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*(subject to editorial corrections)**

IN THE HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

RS' Application [2015] NICA 30

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY RS

Before: Morgan LCJ, Gillen LJ and O'Hara J

MORGAN LCJ (giving the judgment of the court)

[1] The appellant is a 36 year old man who has a long established diagnosis of paranoid schizophrenia. He has had a number of admissions to psychiatric hospitals dating back to 1996. A pattern has developed whereby he receives treatment in hospital and, following discharge, fails to comply with his treatment regime, reverts to alcohol and drug misuse which has a detrimental effect on his mental health, suffers a deterioration in his mental state and requires readmission to hospital. In recent years he has been treated in hospital as a detained patient. Mr Ronan Lavery QC appeared for the appellant with Mr Corkey and Dr McGleenan QC appeared with Ms Connolly for the respondent. We are grateful to all counsel for their helpful oral and written submissions.

[2] The appellant was detained for assessment pursuant to Article 4 of the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order") and subsequently detained for treatment pursuant to Article 12 of the 1986 Order on 23 August 2012. He was discharged from that period of detention by a decision of a Mental Health Review Tribunal ("the Tribunal") on 4 March 2014 but remained in hospital as a voluntary patient until 18 March 2014 when he was discharged into the community. On 10 May 2014 the respondent Trust acceded to the application of an approved social worker under Article 4 of the 1986 Order to detain the appellant for assessment. The assessment period was duly extended and on 22 May 2014 the appellant was detained for treatment under Article 12 of the 1986 Order.

[3] On 3 June 2014 the appellant lodged judicial review proceedings challenging both the detention for assessment and the detention for treatment. Treacy J

concluded that the detention for assessment was lawful but that the detention for treatment was unlawful because the responsible medical Officer ("RMO") failed to indicate acceptable evidence on the prescribed form in respect of the ground upon which detention was effected. The appellant appeals the decision in relation to the detention for assessment and the respondent by notice appeals the decision in relation to the detention for treatment.

Statutory Framework

[4] Article 4 of the 1986 Order makes provision for the admission to hospital of a patient for assessment and his detention thereafter. An application for assessment can be made by an approved social worker who is required to consult with the person appearing to be the nearest relative of the patient. The application must be made in the prescribed form. Such an application may be made in respect of a patient on the grounds that he is suffering from mental disorder of a nature or degree which warrants his detention in hospital for assessment and failure to so detain him would create a substantial likelihood of serious physical harm to himself or other persons. Mental disorder includes mental illness and as a result of the diagnosis of paranoid schizophrenia there is no dispute that the appellant suffers from a mental disorder.

[5] Article 6 of the 1986 Order requires that an application for assessment must be founded on and accompanied by a medical recommendation in the prescribed form which includes a statement that in the opinion of the medical practitioner the patient is suffering from mental disorder of a nature or degree which warrants his detention in hospital for assessment. Particulars of the grounds for that opinion together with a statement that in the opinion of the practitioner a failure to detain the patient would create a substantial likelihood of serious physical harm to himself or to other persons and the evidence for that opinion must be provided on the prescribed form. Article 2 (4) of the 1986 Order provides:

> "(4) In determining for the purposes of this Order whether the failure to detain a patient or the discharge of a patient would create a substantial likelihood of serious physical harm-
>
> (a) to himself, regard shall be had only to evidence-
>
> (i) that the patient has inflicted, or threatened or attempted to inflict, serious physical harm on himself; or
>
> (ii) that the patient's judgement is so affected that he is, or would soon be,

unable to protect himself against serious physical harm and that reasonable provision for his protection is not available in the community;

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

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

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

[6] A duly completed application for assessment is sufficient authority for the approved social worker to take the patient and convey him to the hospital specified in the application at any time within the period of two days beginning with the date on which the medical recommendation was signed. Where the patient is admitted within that period to the hospital specified the application is by virtue of Article 8 of the 1986 Order sufficient authority for the relevant Trust to detain the patient in the hospital for the assessment period specified by Article 9 of the 1986 Order.

