of medications. There had been a number of previous hospital admissions and the applicant had been treated with oral anti-psychotic medication. However, subsequent to her previous discharges, the applicant had disengaged from services and her condition had deteriorated even though facilities had been put in place for her in the community. The applicant's two previous admissions to the

hospital had involved a similar presentation. The applicant's last admission was in December 2013 and occurred on a voluntary, rather than an involuntary, basis. Following her most recent discharge she had been linked in with a "home base team" but she would not allow any of the team access to her house. The applicant's admissions usually happened following expressions of concern by her neighbours. In April 2014, the applicant's neighbours had raised concerns over a number of weeks prior to the applicant's admission. Since the treatment team could not gain access to her in her home, the guards were called, after it was reported that she had been seen with a knife.

22. The responsible consultant psychiatrist then described her interaction with the applicant in the following terms. Initially, upon admission, the applicant was paranoid and refused to engage with the consultant. The applicant interjected at this point in the evidence to state that she would have been willing to engage at the outset but had not been asked to do so. The consultant continued that, on admission, the applicant was, in the consultant's opinion, quite incoherent and difficult to understand. Intra muscular medication had to be administered and the applicant required four injections. The day after her admission, the applicant began to engage. The medication that was then being administered to the applicant was

identified, its effects were described and the proposed course of pharmacological treatment of the applicant's condition was explained.

23. Concerning the presentation of the applicant at the time of the review, the responsible consultant physician stated that there had been some improvement in that regard, in that the applicant was more cooperative and, generally, was taking her medication, although without fully trusting it. The applicant was still disorganised in her thinking and, while coherent could still be delusional, harbouring intense delusional beliefs with a persecutory content but remaining guarded in expressing them. In response to questioning, the consultant expressed the opinion that the applicant then had no insight into her illness in that, while she acknowledged that she has a mental illness, she did not believe that she was currently unwell. Pressed further, the consultant expressed the view that the applicant had zero insight into her illness and that, in respect of her past admissions, she had been regularly discharged while still unwell.

24. A key passage in the note taken by the applicant's solicitor records the following exchange: "In reply to [the Chairperson of the tribunal] as to what would happen if the order were

revoked, [the consultant] felt that [the applicant]

would initially stay in hospital but that if she were to leave the hospital that she would be a risk to herself and to others. [The consultant] stated that, if [the applicant] were a voluntary patient, [the consultant] does not think that [the applicant] would be able to co-operate with treatment because of her limited insight. [The consultant] felt that she would only stay a few days and would be unwell."

25. The applicant challenged the consultant directly on this point, pointing out that all of her previous admissions had been voluntary and that she had never left hospital against medical advice. However, the consultant stated that the applicants intentions were difficult to predict and that, in the opinion of the consultant, the applicant had previously been allowed to leave hospital because she was concealing her symptoms and was not overtly symptomatic. The consultant reiterated her view that, if the applicant were to leave hospital, she would disengage and her condition would deteriorate.

26. Another member of the tribunal then asked the consultant about risk. The consultant responded that the applicant was a risk because of the reported episode with the knife and also because of her self-care issues. The consultant expressed the view that the applicant then lacked capacity because she could not weigh up the

benefits of the medications that she had been offered; was paranoid regarding her treatment; and was thought disordered.

27. The consultant confirmed that she was proposing to make a renewal order in respect of the detention and treatment of the applicant on both the risk ground and the therapeutic ground. One of the members of the Tribunal then queried whether detention was necessary on the risk ground. The consultant stated that, while the risk of self-harm was greater than the risk of harm to others, and accepting that the accuracy of the reports being made by the applicant's neighbours may be questionable, she did believe that there was a real and substantial risk to others from the applicant. The applicant's solicitor put it to the consultant that there was insufficient evidence to establish a serious likelihood of the applicant causing immediate and serious harm to herself or to other persons unless detained for treatment but the consultant did not agree.

28. The applicant then addressed the Tribunal in terms that might well have given rise to some additional concern. She referred to doors that she had locked in the house that she occupies alone being unlocked by other parties, and to documents in her possession and documents that she has posted to a journalist being altered by parties unknown. In answer to a question put by

a member of the tribunal, the applicant did accept that she has a mental illness, which is schizophrenia, but expressed disagreement with her treatment plan and a preference for some "talk therapy" instead.

29. At the conclusion of the hearing, the applicant's solicitor submitted that the Tribunal should revoke the admission order in respect of the applicant on the basis that the statutory criterion under section 3(1)(a) had not been met; because the applicant had never been detained for the purpose of treatment before; because this was the applicant's first involuntary admission during the thirty years she has been beset by mental illness; and because the detention of the applicant for treatment was not required.

The tribunal's decision

30. In reviewing the detention of a person the subject of an admission order (or a renewal order), the options available to the Tribunal under s. 17 of the 2001 Act, are the following:

" (a) if satisfied that the patient is suffering from a mental disorder and

(i) that the provisions of *sections 9, 10, 12, 14, 15* and *16*, where applicable, have been complied with, or

(ii) if there has been a failure to comply with any

such provision, that the failure does not affect the substance of the order and does not cause an injustice,

affirm the order, or

(b) if not so satisfied, revoke the order and direct that the patient be discharged from the approved centre concerned."

31. Under s. 18(3) of the 2001 Act, the tribunal is required to have regard to the independent consultant's report (a copy of which must be provided to the patient's legal representative by the consultant concerned).

32. In its written determination, delivered shortly after the hearing on the 15th May 2014, the tribunal's decision concerning the applicant was: "to affirm the admission order dated the 27th April 2014."

