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Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Between:

BIJAN SHAYEGH

Plaintiff / Appellant;

-and-

SOUTH EASTERN HEALTH AND SOCIAL SERVICES BOARD TRUST

-and-

NORTHERN HEALTH AND SOCIAL SERVICES TRUST

Defendants / Respondents.

Before: Higgins LJ, Girvan LJ and Treacy J

HIGGINS LJ

[1] This is an appeal from the decision of Coghlin J whereby he dismissed the appellant's claim for damages for negligence and false imprisonment arising from his detention under the Mental Health (Northern Ireland) Order 1986 (the Order) between 5 November 1998 and 2 December 1998, a period of 26 days. The substance of the appellant's claim was that he was wrongfully detained under the Order. The respondents claimed that the formal detention of the appellant under the Order was justified in the circumstances. The appellant represented himself both in the court below and in this court. The respondents were represented by Mr Stitt QC and Mr M Lavery.

[2] The appellant married in 1985. From time to time the relationship between himself and his wife was turbulent. His wife gave evidence of being subjected to violence, usually occurring when he was under stress. She

recognised that he suffered mental health problems. He denied or minimised the violence. She alleged a serious assault in 1989 with lesser incidents during successive years. He became suspicious that she was having an affair and intercepted her telephone calls and emails and later consulted a solicitor about divorce proceedings.

[3] In September 1998 Mrs Shayegh alleged that a row took place in which she was pulled around the house by the hair. She called the police but on their arrival she did not make a formal complaint. On 1 October 1998 Mrs Shayegh consulted her GP, Dr Stelfox, alleging that the appellant had hit her head against a wall during a row about the appellant consulting a solicitor alleging evidence of her having an affair. Dr Stelfox found on examination that her neck and shoulder movements were stiff and sore and that her left ear was a bit swollen. She was of the opinion that these findings were consistent with her allegations. Dr Stelfox referred the appellant (and his wife) to the community mental health team of the first named respondent.

[4] The appellant and his wife were registered as patients of the Health Centre in which Dr Stelfox practised. Another doctor in the practice is Dr Armstrong who normally attended to the plaintiff. He is married to Dr Stelfox.

[5] The referrals by Dr Stelfox were received by Bridget McDonald, a social worker in the community mental health team who arranged a domiciliary visit for 20 October 1998, when she was accompanied by Mr Gilmore a community psychiatric nurse. Following this visit the social worker discussed the situation with Dr Stelfox and suggested a mental health assessment of the appellant. The appellant and his wife agreed to this and Dr Stelfox referred him to a Dr Harbinson, consultant psychiatrist, at Newtownards Hospital on 21 October 1998. Dr Stelfox provided the psychiatrist with a history of alleged violence to his wife over a period of time, morbid jealousy, fixed delusions, a belief that he could control the weather and his suspicions of his wife having an affair. In his judgment the learned trial judge recorded that the appellant -

> "has long been concerned with the development of some rather unconventional beliefs and theories. These include "Blue Science" which involves the proposition that there is a very complex but rational relationship between environmental and social issues. The plaintiff believes that a proper understanding and development of Blue Science would be a sophisticated means of remedying climate change or at least minimising its impact and he considers that the weather, including sunshine, rain, temperature and wind, may be influenced by the power of prayer. He has offered his services to a number of national and international agencies including Anglican,

> Wessex and Thames Water, Singapore High Commission and the Executive Office of the Presidents Council on Environmental Quality in Washington."

[6] On 26 October Bridget McDonald took a detailed history from the plaintiff's wife, which in evidence she acknowledged was an accurate reflection of the recent history of their relationship. This was summarised by the learned trial judge in the following terms –

> "First referral of a 40-41 year old Iranian man with a long history of fixed delusional ideas and a morbid jealously re his wife Heather. Due to the history of domestic violence which has increased over the past few months Mrs Shayegh is considering a separation. However there are difficulties regarding the custody of the children. Bijan has stated that he will not leave his sons. Police have been called to an incident in September 1998. The history has been largely concealed in the family. Mrs Shayegh denies any violence towards the children and is concerned re their emotional well being. I have spoken to the health visitor re his family. I feel Mr Shayegh requires a formal mental health state assessment at outpatients."

[7] Being aware that Dr Harbinson had raised the possibility of formal detention of the appellant Dr Armstrong visited the appellant at his home on 3 November 1998. Dr Armstrong considered the appellant's mental state was quite disturbed and that there was a potential risk to the safety of the appellant's wife. He suggested that the appellant might require hospital treatment for mental illness. The appellant was quite "taken aback" by that suggestion. However Dr Armstrong persuaded the appellant to attend a mental health assessment on a voluntary basis. Dr Armstrong's note of this visit recorded that the appellant appeared to have delusional ideas but was willing to co-operate in a voluntary admission to hospital. However at that time Dr Armstrong did not consider that he presented a risk to himself or others and did not authorise formal admission, though in his evidence he stated that there did appear to be a "potential risk" to the appellant's wife.