[7] Article 9 requires that the patient admitted to hospital pursuant to an application for assessment must be examined immediately after he has been admitted by the RMO or some suitable alternative. The RMO is the medical practitioner appointed for the purpose of these statutory provisions by the Regulation and Quality Improvement Authority ("RQIA") and is in charge of the treatment or assessment of the patient. The medical practitioner carrying out the examination is immediately required to furnish to the Trust a report of the examination and the date on which the report is furnished is referred to as the date of admission. Where the report furnished by the medical practitioner states that in his opinion the patient should be detained in hospital for assessment the patient may be detained for a period of 48 hours or seven days depending upon the standing of the medical practitioner. In any event within 48 hours the RMO must furnish to the Trust a report where he has not reported on the admission. There is then provision for the extension of the assessment period on foot of further reports from the RMO.

[8] Article 11 provides for rectification of applications, recommendations and reports. Where, within the period of 14 days beginning with the date of admission, the application for assessment, the medical recommendation or any report given under Article 9 is found to be in any respect incorrect or defective, the application, recommendation or report may, within that period and with the consent of the Trust, be amended by the person by whom it was signed and be deemed to be effective

from the date originally made. It is further provided that where within the 14 day period the Trust gives notice that a medical recommendation or report under Article 9 is insufficient to warrant the detention of the patient the application for assessment shall still be deemed always to have been sufficient if a fresh medical recommendation or report complying with the relevant provisions of the statute other than those relating to time is furnished to the Trust within that period.

[9] Article 12 deals with detention for treatment and provides:

> "12. - (1) Where, during the period for which a patient is detained for assessment by virtue of Article 9(8), he is examined by a medical practitioner appointed for the purposes of this Part by RQIA and that medical practitioner furnishes to the responsible authority in the prescribed form a report of the examination stating-
>
> (a) that, in his opinion, the patient is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment; and
>
> (b) that, in his opinion, failure to so detain the patient would create a substantial likelihood of serious physical harm to himself or to other persons; and
>
> (c) such particulars as may be prescribed of the grounds for his opinion so far as it relates to the matters set out in sub-paragraph (a) ; and
>
> (d) the evidence for his opinion so far as it relates to the matters set out in sub-paragraph (b), specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate,
>
> that report shall be sufficient authority for the responsible authority to detain the patient in the hospital for medical treatment and the patient may, subject to the provisions of this Order, be so detained for a period not exceeding 6 months beginning with the date of admission, but shall not be so detained for

any longer period unless the authority for his detention is renewed under Article 13.

(2) A report under paragraph (1) shall not be given by-

(a) the medical practitioner who gave the medical recommendation on which the application for assessment is founded…..

(4) The responsible authority shall immediately forward to RQIA a copy of any report furnished to the authority under paragraph (1).

(5) In this Order "detained for treatment", in relation to a patient, means detained in a hospital for medical treatment by virtue of a report under paragraph (1)."

The Tribunal hearing on 4 March 2014

[10] The Tribunal noted the long-established diagnosis of paranoid schizophrenia. It concluded that the appellant would in all probability soon revert to alcohol and drug misuse (this was evidenced by recent alcohol and drug misuse whilst on passes) which would have a detrimental impact on his mental health. He would in all probability fail properly to comply with essential medication and treatment in the community. This was highly likely to result in an early deterioration in his mental health followed almost inevitably by readmission to hospital. That could be avoided if the patient remained in hospital until such time as his illness was stabilised and his insight improved to the extent that he recognised the importance of compliance with treatment and abstinence from alcohol and drugs. Accordingly, the Tribunal concluded that his mental illness was of a nature and a degree which warranted his detention in hospital for medical treatment at that time.