33. The tribunal gave the following reasons for that decision:

"Having read and taken into account the s. 17 report of [the independent consultant psychiatrist], and having heard the evidence of the patient's treating psychiatrist, the legal submission of her legal representative, as well as the evidence of the patient herself, the Tribunal is satisfied that the patient is currently suffering from a mental disorder as defined by s. 3 of the

Mental Health Act 2001. The Tribunal accepted the diagnosis of the patient as being [one of] paranoid schizophrenia. As a consequence, the Tribunal affirms the admission order dated the 27th April 2014.

The Tribunal noted that the patient was acutely unwell on admission, was incoherent and distressed. Prior to admission, the patient had not been engaging with the medical services and was non-compliant with medications on admission. The patient received four injections, which helped improve the patient's cooperation and coherence. However, she remained thought disordered, had persecutory delusions and bizarre ideas. The patient has recently been commenced on Risperidone, and it has yet to achieve a full therapeutic effect.

The patient lacks insight into the severity of her illness, and the Tribunal shares the opinion of the responsible consultant psychiatrist that it would be premature to discharge the patient from the carefully controlled environment of the approved centre at this time. The Tribunal is of the opinion that the patient is benefiting from the treatment currently being administered to her, and that she is benefiting to a material extent. For all of the foregoing reasons, the Tribunal is satisfied that the affirmation of the admission order is in the best interests of the patient."

Subsequent events

34. Under s. 15(1) of the 2001 Act, an admission order remains in force for a period of 21 days from the date upon which it is made and then expires. However, under s. 15(2), that period may be extended for an initial further period not exceeding three months by order (known as "a renewal order") made by the consultant psychiatrist responsible for the patient's care and treatment.

35. Having examined the applicant on the 14th May 2014, the day prior to the review of the applicant's detention by the tribunal, the consultant responsible for the treatment and care of the applicant made a renewal order in respect of the applicant's detention on the 16th May 2014, the day after that review, extending the applicant's detention for a further period ending on the 17th August 2008.

36. The applicant acknowledges that a further independent consultant's report was prepared following receipt by the Commission of the said renewal order, as is required under s. 17, subs. 1(c) of the 2001 Act. That report is dated the 23rd May 2014 and is based upon an examination of the applicant and a review of the applicant's records conducted on the 21st May 2014, and an interview with the

consultant psychiatrist responsible for the applicant's care, conducted on the 22nd May 2014. The independent consultant psychiatrist concerned (who was not the consultant responsible for the preparation of the report required for the first review) expressed the opinion that, as of the date of the second report, the applicant was suffering from a mental disorder within the definition of that term incorporating the provisions of s. 3(1)(b) of the 2001 Act.

37. The second report notes, *inter alia*, that:

"While reported as self-isolative and guarded, with very poor insight into her illness, [the applicant] had become less hostile during the course of her admission. She remained very suspicious and paranoid, although on a high does of risperidone. She was refusing medication, and especially her sodium valproate.

...

[The applicant] has been repeatedly non-compliant with treatment, and is declining some of her treatment in the hospital. Her insight into her illness is severely impaired, and her future compliance is likely to be poor, outside the approved centre."

38. Although, s. 3 (1)(a) was not invoked as the basis for the second independent psychiatric

consultant's opinion that the applicant was still suffering from a mental disorder on the 23rd May 2014, the second report has this to say on the question of relevant risk factors to the applicant and others:

"[The applicant] had suffered severe weight loss prior to her admission, due to self- neglect, and was not shopping for food or feeding herself adequately, due to her illness. Further self-neglect remains a risk, as does non-compliance with treatment, with risk of severe deterioration of her mental state. Her family have been concerned about her capacity to manage her home, which is reportedly in bad condition, and this puts her at risk of infestation etc.

[The applicant] is reported to have been highly agitated and was carrying a knife before her admission. If she remains paranoid and defaults from treatment, she may pose a risk to others due to her agitation and hostility. She is also at risk of retaliation in this context."

39. From the submissions made by Counsel at the hearing of the application, it appears to be common case that a new tribunal was convened on the 5th June 2014 to review the applicant's detention on foot of the said renewal order. However, at the request of the applicant's legal representative, it was adjourned to await the outcome of these proceedings.

40. The Court is given to understand that, happily, the applicant has since been discharged from hospital.

The complaint

41. On the 20th May 2014, the applicant's solicitor wrote to the Commission. In relevant part, that letter states as follows:

"While the written decision [of the tribunal] states that in the opinion of the Tribunal my client meets the criteria for mental disorder pursuant to Section 3 of the Mental Health Act 2001, it does not state whether she meets the criteria pursuant to section 3 1 (a) or section 3 1 (b) or both.

We have been advised by our client that she wishes to appeal the decision of the Tribunal and we are currently putting this in hand.

We therefore require clarification from the Chairperson of the Tribunal as to whether in the opinion of the Tribunal my client satisfied section 3 1 (a) or section 3 1 (b) or both as

same will be germane to my client's appeal." 42. The Commission replied by letter dated the 23rd May 2014, stating in relevant part:

"In relation to any proposed appeal under section 19 of the Mental Health Act 2011, the question for the Circuit Court is whether the appellant "is"

suffering from a mental disorder as of the date of the hearing of that appeal. This has been confirmed by the High Court in *D. Han v. President of the Circuit Court and Others* [2008] IEHC 160 and *EG v. Mental Health Tribunal and Others* [2013] IEHC 617."