[8] Dr Harbinson, the Consultant Psychiatrist, who was aware of the history as recorded by Bridget McDonald, saw the plaintiff on 3 November 1998. She noted that the plaintiff attended with a briefcase full of documentation and a tape recording of a telephone call made by his wife. On examination of his mental state Dr Harbinson noted that the plaintiff was agitated with pressure of speech, that he demonstrated grandiose and persecutory delusions, that he

was pathologically jealous of his wife and that he felt that violence to her was justified under the circumstances. Dr Harbinson set out her findings in a letter to Dr Stelfox dated 4 November 1998. In the letter she advised Dr Stelfox that the plaintiff was mentally ill and posed a substantial risk of serious physical harm to his wife and she felt that he ought to be detained under the Mental Health Order in a secure facility in Holywell Hospital.

[9] On 4 November 1998 the appellant was admitted to Newtownards Hospital for mental assessment. This was a voluntary admission following his indication to Dr Armstrong on 3 November 1998 that he would do so. His wife brought him to the hospital. His admission to the ward was documented by Dr Moynihan a Senior House Officer. He noted the admission as an emergency admission. According to the notes the appellant informed him that he was there to prove his sanity so his wife could not divorce him on the grounds of mental disorder. He believed his wife was having several affairs and that she wanted him out of the house so she could turn it into a brothel. He believed that he could control the weather and prevent natural disasters and that he was being persecuted by international conspiracies. He denied using violence towards his wife. Dr Moynihan recorded that the plan was to admit the appellant as a voluntary patient but "ward restricted". In other words if he attempted to leave the ward his General Practitioner and the Duty Doctor were to be contacted.

[10] Dr Armstrong visited the appellant in the ward on the evening of 4 November 1998. According to the appellant he informed him that the appellant had to attend a group meeting the next day, but that he believed he would be discharged.

[11] The appellant was assessed the following day, 5 November 1998, by a team which included Dr Harbinson, Dr Moynihan, Dr Hughes and Sister Best. They formed the impression that the appellant suffered from persistent delusional disorder without insight and that he was highly aroused during discussion with him. The team felt that the ward was unsuitable for him and that he should be discharged from it. The recommendation would be detention and placement in a secure facility. This was based on the high level of arousal, the delusions which he acted under and the fact that these could put nursing staff and other patients at risk. Dr Harbinson telephoned Dr Armstrong during the meeting and informed him of their concerns and that her opinion was that the appellant should be compulsorily detained. [From later records it would appear that Dr Armstrong did not share Dr Harbinson's opinion at that time.]

[12] Dr Armstrong attended the ward late in the afternoon of 5 November 1998 and completed Form 3 (a recommendation for admission for assessment) specified under the Mental Health (Northern Ireland) Order 1986. By completion of this Form Dr Armstrong confirmed his opinion that the appellant was suffering from mental disorder which warranted his detention in

hospital for assessment and that failure to detain him would create a substantial likelihood of serious physical harm to himself or other persons. In his judgment the learned trial judge stated –

> "In so doing Dr Armstrong confirmed that his opinion now was that the plaintiff was suffering from mental disorder which warranted his detention in a hospital for assessment and that failure to so detain him would create a substantial likelihood of serious physical harm to himself or other persons. That opinion was clearly based on Dr Harbinson's recommendation and referred to longstanding grandiose and persecutory delusions together with morbid jealously and violence to his wife. The evidence upon which he based this recommendation was that the plaintiff had been violent towards his wife in the past and that "the psychiatrist has great fears for his wife's safety". When he was asked in cross-examination about his alleged refusal to sign Form 3 on 4 November Dr Armstrong initially denied that he had done so but when his attention was drawn to the evidence of Dr Harbinson he then said "I wouldn't argue". When he was questioned by the plaintiff about the reference to the plaintiff being violent to his wife in the past Dr Armstrong said "I could not be 100% sure if you were not detained you would not be a risk to your wife."

[13] On the same afternoon Mr McIntosh, an approved social worker, read the nursing and medical notes and Ms McDonald's report and met with Dr Armstrong. He also interviewed the appellant. In addition he consulted the appellant's wife who agreed with his detention for assessment. He then completed Form 2 as the approved social worker. At 6pm Dr Moynihan conducted a medical examination after admission and completed Form 7. The appellant was then transported to Holywell Hospital where he was accepted as a patient under the care of the RMO Dr Lynch. The admission documentation was completed by an SHO, Dr Carter, who noted that the appellant was, in the words of the learned trial judge "willing to stay in hospital to see if there was anything wrong with him". The history of the appellant's admission thereafter was noted by the learned trial judge in these terms –

> "[12] ….. He was seen on 6 November by Dr Montgomery who recorded that the plaintiff did not believe that there was anything wrong with him mentally and was willing to co-operate fully with any assessment. Dr Montgomery noted that details were

required from third parties in relation to the allegations of violence together with evidence in support of any delusional or paranoid state. A subsequent entry in the notes for 6 November recorded the completion of Form 8 and a need for further information to be obtained from the plaintiff's wife, GP and, possibly, local police. A further interview took place on 9 November 1998 when it was noted that the plaintiff suspected that his wife might have involved other people including Dr Harbinson in her plan to separate with a quotation from the plaintiff who was recorded as saying:

> 'Maybe I'm only thinking these things but how would you feel if you thought you were going to see a marriage guidance counsellor and then ended up being told that you are a danger to your wife and children'.