[11] The Tribunal then looked at the issue of a substantial likelihood of serious physical harm to himself. It noted that there was no evidence of him being exposed to a risk of serious physical harm in the community in the past even during periods when he was acutely unwell and no evidence of his being threatened or attacked by way of retaliation. He had suffered self-neglect in the community whilst unwell and had engaged in reckless behaviour when drunk. The Tribunal concluded that this evidence was insufficient to justify finding that his judgement was so affected that he would soon be unable to protect himself from serious physical harm. It noted that self-neglect was a long-term risk and there was no evidence of the appellant coming to harm whilst drunk in the recent past.

[12] It examined the risks arising from the misuse of drugs associated with his medication. However, that evidence was insufficiently compelling to justify a finding that there was a substantial likelihood of serious physical harm to the appellant so as to deprive him of his liberty. The Tribunal noted that there was provision for the protection of the appellant in the community in the form of the Home Treatment Team. Even if the appellant failed to engage with the team he would be referred to the enhanced care team so as to remain within the radar of community-based services. The Tribunal also noted that the appellant had self-presented to hospital in the past and had sought assistance from the PSNI. That demonstrated a degree of judgement on his part and satisfied the tribunal that there was reasonable provision for his protection in the community.

[13] The Tribunal was aware of two instances of violence towards others during the course of his admission but noted that there had been no violence towards others since 13 September 2013 and there had been intervening periods when the appellant had been more acutely unwell than he was at present. There was no evidence of incidents of violence towards others while he had been on passes away from the ward.

[14] The Tribunal also considered evidence that the appellant had so behaved himself that others were placed in reasonable fear of serious physical harm to themselves. That included evidence that female patients reported the appellant as being intimidating in nature and evidence of a nurse feeling uncomfortable. There was evidence that he had been hostile and aggressive towards others. The evidence was not sufficiently compelling so as to justify a finding that others were placed in reasonable fear of serious physical harm to themselves. A sense of uneasiness or discomfort or a feeling of intimidation without more substance was not sufficient. The Tribunal concluded, therefore, that the discharge of the appellant would not create a substantial likelihood of serious physical harm to other persons and directed his discharge.

The circumstances of the appellant's detention from 10 May 2014

[15] On the night of 9/10 May 2014 the appellant's mother brought him to the Ulster Hospital, Dundonald, because she was concerned about his mental health. An approved social worker from the out of hours service was contacted on the morning of 10 May and she arranged for the attendance of an out of hours medical practitioner to examine the appellant. As a result of her observations and the medical examination the approved social worker concluded that the appellant required admission for assessment. She spent some time trying to secure a bed and at approximately 7 pm on 10 May 2004 she transported the appellant by ambulance to Downe Hospital, Downpatrick.

[16] The approved social worker's application was accompanied by a medical recommendation completed by the medical practitioner. The portion of the medical

recommendation form providing for a clinical description of the patient's mental condition comprises five lines with space for approximately 6 words in ordinary handwriting on each line. That portion providing for evidence that the failure to detain the patient would create a substantial likelihood of serious physical harm to the patient or other persons has 9 lines with space for approximately the same number of words on each line. In completing both portions the medical practitioner used space at the side of the forms.

[17] The medical practitioner described the appellant's mental condition as follows:

> "He has schizophrenia. He was found by police banging on his neighbour's door in the early hours of the morning. He had apparently lost his keys. He has been non-compliant with his medication clozapine for seven weeks and is refusing to engage with [services including the Home Treatment Team].
>
> His flat has no current gas or electricity supply and little or no food in his flat. He has been noted to be eating infrequently and drinking alcohol to excess and possibly taking recreational drugs. He not appear to wash or change clothes for a period of three weeks."

The medical practitioner selected that part of the form indicating that the patient's judgement was so affected that he was or would soon be unable to protect himself against serious physical harm and that reasonable provision for his protection was not available in the community. She stated the following matters by way of evidence:

> "His thought processes appear disordered and he is unable to explain how there is no electricity or food in the house or discuss his daily routine. His thoughts to explain the fact that there is no electricity are paranoid and there are some paranoid ideas regarding 'republicans' and immigrants in the community. 'So-called young republicans who take uniforms and guns from the military presence in the town'. 'A lot of immigrants in the town that need processed'. I feel he is currently mentally unwell and unable to care for himself in the community."