43. The applicant's solicitor wrote again on the 27th May 2014, altering his position slightly:

"Irrespective of whether my client wished to pursue an Appeal of the decision, my client is entitled to know the basis upon which the Admission Order was affirmed and to have a fully reasoned decision in that regard, so that its legality can be assessed. Failure to provide an adequately reasoned decision is unlawful."

44. The Commission replied again by letter dated the 28th May 2014, reiterating its position that the tribunal is independent in the discharge of its statutory function, that the tribunal's review of the applicant's detention on foot of the relevant admission order had ended, and that the tribunal was, therefore, *functus officio*.

The proceedings

45. On the 3rd June 2014, the applicant sought leave *ex parte* from the President of the High Court to apply for judicial review of the tribunal's decision of the 15th May 2014. On the following day, the President directed that the application

for leave be made on notice to the respondents. On the 5th June 2014, a motion was issued returnable for the 9th June 2014. By agreement between the parties, the hearing of that application was treated as the full hearing on the merits of the application for judicial review.

The relief sought

46. In substance, the applicant seeks the following reliefs:

(i) A declaration that the tribunal failed in its duty to provide an adequately reasoned decision on its review of the applicant's detention on foot of the admission order made on the 27th April 2014.

(ii) An order of *certiorari* quashing the decision of the tribunal dated the 15th May 2014 to affirm the admission order in respect of the applicant made on the 27th April 2014.

(iii) In the alternative to the relief sought at paragraph (ii), an order of *mandamus* requiring the tribunal to provide additional reasons for its decision of the 15th May 2014 to affirm the said admission order.

(iv) An order of certiorari quashing the renewal order made in respect of the applicant's detention by, or on behalf of, the hospital.

(v) A declaration that the detention of the

applicant is unlawful.

47. No issue has been raised concerning the applicant's capacity to instruct her legal representatives for the purpose of the present application. Accordingly, it is unnecessary to consider the contingent declaration sought by the applicant that her right of access to the Court requires the determination of the claim brought on her behalf, regardless of any issue concerning her capacity.

The arguments

48. The applicant contends that the tribunal erred in law on a number of grounds: first, in affirming the admission order in respect of the applicant without making any finding, whether directly or by

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inference, that the applicant's mental illness met the additional criteria for amounting to a mental disorder under s. 3(1)(a) of the 2001 Act (upon which finding or opinion the said admission order had been based); second, in failing to apply the criteria under either s. 3(1)(a) or s.3(1)(b) in affirming the said admission order; third, insofar as it did apply the criterion under s. 3(1)(b), in failing to apply the criterion under s. 3(1)(b)(i); and fourth, in failing to provide adequate reasons for its decision to affirm the admission order.

49. The applicant further contends that, should the decision of the tribunal be found to be unlawful on any of the preceding grounds, then it follows both that the detention of the applicant was unlawful thereafter and that the subsequent renewal order in respect of the applicant's detention is invalid also.

50. The tribunal joins issue with the applicant on each of the two broad arguments just described. The hospital joins issue with the applicant on the second argument, insofar as that seeks to impugn the renewal order made by or on behalf of the Clinical Director of the hospital. Both respondents argue that the domino theory upon which the applicant relies - that a defect in the review of the original admission order taints any subsequent renewal order - has been expressly rejected in Irish law and that, since no separate issue is raised in respect of the renewal order on foot of which the applicant was detained when these proceedings were heard or, indeed, commenced, the proceedings are a moot which the Court should decline to entertain.

The law on reasons

50. Section 18 (5) of the 2001 Act requires that notice in writing of a tribunal's decision on a review of the detention of a patient in respect of an admission order or a renewal order "*and the reasons therefor*" shall be given to the

Commission; the consultant psychiatrist responsible for the care and treatment of the patient concerned; the patient and his or her legal representative; and any other person to whom, in the opinion of the tribunal, such notice should be given.

51. In *M.D. v. Clinical Director of St. Brendan's Hospital* [2008] 1 IR 632, Hardiman J. had the following to say about the statutory requirement that the Tribunal provide reasons for its decision on review (at p. 644):

"[**17**] This is an absolutely essential part of the tribunal's functions and is necessary in law because of the tribunal's very considerable powers to affect directly the rights of a patient, including his right to liberty. It also arises from the terms of s. 49(6)(j) of the Act of 2001. This section deals in general with the obligations and procedures of a tribunal and the relevant sub-paragraph obliges it to attend to "the making of a sufficient record of the proceedings of the tribunal." The requirement to give reasons for a mental health tribunal's decision, in my view, arises both in natural justice and under statute.

[**18**] This, of course, is absolutely essential if the decisions of this powerful body are to be subject to proper review. It is important in the circumstances of this case to recall that neither the consultant psychiatrist nor the tribunal can

avoid or frustrate the review simply by the making of an inadequate or insufficient record of the exercise by them of the very considerable powers conferred upon them by statute."

52. *M.R. v. Byrne* [2007] 3 IR 211 is a case in which the facts were, in several respects, strikingly similar to those at issue in the present application. It involved a challenge to a mental health detention based upon a renewal order that had been affirmed on review by a tribunal under the 2001 Act. A number of helpful principles were very clearly set out by O'Neill J. in the course of his judgment, with which I am in respectful and complete agreement.

53. First, O'Neill J. adopted the analysis of McGuinness J. in *Gooden v. St. Otteran's Hospital* [2005] 3 I.R. 617 and that of the former Supreme Court (per O'Byrne J.) in *In re Philip Clarke* [1950] I.R. 235 in respect of the Mental Treatment Act 1945, and applied each to the 2001 Act, concluding that a purposive approach to interpretation is appropriate in construing that legislation, which is of a paternal character, being clearly intended for the care and custody of persons suffering from a mental disorder.