[13] Contact was made with the plaintiff's wife who confirmed the episode of violence in October. The plaintiff was first seen by Dr Lynch at 10.30 am on 11 November and, as a result of this meeting Dr Lynch completed Form 9 extending the period of medical assessment for a further seven days. Dr Lynch felt that it was important to use the full period of assessment given the need to explore the possibility of obtaining evidence from difference sources. Further contact was made with the plaintiff's wife by telephone on 10 and 12 November during which she confirmed two episodes of violence and the plaintiff's pre-occupation with her alleged affairs. She indicated that she would not 'panic' if the plaintiff was allowed home but would not object to his detention being continued.

[14] On 13 November 1998 Dr McMahon obtained a fax from the RUC confirming that the police had attended at the plaintiff's home on 24 September 1998 when they were informed of a dispute between the plaintiff and his wife as to whether she and the plaintiff's younger son should leave the matrimonial home to go to her parents' house. It appears that the older son wished to stay with the plaintiff. The police recorded that a compromise was reached, there was

> no sign of any injuries and that neither party made any allegation of physical violence. Both Mr and Mrs Shayegh were noted to be frustrated by the situation. During the course of a further interview with Dr Lynch on 18 November 1998 the plaintiff said that he had only slapped his wife twice since 1989. He also confirmed that he had changed the weather in the USA through the power of prayer and that he had written to various government agencies in the USA and Europe. Dr Lynch formed the view that the plaintiff complied with the criteria warranting detention for treatment and completed Form 10 describing his mental condition as "paranoid and grandiose delusions and morbid jealously." He recorded that the plaintiff had committed acts of physical violence towards his wife, that he followed her and checked her whereabouts. He noted that the plaintiff did not appear to have any insight and expressed the view that his wife would be at risk if he were to leave hospital. In cross-examination Dr Lynch confirmed that his assessment of the risk of violence took into account the history that had been obtained from the plaintiff's wife, the police and his wife's GP."

[14] Dr Lynch arranged for the appellant to be examined by a consultant forensic psychiatrist, Dr F Browne. He examined the appellant on 16 November 1998. The learned trial judge referred to this examination in his judgment in these terms -

> "[15] In addition to his other enquiries Dr Lynch arranged for the plaintiff to be seen by an independent consultant forensic psychiatrist, Dr Fred Browne, who saw the plaintiff in Ward 12 on 16 November. Dr Browne noted that the plaintiff had become convinced that his wife had conducted a number of affairs and he was shown copies of e-mails some of which he accepted had a sexual content. Dr Browne did not think that the e-mails proved 'irrefutably' that such affairs had taken place and noted that the plaintiff's conviction therefore seemed to be an overreaction. He tried to rationalise the content of the plaintiff's letters to people such as President Clinton and Jacques Santerres but was still left with the opinion that the plaintiff had grandiose delusional ideas. Dr Brown formed the view that the

> appropriate working diagnosis was that of a paranoid psychosis and that the plaintiff's symptoms had become more manifest recently due to increasing pressure in his marriage. On balance, he considered that there was sufficient evidence of mental illness to satisfy that criterion under the Mental Health Order. With regard to the substantial likelihood of serious physical harm Dr Browne recommended that further contact should be made with the plaintiff's wife to elucidate not only the extent of the violence but also the degree of threat that she perceived. While he felt that there were probably sufficient grounds to further detain the plaintiff and commence treatment with anti-psychotic medication, he was not hopeful that such medication would make a big difference to the case or that the plaintiff would continue to take it once discharged from hospital. At some stage Dr Lynch appears to have prescribed Risperidone but the plaintiff adamantly refused to take any medication and Dr Lynch seems to have reversed this decision on 26 November 1998 after committing it to writing on the 25th."

[15] At a meeting on 26 November 1998 it was agreed that the appellant might be transferred back to the Newtownards Psychiatric Unit as there were no longer any grounds for requiring his confinement in Holywell. The RMO in Newtownards was Dr MacFarlane. Having spoken to Dr Lynch and interviewed the appellant he agreed that the appellant could avail of a week-end pass to return the following Monday and he was released at 7.30pm into the care of his wife. On Monday 30 November 1908 the appellant telephoned Holywell Hospital and informed staff that he was unwilling to return. He was informed of his detained status and agreed to return the following day, which he did. He was granted further release from the unit but reminded of his detained status. On 3 December 1998 the appellant's wife was interviewed by Dr Patton. She expressed no major concerns about the appellant remaining out of the unit, but preferred that he be under some form of monitoring. Arrangements were made for Dr McFarlane to see the appellant on 9 December 1998 but he failed to attend. Contact was made by telephone but he said he believed he did not have to return until 8 January. He failed to attend again on 10 December 1998. He was then considered to be absent without leave but it was decided not to involve the police at that time. On 16 December 1998 his status was changed from absent without leave to being on an 'extended pass'.

[16] On 7 January 1999 a Mental Health Review Tribunal considered the appellant's case. Dr McFarlane gave evidence. The appellant's wife did not attend. The Tribunal was informed that she was indifferent to the hearing and

that she had reported to a social worker that the appellant was less critical of her and that the situation had improved. The Tribunal directed that the appellant should be discharged and gave the following reasons -

> "The Tribunal had concerns about this matter even on the papers. Having heard the evidence it appears that there is a considerable amount of doubt over what the diagnosis is in this case. We were also concerned by the apparent patchy nature of his treatment. It appeared to the Tribunal that he probably has a low grade psychosis which has not prevented him carrying on with his life reasonably successfully to date. We elicited only one serious incident of violence directed against his wife. He appears to suffer from delusions, but we saw evidence that in relation to his wife there may be some rational basis for his feelings towards her. He has been at home for some four weeks to date and his RMO did not seek his return to hospital. Neither had his wife complained of his behaviour over this period, and he continues to reside at home. There does not appear to us that there is sufficient evidence that this man would create a substantial likelihood of serious physical harm to himself or anyone in the community."