[18] On arrival at the hospital he was examined by the on-call senior house officer who concluded that he should be detained in hospital for assessment, noting that he was not taking his medication, refusing to engage with services, neglecting his hygiene and diet, displayed disordered thought content and paranoid ideation, no

insight and threatening behaviour. The period of assessment was extended as a result of a report from Dr Finnerty, the RMO, who noted that he had presented with increased paranoid delusions, decreased self-care and poor concordance with treatment in the community.

[19] On 22 May 2014 Dr Finnerty provided a medical report for detention for treatment for the purposes of Article 12 of the 1986 Order. He stated that the patient was suffering from mental illness and gave the following clinical description of his mental condition:

> "Presents as paranoid and suspicious. Verbally abusive towards others on ward – presents as intimidating – encroaching on others personal space and staring excessively – lacks insight."

In relation to the issue of serious harm the evidential options were excluded apart from that contending that the patient had so behaved himself that other persons were placed in reasonable fear of serious physical harm to themselves. The prescribed form also required him to specify whether other methods of dealing with the patient were available and if so why they were not appropriate. In the allocated space Dr Finnerty wrote:

> "Highly likely to discharge from treatment and abuse alcohol if not in hospital which has been associated with increased psychosis in the past. Requires further period of inpatient treatment."

The conclusions of the learned trial judge

[20] The learned trial judge concluded that as a matter of objective fact the position of the appellant had materially changed between the Tribunal decision and the date of the application for assessment. In those circumstances the decision in ex parte von Brandenburg [2003] UKHL 58 which states that the rule of law requires that effect should be loyally given to the decisions of legally constituted tribunals in accordance with what was decided did not arise. In any event the learned trial judge considered that the case had no application, since neither the approved social worker nor the recommending doctor had access to or knowledge of the Tribunal decision.

[21] In respect of the detention for assessment the learned trial judge noted the matters set out by the examining doctor in the prescribed form. He concluded: –

> "it seems uncontentious to me that a man suffering paranoid ideation, with disordered thought processes, who has no electricity or food in his home

> and cannot explain why this is so can reasonably and rationally be considered to be suffering from judgements so affected that at the moment he is, or would soon be, unable to protect himself from serious physical harm. If he is unable currently to protect himself in the most basic way (i.e. by providing electricity and food) then this will, in the first instance, soon cause serious… physical harm."

Even if it might take some time for the effects of lack of food, heating and washing facilities to become apparent, Treacy J considered that when the doctor was assessing him it appeared to her at that time that he was actually unable to protect himself and was creating a situation where serious physical harm was inevitable. Accordingly, he did not consider the detention for assessment unlawful.

[22] Dr Finnerty swore an affidavit in which he indicated that the purpose in highlighting the clinical information in the prescribed form was both to describe some of the presenting features of his mental condition and in support of his clear view that the appellant required to be detained in order to avoid the risk of serious physical harm to others. He considered that the appellant at that time was in an acutely psychotic and paranoid delusional state. The information available to him indicated that the appellant had been exhibiting quite a lot of staring behaviours in which he would come right up into the personal space of staff in an intimidating manner. He was noted to spend significant periods of time staring excessively at the other patients and encroaching on their personal space on a number of occasions. He had also presented as verbally hostile and abusive to nursing staff at times. Dr Finnerty was concerned that this had in the past been a clear indicator of the deepening state of psychosis and paranoia that had progressed relatively shortly thereafter to physical outbursts. Against a background of a lengthy period of non-compliance with any of his medication, his agitated state was of concern and led Dr Finnerty to the view that other persons would be placed in reasonable fear of serious physical harm.