54. Second, O'Neill J. made the following point (at p. 227):

"[**51**] In approaching an assessment of the decision of the tribunal as revealed by the record of it, both as to substance and form, in my view it is not appropriate to subject the record to intensive dissection, analysis and construction, as would be the case when dealing with legally binding documents such as statutes, statutory instruments or contracts. The appropriate approach is to look at the record as a whole and take from it the sense and meaning that is revealed from the entirety of the record. This must be done also in the appropriate context, namely the record must be seen as the result of a hearing which has taken place immediately before the creation of the record and it must be read in the context of the evidence, both oral and written, which has just been presented to the tribunal. The record is not to be seen or treated as a discursive judgment, but simply as the record of a decision made contemporaneously, on specific evidence or material, within a specific statutory framework, *i.e*. the relevant sections of the Act of 2001...."

55. In addressing the passage just quoted in the submissions made on her behalf, the applicant submits that the facts in *M.R*. should be distinguished on the basis that the tribunal decision in that case appears to have run to 24 numbered paragraphs, thereby implying that its reasoning must necessarily have been more

extensive. However, that submission seems to me to ignore two things. The first is that the tribunal in that case was required to address a more complex factual matrix and more extensive argument than arose before the tribunal in this case. To give two examples: first, the review in that case was conducted under the transitional provisions of s. 72(4) of the 2001 Act in respect of a detention that was originally based upon a temporary chargeable patient order made pursuant to s. 184 of the Mental Treatment Act 1945; and second, the patient's legal representative made a specific submission that there had been a failure to comply with the provisions of s. 15 of the 2001 Act that required to be addressed by the tribunal under s. 18(1)(a)(i) of the Act. The second thing that the applicant's submission on this point ignores, is that the reasons that the tribunal gave for the decision challenged in *M.R.* are expressly recorded by O'Neill J. in his judgment as follows (at p. 215):

"[***14***] The Mental Health Tribunal decided to affirm the renewal order on the 21st December 2006, in the following terms:-

"The patient continues to suffer from persecutory delusions and while her insight has improved somewhat she continues to require structured residential treatment and the tribunal affirms the

order."

The reasons given in the order for the decision were as follows:-

"In affirming the order the tribunal held that:-

(1) there was clear evidence from Dr. O'Neill's report and the patient's own responses that the patient continues to suffer from a mental disorder, persecutory delusions and schizophrenia;

(2) the patient benefits from the structured environment which her involuntary status ensures. She herself accepted that she is not ready for discharge and also that the treatment that she has been receiving has been beneficial to her;

(3) in the event of her being changed to voluntary status compliance with medication and occupational therapy would not be guaranteed."

56. A very short consideration of the foregoing reasons demonstrates that the tribunal in *M.R.* did not expressly invoke the terms of s. 3(1)(a) or s. 3(1)(b) in providing reasons for its decision. Instead, it appears to have been deduced by the Court that the reasons provided, coupled with the decision to affirm the renewal order in that case, clearly establish that s. 3(1)(b) formed the basis for that

decision.

57. The third helpful principle to emerge from the decision in *M.R*. concerns the inter-relationship between the separate criteria for establishing a mental disorder under s. 3(1)(a) and s. 3(1)(b) of the 2001 Act. In that regard, O'Neill J. observed (at pp. 221-2):

"[***22***] The definition of "mental disorder", as contained in s. 3 of the Act, is of critical importance as it establishes the benchmark against which all forms of mental illness must be assessed before an admission order or a renewal order can be made.

[***23***] As is clear from this section there are two separate bases upon which "mental disorder" can be established.

[***24***] The first of these is set out in s. 3(1)(a) and it is where the mental illness, severe dementia or significant disability is such that there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons.

[***25***] The second basis is where the severity of the mental illness, dementia or disability is such that the judgment of the person concerned is so impaired that a failure to admit the person 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 that the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition to a material extent.

[***26***] I am quite satisfied that these two bases are not alternative to each other and indeed it would be probable in my view that in a great many cases of severe mental illness there would be a substantial overlap between the two. Thus it would be very likely in my opinion that in a great many cases in which a person could be considered to fall within the categorisation in s. 3(1)(a) that they would also be likely to fall within s. 3(1)(b). To a much lesser extent, it is probable that persons who are primarily to be considered as falling within s. 3(1)(b), would also be likely to have s. 3(1)(a) applied to them."

58. The fourth relevant principle to be found in the judgment of O'Neill J. in M.R. concerns the proper interpretation of s. 3(1)(b) and is as follows:

"In my view it is appropriate to take the two parts of this subsection together namely (b) (i) and (ii). Between them they establish three essential elements which must be present before "mental disorder" under this provision is established.

These are as follows:-

(1) the severity of the illness, disability or dementia must result in the judgment of the person concerned being impaired to the extent that failure to admit the person to an approved centre is likely to

(2) lead to a serious deterioration in his or her condition or prevent the administration of appropriate treatment that can be given only on such admission and

(3) that the reception, detention and treatment of the person in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent.

[***36***] These elements in s. 3(1)(b)(i) and (ii) are in my view clear and self explanatory. It is perhaps worth drawing attention to the fact that in 3(1)(b)(i) there are alternative provisions, namely that the failure to admit to an approved centre would be likely to lead to a serious deterioration in the condition of the person or that the failure to admit into an approved centre would prevent the administration of appropriate treatment that could be given only by such admission."