[17] It was not disputed before the learned trial judge that the appellant was detained between the 5 and 27 November 1998. The respondents argued that the detention was justified and that the evidence of the medical witnesses called on their behalf established this to be so. The appellant argued that the evidence called failed to provide any lawful justification for his detention. At paragraph 21 the learned trial judge summarised the submissions made by the appellant.

> "[21] The plaintiff disputed that the evidence relied upon by the defendant provided any such lawful justification and, in particular, he argued that:
>
> (i) In the absence of any evidence of a risk of harm to himself, the defendants were required to produce evidence that he had behaved violently towards other persons or that he had so behaved himself that other persons had been placed in reasonable fear of serious physical harm to themselves in order to comply with Article 2(4) of the Order. In such

circumstances, the plaintiff argued that it was not sufficient to produce evidence of violence or a risk of violence to only one person, namely, in this case, his wife.

(ii) In the alternative, the plaintiff submitted that the only evidence of such violence or risk of violence was provided by his wife, was uncorroborated and should not be accepted since it was likely to have been motivated by a desire to protect her position in the matrimonial proceedings that he intended to initiate.

(iii) That no reliance should be placed upon the notes and records made by the various witnesses called on behalf of the defendants in the absence of objective tape recordings. He also argued that the professional witnesses called on behalf of the defendants were not scientifically or technically qualified to comment upon the plaintiff's beliefs and theories.

(iv) In reaching a diagnosis that the plaintiff suffered from delusions the professional witnesses called on behalf of the defendants had failed to understand the crucial distinction between the words "influence" and "control" in relation the plaintiff's belief that he could affect the weather and/or natural or social disasters through the power of prayer.

(v) In reaching a diagnosis of paranoia and morbid jealously the professional witnesses had failed to have any or adequate regard to the e-mails that the plaintiff had intercepted and the telephone conversation that he had recorded relating to his wife's communication with other men."

[18] The learned trial judge was satisfied that the appellant was detained initially for assessment under Article 2 of the Order and on and from 18 November for the purposes of treatment in accordance with Article 12. He summarised the evidence relating to mental disorder which justified the detention at paragraph 22 of his judgment.

"[22] In relation to the evidence relating to mental disorder of a nature or degree which warranted the plaintiff's detention in hospital for assessment or treatment I took into account the following:

(i) Dr Harbinson carried out a psychiatric examination of the plaintiff on 3 November 1998 and having done so, she concluded that he demonstrated grandiose and persecutory delusions. She also noted him to be pathologically jealous of his wife and feeling that his violence to her was justified under the circumstances. Dr Harbinson diagnosed delusional disorder.

(ii) On admission to Newtownards Mental Health Unit the plaintiff was examined by a junior doctor to whom he reported that his wife was having several affairs and wanted to turn his house into a brothel. The doctor's note also records a belief that the plaintiff could control the weather and prevent natural disasters and that because of these abilities he believed that he was being persecuted by 'international conspiracies'. The doctor recorded his impression as being that the plaintiff suffered from a delusional disorder with morbid jealously and that he had experienced a manic episode.

(iii) Dr Brown, consultant forensic psychiatrist, carried out an examination of the plaintiff on 16 November 1998 and, having done so, concluded that the most appropriate working diagnosis was paranoid psychosis. He felt that the plaintiff had a pre-disposition towards this condition and that the symptoms had become more manifest recently due to the increasing pressure in the marriage. He also considered that there was a possibility that the plaintiff suffered from a schizo-typal personality disorder. He felt, that on balance, there was sufficient evidence of mental illness to satisfy the criterion required by the Order.

(iv) After the conclusion of the independent inquiries including the report from Dr Brown, contact with the plaintiff's wife and with the police, Dr Lynch, the RMO at Holywell Hospital, concluded that the plaintiff was suffering from paranoid and grandiose delusions together with morbid jealously. Under cross-examination, Dr Lynch explained that he took into account a number of factors in reaching this diagnosis including the plaintiff's belief that he could influence the weather by the power of prayer, his belief that the special new style of letter that he had written to President Clinton had attracted the attention of the world community to Northern Ireland, the belief that he was an expert in the pioneer science of environmental and social issues and his paranoid delusion that his wife's parents and Dr Harbinson had conspired to have him admitted to hospital in order to prevent him from winning a divorce case.

In the circumstances, taking into account all of the evidence, I was satisfied on the balance of probabilities that the defendants had established a qualifying mental disorder warranting compulsory detention for assessment and treatment as required by the provisions of the order."

[19] At paragraph 23 he set out his findings in relation to the question whether failure to detain the appellant would create a substantial likelihood of serious physical harm to himself or other persons.

"[23] In relation to the need to establish that a failure to detain the plaintiff would create a substantial likelihood of serious physical harm to himself or other persons I took into account the following:

(i) In practical terms, the evidence relating to this factor was limited to the plaintiff's wife. I reject the plaintiff's submission that it was necessary for the defendants to establish a risk of serious physical harm to more than one person in order to comply with the requirements of the Order.