[23] The learned trial judge did not doubt Dr Finnerty's judgement but concluded that the detention was unlawful because there was no acceptable evidence making out the relevant ground on the prescribed form as required by Article 12 of the 1986 Order. The Article 12 report was the only sufficient authority for the detention of the patient in hospital for medical treatment. The report was not a mere formality but an important safeguard and must be capable of demonstrating that the statutory test is made out on acceptable, permissible evidence. There was nothing in the description of the appellant's symptoms in the Article 12 report to indicate a history of physical outbursts as a result of those symptoms and in any event the report did not specify what other methods of dealing with the patient were available and if so why they were not appropriate.

The submissions of the parties

[24] Mr Lavery submitted that the admission for assessment report prepared by the general practitioner merely indicated evidence of self-neglect. He pointed to the assessment by the Tribunal set out at paragraph 11 above that self-neglect was a long-term risk and submitted that there was no evidence that the appellant would be unable to protect himself from serious physical harm. There was nothing in the report to indicate the reasons for the failure of electricity or the absence of food and no evidence of any physical effects of malnourishment or exposure.

[25] The Department of Health and Social Services ("the Department") has issued a Code of Practice under Article 111 of the 1986 Order. Paragraph 2.55 provides that medical recommendations should be examined at the same time as the application. They must be scrutinised to ensure that they show sufficient legal grounds for detention. That point is reinforced by paragraphs 34 and 35 of the Guide on the 1986 Order issued by the Department ("the Guide") which state that those who sign applications, medical recommendations or reports should take care to see that they comply with the requirements of the 1986 Order and that Boards should make arrangements to have the admission documents carefully scrutinised as soon as the patient has been admitted. In those circumstances although the approved social worker and the general practitioner providing the medical report may not have had previous knowledge of the Tribunal's decision and the reasons for it that would not excuse the Trust who should have examined the admission for assessment documents against the background of the Tribunal decision.

[26] In the absence of evidence of malnourishment as a result of the absence of food or exposure as a result of the absence of electricity there was no rational basis for the conclusion that self-neglect would create a substantial likelihood of serious physical harm to the appellant. It was submitted that it would be a substantial extension of the detention powers under the 1986 Order for a Trust to detain a patient for not having food or electricity when the same was not shown to be causing or having previously caused harm to the patient.

[27] In light of the consideration by the Tribunal of the risks associated with self-neglect and the identification of those as long-term risks the appellant submitted that the admission for assessment was in any event a departure from the reasoning of the Tribunal. Similarly, if the basis for the admission was that the appellant was suffering paranoid ideation with disordered thought processes that also had been considered by the Tribunal which concluded that the patient had remained safe in the community in the past even when acutely unwell. The appellant relied upon the decision of the House of Lords in R (von Brandenburg) v East London and City

MHNHS Trust [2003] UKHL 58 for the proposition that proper effect should be given to Tribunal decisions for what they decide so long as they remain in force.

[28] Finally the appellant submitted that the abandonment of the basis upon which the admission for assessment was made by the RMO who relied upon the alternative ground that failure to detain the appellant would create a substantial likelihood of serious physical harm to other persons only 12 days after admission was in itself highly unusual and undermined the evidence in relation to the admission. Issue was taken with that proposition by Dr Finnerty who said that in light of the treatment the appellant had received in the intervening period a change in the basis for detention was not unusual.

[29] Dr McGleenan relied on the Guide which provided at paragraph 24 that it was for the doctor to decide whether the evidence for one or more of the relevant conditions was sufficient to warrant admission for assessment. It provided, however, that a mentally disordered person who was simply making a nuisance of himself or indulging in antisocial behaviour would not meet the criteria. On the other hand it was clear that it was not necessary to wait until the patient had actually injured himself before admitting him to hospital. The information that had to be contained in the forms was circumscribed by their format and in particular the word limits of what the form contemplated would be inserted. This was a form dealing with acute admission in a crisis situation and should not place on the medical practitioner involved an onerous or over complicated duty (see R (on the application of H) v Oxfordshire Mental Health Care NHS Trust and Others [2002] EWHC 465).

[30] The respondent noted that in von Brandenburg Lord Bingham did not accept that an approved social worker's decision to seek admission would be vitiated if he failed to take account of a recent Tribunal decision of which he was unaware. In relation to the fluctuating nature of mental illness it was submitted that this had been acknowledged by the Master of the Rolls in that case.