59. Later in the judgment, at paragraphs 58 to 68, O'Neill J. considered the reasons provided by the tribunal for its decision to affirm the renewal

order detaining the applicant in that case, against the three essential elements of the criterion for mental disorder under s. 3(1)(b) of the 2001 Act, before concluding that each of those elements was established in the short statement of reasons provided and that, accordingly, the decision was valid in substance and form.

60. I now propose to perform a similar exercise by reference to the reasons provided by the tribunal for its decision to affirm the admission order detaining the applicant in this case. The first essential element of s. 3(1)(b) identified by O'Neill J. is that the severity of the illness, disability or dementia from which the person concerned suffers, is causing the judgment of that person to be impaired. The reasons provided by the tribunal on this point include clearly expressed findings that the applicant was suffering from paranoid schizophrenia, was thought disordered, had persecutory delusions and bizarre ideas, and lacked insight into the severity of her illness. In my view, those findings were entirely consistent with all of the evidence before the Tribunal, both written and oral.

61. The second necessary element for a decision under s. 3(1)(b) is that a failure to detain the person concerned would lead to a serious deterioration in the condition of that person or would prevent the administration of appropriate

treatment, which could only be given in the context of such detention. In this case, the tribunal clearly stated, as part of its reasons, that the applicant was acutely unwell on admission, and was incoherent and distressed; that, prior to admission, the applicant had not been engaging with the medical services and was non-compliant with medications on admission; that the applicant received four injections, which helped improve her cooperation and coherence; and that the applicant had recently been commenced on Risperidone, which had not yet achieved a full therapeutic effect.

62. The third essential element for a decision under s. 3(1)(b) is that the detention of the person concerned would be likely to benefit or alleviate the condition of that person to a material extent. The reasons given by the tribunal for its decision on review in this case specifically include a finding, based on the evidence before it, that it would be premature to discharge the patient from the carefully controlled environment of the hospital at that time, as well as a finding that the applicant was benefiting from the treatment then being administered to her, and was benefiting to a material extent.

63. Just as O'Neill J. was on the particular facts presented in *M.R.,* I am quite satisfied by reference to the facts of this case that the

decision of the tribunal to affirm the order on foot of which the applicant was detained is valid both in substance and in form.

64. I am reinforced in that conclusion by the following observation of O'Flaherty J. in *Faulkner v. Minister for Industry and Commerce* [1997] ELR 107 (at 112), a case which involved a challenge to a Labour Court recommendation that had been expressed in a single sentence:

"I would reiterate what has been said on a number of occasions, that when reasons are required from administrative tribunals they should be required only to give the broad gist of the basis for their decisions. We do no service to the public in general, or to particular individuals, if we subject every decision of every administrative tribunal to minute analysis."

65. In truth, I do not think that either the arguments or the authorities relied upon by Counsel for the applicant in opposition to the conclusion that I have just reached can avail the applicant.

66. The applicant's first argument is that the tribunal erred in law in affirming the admission order in respect of the applicant without making any finding, whether directly or by inference, that the applicant's mental illness met the additional criteria for amounting to a mental disorder under

s. 3 (1) (a) of the 2001 Act (upon which finding or opinion the said admission order had been based). However, the relevant part of the tribunal's task, in conducting a review of a patient's detention under s. 18(1)(a) of the 2001 Act, is to determine whether it is satisfied that the patient concerned is suffering from a mental disorder. That provision is couched in the present tense, as is the equivalent provision concerning appeals to the Circuit Court from decisions of the tribunal under s. 19(4) of the

2001 Act.

67. In *Han v. The President of the Circuit Court* [2011] 1 IR 504, Charleton J. concluded that he was obliged to give grammatical and ordinary sense to the use of the present tense in the latter provision. I believe I am compelled to do the same in relation to s. 18(1)(a). It follows that the task of the tribunal was not to review the correctness of the consultant psychiatrist's opinion that the applicant was suffering from a mental disorder when an admission order was made on the 27th April 2014, but rather to form its own view concerning whether the applicant was suffering from a mental disorder when the review occurred on the 15th May 2014.

68. In *Gallagher v. Mental Health Tribunal* [2013] IEHC 617, O'Neill J pointed out that, in considering whether or not a patient has a mental

disorder in the context of an appeal to the Circuit Court under s. 19 of the 2001 Act, that court is entitled to reach its own conclusion on that issue, regardless of what conclusions had been reached earlier, either in the context of the making of an admission or renewal order, or in the context of a review by the tribunal of any such order. It seems to me clear that the same must be said about the tribunal's entitlement (indeed, obligation) to come to a conclusion on the same issue independent of any prior conclusion reached on that issue in the context of the making of an admission order.

69. This conclusion is borne out by the fact that, in *M.R.*, O'Neill J. expressly upheld a tribunal decision, based on a finding of mental disorder under the s. 3(1)(b) criterion, to uphold a renewal order that had been based on a finding of mental disorder under the s. 3(1)(a) criterion.

70. The applicant's second argument is that the tribunal erred in failing to apply the criteria under either s. 3(1)(a) or s.3(1)(b) in affirming the said admission order. I have already found, for the reasons set out above, that the reasons furnished by the tribunal make it plain that it did, in fact, apply the s. 3(1)(b) criterion. I have also already implicitly rejected the applicant's third argument that, insofar as it did apply the criterion under s. 3(1)(b), the tribunal erred in failing to apply the criterion under s. 3(1)(b)(i).