(ii) The plaintiff's wife give evidence and I considered her to be an impressive witness who gave her evidence in a fair and balanced fashion. She made it clear that she continues to have affectionate feelings for the plaintiff whom she described as a very kind generous person who is only violent when he was under stress. She recognises that the plaintiff does have mental health problems and I accept that she sought help primarily for the plaintiff and in an effort to "keep things together for my children". In fact, as she conceded herself in cross-examination, it appears to have made things worse. She was hoping for some form of therapy and expressed herself as "shocked" by the plaintiff's detention. I accepted Mrs Shayegh's account of the incidents of violence during the marriage. She said that, after the serious incident at Christmas 1989, there were other "minor problems" every two or three years and she denied that she had told Mrs McDonald that from December 1997 incidents of domestic violence had been a weekly occurrence. That inaccuracy in Bridget McDonald's report was of some significance since it appears to have been the basis for Dr Moynihan's reference to violence becoming "more consistent and escalating since 1997" which was considered to be important by Dr Scott as showing an increase in risk.

(iii) During the course of her physical examination of Mrs Shayegh on 30 September 1998 Dr Stelfox found objective physical evidence that she considered to be entirely consistent with the allegations of violence that she had made.

(iv) When Dr Harbinson carried out her examination of the plaintiff on 3 November 1998 she recorded in her letter to Dr Stelfox that his attitude had been that his violence to his wife was justified under the circumstances.

(v) Mrs Shayegh also appears to have been fairly consistent about her complaints during the telephone conversation with Dr McMahon on

10 November 1998 and her face to face interview with Dr Lynch on 18 November 1998. During the course of the latter she referred to the plaintiff's possessiveness and accusations as well as physical abuse and "rages" that occurred out of the blue with a definite deterioration taking place in the previous six months. She explained how the plaintiff became extremely angry if he thought the proposed matrimonial proceedings would not proceed in accordance with his wishes and that she was frightened of him when angry. She said that he considered hitting her as a "short sharp shock" which was a better way of teaching her a lesson than putting her and the family through a divorce.

In the circumstances, after careful consideration of the relevant evidence, I am also persuaded, again on the balance of probabilities, that the defendants have established the necessary substantial risk of serious physical harm to another person namely, in this case, his wife.

[24] The defendants also relied upon the independent evidence of Dr Scott, consultant psychiatrist at Belfast City Hospital, who has served as a medical member of the Mental Health Review Tribunal since January 2002. Dr Scott gave careful consideration to the various bundles of medical notes and records and, having done so, concluded that they confirmed the plaintiff to be suffering from a persistent delusional disorder in accordance with the ICD 10 1992 classification. He felt that the original diagnosis by Dr Harbinson was entirely reasonable as was her decision that the plaintiff should be formally admitted for assessment. In support of his conclusions he also referred to the social history obtained from Mrs Shayegh by Bridget McDonald, the assessment of the plaintiff's thought content carried out by Dr Moynihan after his interview with the plaintiff on 4 November 1998 and the record made by Dr McMahon on examination of the plaintiff at Holywell Hospital on 9 November 1998 with particular regard to the paranoid ideation expressed by the plaintiff in relation to the possibility that his

wife had involved other people, including Dr Harbinson, in her plan to achieve a marital separation.

[20] The grounds of appeal may be summarised as follows –

1. That the appellant's detention was a violation of Article 6 of the Order as the respondent's accepted a referral by a General Practitioner who did not know the appellant, had never spoken to him and had never examined him (the appellant believed this referral was by Dr Stelfox) ;
2. In detaining the appellant under the Order the respondents disregarded Article 2(4)(b) of the Order;
3. That the respondents disregarded Article 32(4)(b) of the Order in identifying his "separated wife" as the appellant's nearest relative;
4. That the detention forms were filled in incorrectly or maliciously where they alleged a substantial likelihood of the appellant being a risk of serious physical harm to himself or other persons;
5. The concerns expressed by the learned trial judge (and the Tribunal) at some of the actions of the respondent.
6. The denials of the medical witnesses that they had seen evidence concerning the unreasonable behaviour of the appellant's "former wife". This ground contained various references to a number of different matters including his "wife's affairs", the knowledge of the witnesses about science, the appellant's beliefs and theories, allegations that Dr Scott was biased towards the respondents and allegations about the membership of the Mental Health Review Tribunal and the existence of a professional crime ring under "the camouflage of the Mental Health Order".

These grounds of appeal were expanded upon in the appellant's skeleton argument which ranged over many different matters and much of the transcript. Ultimately they condensed into a single challenge to the findings of the learned trial judge that the respondents had satisfied him that his detention was justified under the Order.

[21] The procedure for admission to hospital for assessment is governed by Articles 4,5 and 6 of the Order. An application for assessment may be made by either the nearest relative of the patient (Article 5(1)(a)) or an approved social worker (Article 5(1)(b)) and is made in Form 2. In this instance the application was made by an Approved Social Worker employed by the first respondent. Article 4 provides for admission to hospital for assessment and detention in hospital for the period permitted by Article 9. Article 4 provides –

> "Admission to hospital for assessment
> Admission for assessment

4.-(1) A patient may be admitted to a hospital for assessment and there detained for the period allowed by Article 9, in pursuance of an application for admission for assessment (in this Order referred to as 'an application for assessment") made in accordance with this Article.

