

Detaining patients: evidence must be on prescribed forms



Law Centre (NI)

At a glance

This briefing is for:

- health and social care professionals involved in completing detention forms,
- legal practitioners who represent patients wishing to challenge their detention.

The purpose of the briefing is to assist good practice amongst professionals to comply with the law when completing prescribed detention files, in order to ensure that patients' rights on admission and renewals are not unlawfully breached.

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Our advice line

Monday to Friday: 9024 4401

Introduction

This briefing considers the case of *RS' application [2015] NICA 30*¹ (*RS*) in the context of completion of the prescribed detention forms.

The briefing aims to assist good practice amongst professionals to comply with the law in order to ensure that patients' rights on admission and renewals are not unlawfully breached.

The prescribed detention forms include Forms 3,5,7,8,9, and 10².

For an analysis of the rationale in *RS*, see Law Centre (NI) information briefing³: [Redetaining patients after earlier MHRT decision to discharge - Implications of RS's Application \[2015\] NICA 30](#).

1. Implications of the *RS* judgement

The decision of the Court of Appeal in the application of *RS* reaffirmed the importance of providing sufficient relevant information in completing the prescribed detention forms in order to satisfy the requirement for **objective** evidence that will meet the legal criteria.

The decision's concluding paragraph stresses that the medical practitioner should detail the evidence in support of the detention **on the forms**. It will not suffice to have regard to the evidence in the thought process but not to write it down.

In *RS*, judgement was delivered on 22 May 2015. In the cases referred to Law Centre (NI), there continues to be instances where the criteria set out in the Mental Health (NI) Order 1986 [MHO] are not met.

Some recent examples include where the detention form records that a member of staff alleges they were put in reasonable fear of serious physical harm by the patient, but there is no evidence recorded of what was said or done by the patient; or where a form records that the patient threatened to punch a fellow resident, but examination of the medical notes evidence that it was a self-report by the patient, and that no third party made a complaint to

¹ [https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2015/\[2015\]%20NICA%2030/j_j_MOR9652Final-PUBLISH.htm](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2015/[2015]%20NICA%2030/j_j_MOR9652Final-PUBLISH.htm)

² <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/the-mental-health-northern-ireland-order-1986-prescribed-forms.pdf>

³ <http://www.lawcentreni.org/Publications/Law-Centre-Information-Briefings/Mental-health-detention-RS-Law-Centre-NI-Feb-17.pdf>

the staff. A further example is of detention forms relying on a verbal report of CCTV footage content, yet the subsequent investigation shows no connection between the incident and the patient.

Examples such as these may result in weak or circumstantial evidence leading to a deprivation of liberty.

2. Relevant law

The relevant clause which deals with the required evidence to support detention is found at Article 2 (4) of the MHO. Article 2 (4)(b)(ii) states:

*“ [one must look to evidence] that the patient has so behaved himself that other persons were placed in **reasonable fear** of serious physical harm to themselves” [our emphasis]*

3. Analysis

The key words are ‘reasonable fear’. There is an objective element to the evidence, not a subjective one.

The person signing the form is obliged to gather and assess the evidence of factual behaviour, and arrive at a judgement as to whether objectively it is capable of causing reasonable fear.

A detailed summary of that factual evidence must be written onto the form. If this is omitted, then the statutory requirement may be found not to have been complied with.

Further, it is incumbent on staff to gather evidence from the person subjected to the alleged behaviour as to whether they were put in fear and exactly what serious physical harm they were fearful of sustaining.

Conclusion

As detention infringes a person's right to liberty, it is imperative that the prescribed forms are completed correctly, containing sufficient relevant evidence to permit the patient to understand the precise reasons for detention.

For this reason, the circumstances leading up to the decision to detain, or on renewal of detention, should be robustly investigated, with care taken to focus on reliable evidence of sufficient weight to meet the legal criteria.

It would be of assistance for detaining authorities to have an internal system in place to approve the forms before they are sent to RQIA.

Finally, when acting on behalf of a detained person, representatives should always routinely examine the detention forms carefully and cross reference with the contemporaneous hospital notes if necessary.

Law Centre (NI) runs a free specialist legal advice line for mental health patients and their families, as well as for advisers and health and social care staff.

Call 028 9024 4401, 9.30am to 1pm, Monday to Friday.

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