71. The applicant's fourth and final argument on the principal issue is the general one that, quite simply, the tribunal failed to provide adequate reasons for its decision to affirm the admission order. This argument invokes what Kelly J. referred to in *Deerland Construction Ltd v. Aquaculture Licence Appeals Board* [2009] 1 IR 673 (at 688) as the "abundance of case law indicating what must be done by a body, such as the first respondent [in that case], if it is to satisfy its obligation of setting forth reasons for its conclusions."

72. Counsel for the applicant sought to rely, in a general way, on the decision of Kelly J. in *Mulholland v. An Bord Pleanála (No. 2)* [2005] IEHC 306, a case involving a contested application for leave to seek judicial review of a grant of planning permission by the respondent board. The applicants argued that they had established substantial grounds, as required under s. 50 of the Planning and Development Act 2000, for challenging the validity of the board's decision on the ground, *inter alia*, that it had failed to comply with the significant obligation imposed on it under s. 34(10) of the 2000 Act to state the main reasons and considerations on which its decision was based. In particular, the applicant relies on the principles set out in the following passage from the judgment (at p. 465):

"I am of the opinion that, in order for the statement of considerations to pass muster at law, it must satisfy a similar test to that applicable to the giving of reasons. The statement of considerations must therefore be sufficient to:-

(1) give an applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision;

(2) arm himself for such hearing or review; (3) know if the decision maker has directed its mind adequately to the issues which it has

considered or is obliged to consider; and

(4) enable the courts to review the decision."

73. I fully accept that the foregoing is a correct statement of the principles that govern the provision of adequate reasons for administrative decisions. What I am unable to accept, for the reasons I have already set out above, is that the reasons provided by the tribunal in this case do not comply with those principles. The definition of mental disorder under s. 3(1) of the 2001 Act is not open-ended. It requires the presence of mental illness, severe dementia or significant disability. In this case the applicant's mental illness is conceded, in circumstances where the

evidence to that effect was, in any event, uncontroverted and conclusive. Thereafter, the person concerned must meet one of two other clearly expressed criteria. I can find nothing in the tribunal's decision that suggests the possibility, much less the presence, of a purported finding that there was a serious likelihood of the applicant causing immediate and serious harm to herself or other persons, as is required to meet the criterion under s. 3(1)(a). At the same time, applying the methodology adopted by O'Neill J. in *M.R*., I have concluded that the reasons provided by the tribunal clearly support a finding that the applicant did meet the criterion under s. 3(1)(b). Accordingly, I cannot accept that, having been furnished with a copy of the decision, the applicant and her legal representatives were not in a position to consider her chance of successfully judicially reviewing that decision (an appeal would have been a hearing *de novo* with a reversed onus of proof); or that they could not arm themselves for such review; or that they could not know if the tribunal had directed its mind adequately to the issues which it had considered or was obliged to consider; or that this Court would not have been enabled to consider the lawfulness or *vires* of that decision.

74. It should not be overlooked that, in *Deerland Construction Ltd*, Kelly J. also cited with approval

the following dictum of Murphy J. in *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 750 (at 757):-

"It is clear that the reason furnished by the board (or any other tribunal) must be sufficient first to enable the court to review it and secondly to satisfy the person having recourse to the tribunal that it has directed its mind adequately to the issue before it. It has never been suggested that an administrative body is bound to provide a discursive judgment as a result of its deliberations."

75. Finally on this issue, the applicant through Counsel commended to the Court a passage from the judgment of Stanley Burnton J. in the English High Court decision in *R (Ashworth Hospital Authority) v. Mental Health Review Tribunal for West Midlands and North West Region* [2001] EWHC Admin 901 (at para. 77) concerning the nature and scope of the obligation upon a Mental Health Tribunal in England to give reasons for its decisions, which passage was cited with approval by Gillen J. in the High Court in Northern Ireland in the case of *X's Application* [2008] NIQB 22 in the context of a case involving the Mental Health Review Tribunal for Northern Ireland under the Mental Health (Northern Ireland) Order 1986, as amended. However, while those principles are very interesting, it is not clear to me how it is

suggested that they would, if accepted, add anything to the approach that I am required to adopt under the authorities I have already considered.

76. Accordingly, I can find no basis for the applicant's contention that the tribunal failed to provide adequate reasons for its decision to affirm the admission order and I reject that contention.

Remaining issues

77. In light of the findings I have made, I must refuse each of the five reliefs sought by the applicant; the first three by reference to my conclusion that the tribunal did provide adequate reasons for its decision on the impugned review and the other two because they rely on the proposition that the subsequent renewal order on foot of which the applicant was later detained is somehow fatally tainted by the asserted defect in the tribunal's decision in respect of its review of the original admission order. Since I have rejected the argument that the tribunal's decision is defective, it follows that there was no infirmity attaching to the original admission order capable of tainting the applicant's subsequent detention on foot of the later renewal order.

78. However, I am conscious that the application at hand concerns a deprivation of liberty (albeit a

past one), and that the applicant may wish to exercise her entitlement to appeal this decision. In those circumstances, in order to expedite matters and to allow for greater efficiency in the conduct of the litigation, I propose to determine the remaining issues in the present application as though some inadequacy or deficiency had been identified in the reasons provided by the tribunal for affirming the admission order in respect of the applicant's detention.

Domino theory

79. In *WQ v. Mental Health Commission* [2007] 3 IR 755, O'Neill J. addressed, in the following terms, the assertion that a defect in a prior admission or renewal order could taint a subsequent renewal order (at p. 768):

"[***46***] There is, in the best interests of a person suffering from a mental disorder, a need for good order in the care and treatment of that person and the management of that care and treatment. The rendering invalid of an otherwise valid renewal order by reason of defect in a prior renewal or admission order is in my view inimical to good order in this process and ultimately not in the best interests of someone suffering from a mental disorder."

