

MENTAL HEALTH TREATMENT

Patients' right to information in compulsory detention cases



Law Centre (NI)

At a glance

This briefing is aimed at mental health legal advisers and Health Trusts.

It describes the legal duties arising from the High Court case in *SC's Application [2015] NIQB 34*, which clarifies the right of patients and legal advisers to access information on the written reasons why a patient is detained for psychiatric treatment.

It also illustrates the pivotal role of Article 5 of the European Convention on Human Rights (ECHR) – the right to liberty and security of person - in cases involving the detention of patients.

Law Centre (NI)

- promotes social justice and provides specialist legal services to advice organisations and disadvantaged individuals
- in five areas of law: social security, community care, mental health, employment, trafficking and asylum
- through advice, casework, training, information and policy services

Our advice line

9.30 to 1pm, Monday to Friday: 9024 4401

Introduction

This briefing considers guidance from the NI High Court in *SC's Application [2015] NIQB 34*¹, which clarifies the right of patients and legal advisers to access information regarding the written reasons as to why a patient is detained.

Factual background

The applicant was a detained patient under Article 12 of the Mental Health (NI) Order 1986² [MHO] in the Avoca Ward at Knockbracken Healthcare Park. The MHO sets out certain statutory requirements including a requirement that prescribed forms containing information about the reasons for patient's detention and their right to challenge that detention must be completed by a responsible medical officer if a patient is detained under the MHO.

In March 2013, the applicant's solicitor requested copies of the detention forms for legal advice purposes. The Belfast Health and Social Care Trust refused to provide the forms immediately, and treated the request for the forms as a Subject Access Request under the Data Protection Act 1998 [DPA]. The Trust passed the request for the forms to its Data Protection Office which requested the usual fee of £30.

This approach was problematic because a DPA request can take up to 40 days to process. Also the relevant body, in this case the Belfast Health and Social Care Trust, may rely on a DPA statutory exemption to withhold certain records which in its opinion have the potential to cause serious physical or mental harm to the patient or some other person.

In this case the Trust's refusal to provide the patient's solicitor with the detention forms other than in accordance with the DPA was challenged in the High Court by way of judicial review proceedings.

Outcome

The judge held that the patient and their legal advisers had a right to review those forms in their entirety, at no charge, and independent of any additional rights which they may have under the Data Protection Act³.

The detention forms set out the legal basis for the patient's detention and provide information which outlines the patient's right to challenge their detention. This information is essential for a legal adviser to give the patient timely and effective legal advice.

¹ [https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2015/\[2015\]%20NIQB%2034/j_i_TRE9613Final.htm](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2015/[2015]%20NIQB%2034/j_i_TRE9613Final.htm)

² <http://www.legislation.gov.uk/nisi/1986/595>

³ <http://www.legislation.gov.uk/ukpga/1998/29>

In the case of a detained patient, time is of the essence and treating a request for detention forms in this way may deprive the patient of their right to mount an effective challenge to their detention.

In the event, the applicant was discharged from detention and the delay in providing the forms did not result in them being detained for any longer than would otherwise have been the case.

The judge set out the legal position in the following terms:

“Patients and their legal advisers have a right pursuant to Article 5 of the ECHR to be provided with their detention forms, by means of secure transmission, as soon as reasonably practicable after a request has been made to the detaining authority by the detained patient or their legal advisor.

In the case of requests by a legal adviser, the request should be accompanied by a written form of authority signed and dated by the detained patient

The Data Protection Act 1998 does not interfere with the rights of a detained patient or their legal representative to obtain copies of his detention forms”.

Commentary

The judgment adopts a pragmatic approach to facilitating requests from legal representatives for access to detention forms which are necessary for the purposes of, or in connection with, any legal proceedings or necessary for the purpose of obtaining legal advice.

It is particularly significant in the area of mental health law because it reinforces the high status afforded to the right to liberty for individuals who are subject to compulsory detention and treatment.

Law Centre (NI) contact details

Central Office

124 Donegall Street

Belfast

BT1 2GY

Tel: 028 9024 4401

Fax: 028 9023 6340

Textphone: 028 9023 9938

Email: admin.belfast@lawcentreni.org

Western Area Office

9 Clarendon Street

Derry

BT48 7EP

Tel: 028 7126 2433

Fax: 028 7126 2343

Email: admin.derry@lawcentreni.org

Our website: www.lawcentreni.org

Follow us on Twitter: [@LawCentreNI](https://twitter.com/LawCentreNI)

Find us on YouTube: [Law Centre NI](https://www.youtube.com/LawCentreNI)



Disclaimer

Although every effort is made to ensure the information in Law Centre publications is accurate, we cannot be held liable for any inaccuracies and their consequences. The information should not be treated as a complete and authoritative statement of the law.

Law Centre (NI) only operates within Northern Ireland and the information in this document is only relevant to Northern Ireland law.

When reading Law Centre documents, please pay attention to their date of publication as legislation may have changed since they were published.