[31] The affidavit from Dr Finnerty indicated that he did not compartmentalise the evidential material for the need for detention so as to exclude from the evidence for serious harm the matters referred to in the clinical assessment. It was submitted that the learned trial judge had compartmentalised the approach to the relevant form and was in error in doing so. In relation to the suggestion that the RMO did not deal with other available methods of dealing with the patient the respondent pointed out that leave had not been granted on this ground and that, in any event, the information provided in the form noted that the appellant was highly likely to discharge himself from treatment and misuse alcohol if not in hospital and this had been associated with increased psychosis in the past. He required a further period of inpatient treatment.

Consideration

[32] The learned trial judge decided this challenge upon the basis that any failure by those completing the prescribed forms would render unlawful the detention no matter what justification may have been available to the decision maker for that course. Having regard to the statutory scheme we are satisfied that he was correct in so concluding.

[33] As set out above, by virtue of Article 4(3) of the 1986 Order an application for assessment shall be founded on and accompanied by a medical recommendation given in accordance with Article 6 in the prescribed form and signed by a medical practitioner who has examined the patient not more than 2 days before the date on which he signs. It must contain the statements and particulars set out in Article 4(3). The prescriptive nature of the statutory regime and the strict construction which should be applied to any legislation authorising the detention of the citizen by the State would in any event have pointed towards the conclusion that the detention could only be lawful if the prescribed forms were properly completed. We are satisfied that the matter is put beyond doubt in relation to detention for assessment by the rectification provisions of Article 11 which enable the application or medical recommendation to be amended within 14 days in certain circumstances. Similarly that section permits the compilation of a fresh medical or report where the original report is insufficient which then operates retrospectively. Those provisions reinforce the interpretation that the detention for assessment is not lawful if the application or the medical report does not satisfy the statutory requirements.

[34] The scheme of Article 12 providing for detention for treatment is similar. The Trust can only detain the patient for treatment where an RQIA appointed medical examiner has provided in the prescribed form an opinion, particulars and evidence as set out at paragraph 9 above. There is, however, no rectification provision available if the documents are defective. We do not consider that this distinction affects the necessity for the documents to be in order to make the detention lawful. First, the application for detention for assessment is based upon a report from a medical practitioner who is not RQIA appointed and it is foreseeable that the practitioner reporting on the assessment might not have the familiarity with the requirements that would be expected of an RQIA appointed medical practitioner. It is notable that there is also a rectification regime in guardianship applications where medical practitioners unfamiliar with the requirements of the 1986 Order may be involved. Secondly, detention for assessment often arises as a result of an emergency situation requiring an immediate response. In such circumstances it is understandable that the paperwork may have to be completed in pressurised situations. A provision for rectification acknowledges both situations.

[35] By contrast, detention for treatment is grounded on a medical report prepared by an RQIA appointed medical practitioner. Secondly, that report is prepared as a result of the assessment process so that there is not the same pressurised situation identified above. Thirdly, since it is clear for the reasons set out above that detention for assessment is only lawful if the documentary proofs are in order, it is entirely

consistent with the statutory scheme that the same strict requirement should govern the scheme for detention for treatment.

[36] In determining whether the requirements of the legislation have been satisfied we accept that the statutorily prescribed forms envisage the provision of summary reasons (see R(on the application of H) v Oxfordshire Mental Healthcare NHS Trust [2002] EWHC 465 (Admin)). We also recognise that matters relevant to clinical judgement may also impinge on the evidence of serious physical harm and that it would be artificial to exclude from consideration of the statutory requirements matters contained within other sections of the prescribed forms.

[37] It is common case that the basis for the detention for assessment pursuant to Article 4 of the 1986 Order was that the patient's judgement was so affected that he would soon be unable to protect himself against serious physical harm and that reasonable provision for his protection was not available in the community. The latter proposition was evidenced in the medical practitioner's note by the record that the appellant had disengaged from the Home Treatment Team. The fact that his judgement was affected was identified by the reference to his thought processes appearing disordered.