80. *R.L. v. Clinical Director of St. Brendan's Hospital* (Unreported, Supreme Court, 15

February, 2008) was a case which involved an otherwise valid admission order made subsequent to the removal of the appellant to the approved centre concerned in a manner that was found by the Court to be in clear and obvious breach of the statutory requirements in respect of such removal under s. 13 of the 2001 Act. Addressing the submission that the established prior breach of s. 13, rendered the admission order subsequently made under s. 14 invalid, Hardiman J. (Geoghegan and Kearns JJ. concurring), in an *ex tempore* judgment, stated as follows:

"The Court can simply see no reason whatever to believe that an irregularity or a direct breach of s. 13 would render what is, on the face of it, a lawful detention on foot of an admission order invalid.

...

The Court cannot see and it does not believe that there is any authority for the proposition that s. 14 cannot work at all, simply cannot be operated, if there is a defect in the execution of a removal under s. 13. There was no argument advanced as to why that proposition is true and it would appear to be contrary to the scheme and spirit of the Act.

...

We will repeat, as was said by this Court in the

previous case of M.D. that [the 2001 Act] is a scheme of protection and a very elaborate and very necessary scheme of protection because of course, everybody, even from general knowledge, is aware of the serious nature of the provisions to detain people in mental hospitals which have taken place in fairly recent times in other jurisdictions, and is aware of the judgment of the former President, Mr. Justice Costello, condemning the procedures formerly in force in this jurisdiction and mandating the establishment of a firm scheme or regime of protection.

But this is not a case which calls for protection under Article 40 of the Constitution, fortunately. The scheme of Article 40 is that the Court orders the person detaining, [the clinical director] in this case, to certify. She did certify. She certified relying on the admission order and the obligation of the Court, the High Court or this Court on appeal, when these things are done is that we must order the release of such person from detention unless satisfied that he or she is being detained in accordance with law. The position in this case is that we are satisfied that she is being detained, as of today, and was when the case was before the High Court, being detained in accordance with the law and we will decline to order her release."

81. In the subsequent Supreme Court decision in

C. v. Clinical Director of St. Brigid's Hospital (Unreported, Supreme Court, 13th March, 2009) at issue was a challenge to an admission or renewal order on the basis that it was tainted by some alleged unlawfulness that occurred when a member of An Garda Síochána first took the appellant into custody under s. 12 of the 2001 Act. Giving judgment for the Court, Hardiman J. cited the passage just quoted from *R.L.* before continuing:

"Now in this case a very similar position applies. We are quite satisfied that Dr. McAuley's certification of the 19th February, 2009, grounds the detention of the applicant in St. Brigid's Hospital. We do not feel called upon by authority or otherwise to apply to this case the sort of reasoning that would be applied if it were a criminal detention and to investigate whether previous matters, which might have a causal relationship to the present detention are invalid."

82. The most recent authority on this point is the decision of the Supreme Court in *E.H. v. Clinical Director of St. Vincent's Hospital* [2009] 3 IR 774. That was a case in which the appellant, who was being treated as a voluntary patient in an approved centre, was made the subject of a detention order under s. 24 of the 2001 Act, whereby a consultant psychiatrist, registered medical practitioner or registered nurse, who is of

the opinion that a voluntary patient who wishes to leave the approved centre concerned is suffering from a mental disorder, may detain that patient for a period not exceeding 24 hours. The appellant argued that his detention under s. 24 of the 2001 Act was unlawful because, lacking the capacity to consent to voluntary treatment prior to his detention, he was in reality unlawfully detained during that period, and that earlier unlawful detention tainted his subsequent otherwise valid detention under s. 24 by way of a domino effect.

83. In giving judgment for the Court on that appeal, Kearns J. cited the earlier decision of Hardiman J. for the Court in *C v. Clinical Director of St. Brigid's Hospital* before continuing (at p. 792):

"[***50***] These proceedings were initiated and maintained on purely technical and unmeritorious grounds. It is difficult to see in what way they advanced the interests of the applicant who patently is in need of psychiatric care. The fact that s. 17(1)(b) of the Act of 2001 provides for the assignment by the Commission of a legal representative for a patient following the making of an admission order or a renewal order should not give rise to the assumption that a legal challenge to that patient's detention is warranted unless the best interests of the patient so

demand. Mere technical defects, without more, in a patient's detention should not give rise to a rush to court, notably where any such defect can be, or has been cured - as in the present case. Only in cases where there had been a gross abuse of power or default of fundamental requirements would a defect in an earlier period of detention justify release from a later one. As O'Higgins C.J. observed in *The State (McDonagh) v. Frawley* [1978] I.R. 131 at p. 136:-

'The stipulation in Article 40, s. 4, sub-s. 1 of the Constitution that a citizen may not be deprived of his liberty save 'in accordance with law' does not mean that a convicted person must be released on *habeas corpus* merely because some defect or illegality attaches to his detention. The phrase means that there must be such a default of fundamental requirements that the detention may be said to be wanting in due process of law. For *habeas corpus* purposes, therefore, it is insufficient for the prisoner to show that there has been a legal error or impropriety, or even that jurisdiction has been inadvertently exceeded.' "

84. Each of the foregoing decisions provides compelling authority for the proposition that there can be no domino effect as between any alleged defect in the decision of a Mental Health Tribunal on the review of an admission or renewal order, on the one hand, and any renewal order

subsequently made, on the other, save where there has been a gross abuse of power or a default in some fundamental requirement.