(2) An application for assessment may be made in respect of a patient on the grounds that-

(a) he is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment); and

(b) failure to so detain him would create a substantial likelihood of serious physical harm to himself or to other persons.

(3) An application for assessment shall be founded on and accompanied by a medical recommendation given in accordance with Article 6 by a medical practitioner which shall include-

(a) a statement that, in the opinion of the practitioner, the grounds set out in paragraph (2) (a) and (b) apply to the patient;

(b) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the ground set out in paragraph (2) (a);

(c) a statement of the evidence for that opinion so far as it relates to the ground set out in paragraph (2)(b).

(4) An application for assessment shall-

(a) be made in the prescribed form; and

(b) be addressed to the responsible authority."

Article 4(3) provides that the application for assessment in hospital shall be founded on and accompanied by a medical recommendation by a medical practitioner given in accordance with Article 6 which provides –

"6. The medical recommendation required for the purposes of an application for assessment shall be in

the prescribed form and shall satisfy the following requirements, namely;-

(a) the recommendation shall be given and signed by a medical practitioner who has personally examined the patient not more than two days before the date on which he signs the recommendation;

(b) the recommendation shall, if practicable, be given by the patient's medical practitioner or by a medical practitioner who has previous acquaintance with the patient;

(c) the recommendation shall not, except in a case of urgent necessity, be given by a medical practitioner on the staff of the hospital to which admission is sought;

(d) the recommendation shall not be given by any of the persons described in Schedule 1."

[22] The medical recommendation, which is distinct from the application for assessment, is completed using Form 3. By virtue of Article 2 (3) it shall include 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 a hospital for assessment and that failure to detain him would create substantial likelihood of serious physical harm to himself or to other persons as well as such particulars of the grounds for that opinion. In accordance with Article 6 the medical recommendation was completed by Dr Armstrong, the appellant's General Practitioner, and not by Dr Stelfox as alleged by the appellant. This is sufficient to dispose of Ground 1 of the Grounds of Appeal insofar as it relates to the alleged breach of Article 6.

[23] Dr Armstrong had visited the appellant at his home on 3 November 1998. The appellant disputed that any such visitation occurred. Dr Armstrong noted that the appellant appeared to have delusional ideas but agreed to co-operate in a voluntary admission to hospital. Dr Armstrong concluded that the appellant did not present a risk to himself or others and accordingly did not authorise a formal admission to hospital. Dr Harbinson, the consultant psychiatrist, spoke to Dr Armstrong on 5 November 1998 and expressed her concerns and underlined her opinion that the appellant should be the subject of compulsory detention for assessment. Late in the afternoon of 5 November 1998 Dr Armstrong visited the appellant in the ward. There he completed the medical assessment for admission for assessment in accordance with Form 3. At paragraph 11 of his judgment the learned trial judge stated -

> "In so doing Dr Armstrong confirmed that his opinion now was that the plaintiff was suffering from mental disorder which warranted his detention in a hospital for assessment and that failure to so detain him would create a substantial likelihood of serious physical harm to himself or other persons. That opinion was clearly based on Dr Harbinson's recommendation and referred to longstanding grandiose and persecutory delusions together with morbid jealously and violence to his wife. The evidence upon which he based this recommendation was that the plaintiff had been violent towards his wife in the past and that "the psychiatrist has great fears for his wife's safety."

[24] It is clear that Dr Armstrong changed his view and at the time he completed Form 3 was of the opinion declared therein. Selective passages of the transcript of Dr Armstrong's cross-examination have been made available. It appears from the transcript that the appellant was putting to Dr Armstrong that he personally had not witnessed any violence exhibited by the appellant, which Dr Armstrong agreed. The following exchange took place –

> "Q. So is it fair to say at that very day when you signed that the only concerns that you had was the allegations, unproven allegation of history of violence and the second concern that you had was the psychiatrist beliefs, is that correct?
>
> A. Really, the way I assess it was that I felt at that stage I got little insight into your conditions, you were mentally ill, that was my first part, and the second part was concern that I could not be one hundred percent sure that if you were not detained you would not be a risk to your wife.
>
> Q. Would you agree none of those …
>
> MR JUSTICE COGHLIN: Give me a moment, 'I could not be one hundred percent sure if you were not detained you would not be risk to your wife'. That is your basis 'I would not be one hundred percent sure if you were not detained you would not be a risk to your wife.'

A. Well there was evidence really in the previous notes that there was, it had been recorded that she had or that he had been violent towards his wife in the past.

MR JUSTICE COGHLIN: You saw that in the records?

A. Yes, I knew that was the case.

MR JUSTICE COGHLIN: Having seen it in the records, you hadn't spoken to the wife at this stage, had you?

A. No, I don't think I ever spoke to the wife.

[25] It is equally clear from his interventions that the learned trial judge was alive to the issues raised at that time and the context in which the answers were given. The cross-examination continued and the following questions and answers were recorded.

Q. No, I am asking you that according to this it was not your personal observations it was the unproven allegations of history of violence and the fear that the psychiatrist had expressed. You personally did not observe anything because there is nothing in your Form 3 to say as such and it also coincide with the statements that has made Doctor Harbinson, statement has made by Chief Executive?