[38] The real issue concerned whether the absence of food or electricity was a sufficient indicator that he would soon be unable to protect himself against serious physical harm. We accept the submission that evidence of self-neglect does not of itself satisfy the statutory test. As the Tribunal stated at paragraph 20 of its decision self-neglect is a long-term risk which means, therefore, that prolonged self-neglect may give rise to the risk of serious physical harm. Whether that stage has been reached is plainly a matter of judgement. The summary forms cannot record each and every aspect of the factors which impinged on that judgement. We note, for instance, that the record made by the approved social worker in her more extensive assessment indicated that he was very thin. He stated that there were days when he did not eat and that someone was tampering with his food, his food was being taken from him and nutrients were being removed from food.

[39] We consider that the summary record prepared by the medical practitioner indicated the basis for her conclusion about self-neglect and the remaining material prepared by the approved social worker demonstrates that that judgement was within the bounds of the reasonable judgements available to her. We also reject the submission that the admission for assessment was caught by the principle in von Brandenburg. The Tribunal plainly recognised the risk of self-neglect but did not make any judgement that self-neglect of itself could not provide a proper basis for satisfaction of the statutory test. Indeed the reference to long-term risk recognised that there were circumstances in which self-neglect could do so. The question for the medical practitioner was whether that stage had been reached.

[40] Finally, it was suggested that there was some significance to be attached to the fact that there was no record of malnourishment or exposure. We do not consider that such evidence of injury is necessary in order to satisfy the statutory test. The test is concerned with risk that the event might occur. That view is supported by paragraph 24 of the Guide to the 1986 Order which states explicitly that it is not necessary to wait until the patient has actually injured himself before admitting him to hospital.

[41] The decision to detain for treatment was made on the basis of a report by Dr Finnerty. As indicated at paragraph 22 above he made an affidavit in which he detailed his past engagement with the appellant since August 2005. He stated that at the time of making the decision on 22 May 2014 he had almost daily contact with the appellant on the wards where he had the opportunity to monitor his presentation. He stated at paragraph 8 of his affidavit that the information setting out the clinical presentation of the appellant could not be disentangled from the risks about which he was concerned. He considered that the appellant at that time was in an acutely psychotic and paranoid delusional state and that his presenting behaviour, based on previous knowledge, gave rise to a real risk of physical harm.

[42] He considered that his staring behaviours and verbally hostile and abusive presentations had in the past been a clear indicator of a deepening state of psychosis and paranoia that had progressed relatively shortly thereafter to physical outbursts. He noted previous incidents of violence in September 2013 and that those were also associated with paranoid delusional beliefs.

[43] The affidavit made it clear, therefore, that the basis for this decision was that increased psychosis in the past had led to violent outbursts and the presentation of the appellant at the time of examination indicated the development of a similar condition. We agree with the learned trial judge, however, that there is no mention of violent outbursts in either the clinical description or the evidence for the risk. During the Tribunal hearing on 4 March 2014 the Trust relied on the evidence of violent behaviour referred to in the affidavit of Dr Finnerty. The conclusion of the Tribunal was that there had been no violence towards others since then and the Tribunal took into account the fact that there had been intervening periods when the appellant had been more acutely unwell than he was then. The Tribunal also noted that there was no evidence of incidents of violence when he had consumed alcohol and misused drugs on a previous occasion.

[44] Particularly in light of that previous history, if it was contended that the risks of violence associated with his increased psychosis justified his detention, it was in our view necessary that this should have been spelt out, albeit in a summary manner, on the prescribed form. It was submitted that the assertion that he required a further period of inpatient treatment could properly be associated with the earlier mentioned increased psychosis so as to explain why no other method of dealing

with the patient was available. We consider that there is merit in that submission but it does not, of course, deal with the absence of any reference to violence.

Conclusion

[45] For the reasons given we dismiss the appeal and cross appeal.