85. Confronted with this difficulty, the applicant initially put up two arguments. The first is that the decisions in *R.L.* and *E.H*., at least, can be distinguished from the present case because each of those

cases involved an alleged unlawfulness that occurred prior to the original admission order in respect of the patient concerned, whereas the present case involves "the essential procedural safeguard" of a review hearing.

86. I cannot accept that argument because it seems to me to represent a distinction without a difference. Compliance with the law in connection with any detention (as well as in the review of any detention) is an essential bulwark of liberty to which every citizen is entitled. The Supreme Court drew no such distinction as the applicant now seeks to make when Hardiman J. pointed out in *C v. v. Clinical Director of St. Brigid's Hospital* that the Court did not feel called upon by authority to apply to that case the sort of reasoning that would be applied if it were a criminal detention or to investigate whether previous matters, which might have a causal relationship to the detention then at issue were

invalid. It must also be remembered that a renewal order, such as the renewal order made in the present case on the 16th May 2014, can only be made if the patient has been examined by a consultant psychiatrist within the week immediately preceding the making of the order (as the applicant was on the 14th May 2012) and if that consultant certifies in consequence that the patient continues to suffer from a mental disorder. It is in my view, absolutely inimical to good order in the treatment process and ultimately not in the best interests of someone suffering from a mental disorder if a defect in the review of a previous admission or renewal order could invalidate a subsequent renewal order based on a separate and contemporaneous uncontroverted finding that the person concerned is suffering from a mental disorder.

87. The second argument the applicant relies on in seeking to maintain a challenge to the validity of the renewal order made on the 16th May 2014 is that the inadequacy alleged in the reasons provided by the Tribunal must be viewed as constituting such a default of fundamental requirements that the detention may be said to be wanting in due process of law. Of course, I have held that there has been no failure to provide adequate reasons for the tribunal's decision to affirm the admission order in respect of the applicant, but even if I had found the

reasons provided to be in some way deficient, it is difficult to see how any such deficiency could be properly characterised as a default of fundamental requirements. If the allegation that the appellant in *E.H*. had been unlawfully detained for a number of days prior to his detention under s. 24 of the 2001 Act could be characterised, as it was by the Supreme Court in that case as "a purely technical and unmeritorious ground", it is difficult, if not impossible, to imagine how an asserted deficiency in the reasons given by the tribunal for affirming an admission order could be said to amount to "a default of fundamental requirements." This is not, for example, a case in which there was a failure or refusal to convene a tribunal to review the applicant's detention, nor is it even a case in which a decision to affirm a detention order has been made for which no reasons have been provided.

88. For all of the reasons set out above, I am satisfied that the inadequacy that the applicant contends for in the reasons provided by the tribunal could not, even if it were accepted, render unlawful the detention of the applicant on foot of the renewal order made in respect of the applicant on the 16th May 2014. Indeed, I had formed the impression - perhaps incorrectly - that this point was conceded on behalf of the applicant in the course of argument, and that the only

remaining point of disagreement between the parties was, rather, whether the applicant was entitled to maintain her challenge to the validity of the tribunal's decision (notwithstanding the legality of her subsequent detention) or whether that challenge should be dismissed as moot. For the sake of completeness, I propose to address that argument also.

Mootness

89. Having considered the matter carefully, I have come to the conclusion that the present proceedings are, indeed, moot, and that the respondents are entitled to an order refusing the relief sought on that basis also. This seems to me to follow ineluctably from the following explanation of the application of the doctrine provided by the Supreme Court (*per* Hardiman J, Geoghegan and Fennelly JJ. concurring) in *G v. Collins* [2005] 1 ILRM 1 (at p. 13):

"A proceeding may be said to be moot where there is no longer any legal dispute between the parties. The notion of mootness has some similarities to that of absence of *locus standi* but differs from it in that standing is judged at the start of the proceedings whereas

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mootness is judged after the commencement of the proceedings. Parties may have a real dispute

at the time proceedings commence, but time and events may render the issues in the proceedings, or some of them, moot. If that occurs, the eventual decision would be of no practical significance to the parties.

...

The practice of the courts in declining, in principle, to decide moot cases arose at common law, although various jurisdictions have statutory or constitutional provisions about it. (see 88 Harvard Law Review 373 at 374 (1974)). In *De Roiste v. Minister for Defence* [2001] 1 IR 190; [2001] 2 ILRM 241 Denham J. said at pp. 204/254-255:

'Judicial review is an important legal remedy, developed to review decision making in the public law domain. As the arena of public law decision making has expanded so too has the volume of judicial review. It is a great remedy modernised by the Rules of the Superior Courts 1986, and by precedent. However, there is no absolute right to its use, and there are limitations to its application. The granting of leave to apply for judicial review and the determination to grant judicial review are discretionary decisions for the Court. This has been set out clearly in precedent.'"

90. In *RL*, Hardiman J. pointed out that the

applicant in that case certainly had rights in the event of her being able to establish the breaches of the provisions of s. 13 of the 2001 Act that she alleged. But she did not have a right to an Order directing her release under Article 40 of the Constitution in light of the lawfulness of her subsequent detention. Similarly, in this case I do not doubt that the applicant has rights, in the event of her being able to establish the breach that she alleges of the statutory obligation upon the tribunal under s. 18(5) to provide reasons for its decision to affirm the relevant detention order. But I have concluded, by reference to the principles described in the preceding paragraph, that she does not have a right to the discretionary remedy of judicial review in that regard.

Conclusion

91. The application is refused.