A. Obviously Doctor Harbinson had brave concerns about the risk.

Q. Yes, I understand that.

A. My wife, Doctor Stelfox felt there was a risk as well.

Q. Yes, I am asking about your view?

A. What my view was?

Q. Yes, your view that you personally felt that when you came to my house you interviewed

me after so many years, that your view, feeling, that I was a risk, any evidence of such is not recorded in your Form 3 and it also coincides with the other statements that you did not believe personal, you personally did not believe that fact?

A. Whenever I saw you in your house, I knew at that stage that your wife was not going to be in contact with you, so because of that …

Q. I know, I know.

A. Because of that, I felt, and also I have to say because you agreed, quite reasonably in my opinion, you agreed to go into hospital for an assessment despite the fact you didn't actually feel there was anything wrong with you, you actually agreed to go in which enabled me, I felt, to take probably the unusual step of not going ahead for a formal admission at that stage.

Q. Obviously you were my GP and you had pledged it to be considering my interest and you advised me to voluntary go and I believed that I was healthy and they would treat me fairly and they would discover, so there is no point, I meant there is no trouble for me to be one day in the hospital, that is my belief and that was …

A. The other thing is you did actually comply, you did as you said you would, turn up. I mean if you hadn't turned up and something had happened to your wife as a result of it, I mean that would have probably been the end of my medical career Mr Shayegh.

Q. So what I am here, thank you for confirming that, it was the fear that they had put to you, you personally had not observed that. You personally viewed that I took you advice reasonably and I did present any violent behaviour, I did not threat my wife or she is responsible for doing this …

A. At that stage that was absolutely right, yes, that is why I felt it was a reasonable course of action to arrange your admission on any informal basis, against probably the advice of nearly everybody else who has been involved in the case.

…….

Q. Only case, so obviously I believe it is reasonable that you have some recollection of these events taking place, it would be reasonable you remember some part of it?

A. I remember going to your house and I remember you being shocked.

MR JUSTICE COGHLIN: This is on the 3rd I take it.

A. Yes this is when I visited him. And your shock is entirely reasonable, and beyond that really very little recollection, I remember discussing with you that I think, I possibly gave you the options that it was go in as a voluntary patient or go in as a formally detained patient.

MR SHAYEGH: Yes, you mentioned you went in voluntary otherwise Harbinson wants to send ambulance and to take you I remember that very well and …

MR JUSTICE COGHLIN: You say he said that to you on the 3rd when he came to see you?

MR SHAYEGH: Yes exactly Doctor Armstrong remembers that?

MR JUSTICE COGHLIN: You can go in voluntarily or Harbinson will send an ambulance, is that something you could have said?

A. It is possible but I would have more accurately said that I would be obliged to, I would be obliged to organise a formal detention rather than Doctor Harbinson.

[26] The appellant questioned the justification for his detention for assessment. Dr Armstrong provided the answer to that by his completion of Form 3. In doing so he was entitled to rely on the opinion of the Consultant Psychiatrist, his knowledge of the appellant and the other written material available about the violence displayed by the appellant towards his wife. It was not suggested that Dr Armstrong was acting in bad faith; rather that he or he personally did not have the information on which to base his opinion. That opinion expressed on 5 November 1998 in Form 3 was to the effect that the appellant was suffering from mental disorder of a nature or degree which warranted his detention in hospital for assessment and that failure to detain him would create a substantial likelihood of serious physical harm to his wife. In the cross-examination some ten years later Dr Armstrong stated that the "second part was concern that I could not be one hundred per cent sure that if you were not detained you would not be a risk to your wife". The learned trial judge immediately repeated this and asked if that was his basis (for his opinion). Dr Armstrong answered "Well there was evidence really in the previous notes that there was, it had been recorded that she had or that he had been violent towards his wife in the past." Later Dr Armstrong said "Obviously Dr Harbinson had brave concerns about the risk" and that Dr Stelfox felt there was a risk as well. Later the appellant asked him about his own view. In answer to that Dr Armstrong said, and I paraphrase, that his agreement to be admitted voluntarily enabled him to take the unusual step (on 3 November) not to proceed to a formal admission at that stage, which he said was against the advice of nearly everyone else. Later he was asked if he had said to the appellant on 3 November that he could go to hospital voluntarily or "Harbinson will send an ambulance". Dr Armstrong replied "It is possible but I would have more accurately said that I would be obliged to, I would be obliged to organise a formal detention rather than Dr Harbinson". The following exchange took place –

> "Mr Shayegh: Why did you feel obliged if you personally did not observed (sic) anything and there was no proven history of violence, why did you feel obliged to do so?
>
> A. Because, well to me as a general practitioner clearly I felt you were disturbed at that time. That I felt by talking to you that you were disturbed mentally at that time. So that was the first thing. The second thing was because I knew, when I say I knew, it had been told to me and I had read in the notes and I discussed with Doctor Stelfox that the had been some marital violence issues of some degree in the past.

> Q. The issues that you mentioned about the disturbed, I was disturbed, yes of course I was maybe annoyed, maybe, but my disturbance in anyway, would you agree my disturbance in anyway was in a violent form otherwise it would have been in your Form 3, should have been?
> A. My overall concern was that you were mentally ill and unstable at that time and if you were to a voluntary patient and not have accepted treatment then there was a potential risk to you wife, to absolutely nobody else.
>
> Q. So your concern was only my wife's safety?
>
> A. That is when I signed the Form 3.
> …………..
> Q. …. so did it occur to you this is a matter in relation to mental health, not to be used as an instrument for marital ….
>
> A. Regrettably very regrettably I felt that I had to take the decision that I felt you could not be released before you had a formal assessment and a decision made as to whether or not you posed a risk to your wife."

[27] In Form 3 Dr Armstrong has declared his opinion that the appellant was suffering from mental disorder of a nature or degree which warrants his detention in hospital for assessment and that failure to detain would create a substantial likelihood of serious physical harm to himself or other persons. He then wrote the grounds upon which his opinion was based. This states –

> "Seen by Dr Helen Harbinson Consultant Psychiatrist Ards Hospital this morning who has recommended formal admission. Long standing grandiose and persecutory delusions. Morbidly jealous of his wife. Violent to his wife.
>
> He has been violent to his wife in the past. The psychiatrist has great fears for his wife's safety."

[28] It was not suggested that Dr Armstrong acted in bad faith nor was it suggested that he did not understand what was required before completion of Form 3. He did complete the form albeit relying, in part, as he was entitled to do, on the opinion of a consultant. That constituted the necessary recommendation for the approved social worker. It is clear from a fair reading

of all the portions of the transcript which have been set out that Dr Armstrong believed the conditions necessary for detention were present. Indeed if it had not been for the appellant's agreement to attend Newtownards Hospital voluntarily he would have been so satisfied at that time. As he expressed it he would have been obliged to organise a formal detention. The learned trial judge was satisfied on all the evidence that the respondents had established, on the balance of probabilities and at the time of admission, the qualifying mental disorder warranting detention and the necessary substantial risk of serious physical harm to the appellant's wife. The appellant submits that this was a finding the learned trial was not entitled to reach on the evidence. The learned trial judge had the undeniable advantage of seeing and hearing the witnesses. This trial was an emotive experience for the appellant and this is apparent from the cold print of the transcript. The short extracts from the cross-examination of Dr Armstrong bear this out. The issue appears to be whether the expression " I could not be one hundred per cent sure that if you were not detained you would not be a risk to your wife" uttered by Dr Armstrong during cross-examination undermines the clear expression of his opinion as set out in Form 3 and elsewhere in is cross-examination. Crucially the learned trial judge found Dr Armstrong to be an honest and conscientious witness and it follows from that finding that he was satisfied that he had given an honest opinion when he completed Form 3.

[29] The approach to be taken on an appeal from a decision on the facts by a judge sitting alone was considered recently in Murray v Royal County Down Golf Club 2005 NICA 52 where Kerr LCJ reviewed the authorities.

> "[11] On an appeal in an action tried by a judge sitting alone the burden of showing that the judge was wrong in his decision as to the facts lies on the appellant and if the Court of Appeal is not satisfied that he was wrong the appeal will be dismissed – Savage v Adam [1895] W. N. (95) 109 (11). But the court's duty is to rehear the case and in order to do so properly it must consider the material that was before the trial judge and not shrink from overruling the judge's findings where it concludes that he was wrong – Coghlan v Cumberland [1898] 1 Ch 704.
>
> [12] In Lofthouse v Leicester Corporation (1948) 64 T.L.R. 604 Goddard LCJ described the approach that an appellate court should take thus: -
>
> > 'Although I do not intend to lay down anything which is necessarily exhaustive, I would say that the Court ought not to interfere where the

> question is a pure question of fact, and where the only matter for decision is whether the Judge has come to a right conclusion on the facts, unless it can be shown clearly that he did not take all the circumstances and evidence into account, or that he has misapprehended certain of the evidence, or that he has drawn an inference which there is no evidence to support.'

> [13] And in this jurisdiction Lord Lowry CJ outlined a similar approach in Northern Ireland Railways v Tweed [1982] NIJB where he said: -

> '… while the jurisdiction of the Court of Appeal is unrestricted when hearing appeals from the decision of a judge sitting without a jury, the trial judge was in a better position to assess the credibility of the witnesses and his decision should not be disturbed if there was evidence to support it'."

[30] In Biogen v Medeva Plc [1996] 38 BMLR 149, Lord Hoffman at page 165 provided further guidance on the approach of appellate courts to findings by trial judges.

> "The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, la vérité est dans une nuance), of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation. It would in my view be wrong to treat Benmax [Benmax v. Austin Motor Co. Ltd. [1955] A.C. 370] as authorising or requiring an appellate court to undertake a de novo evaluation of the facts in all cases in which no question of the credibility of witnesses is involved."

In Smith New Court Securities Ltd v Citibank N.A. 1997 AC 254 at 274H Lord Steyn offered the following view -

> "The principle is well settled that where there has been no misdirection on an issue of fact by the trial judge the presumption is that his conclusion on issues of fact is correct. The Court of Appeal will only reverse the trial judge on an issue of fact when it is convinced that his view is wrong. In such a case, if the Court of Appeal is left in doubt as to the correctness of the conclusion, it will not disturb it."

[31] Applying these principles to the instant appeal I do not consider that the appellant has demonstrated that the learned trial judge was wrong to conclude that the conditions required by Article 2(4) of the Order were satisfied. The learned trial judge was satisfied that he was an honest witness who had applied his mind to the completion of Form 3. The grounds upon which he relied in completing Form 3 (set out at paragraph 27 above) and the last answer set out at paragraph 26 above demonstrate that Dr Armstrong was aware of what was required for formal detention and that he had not reached that decision lightly. In my view the comment made in cross-examination does not undermine that decision. Reading all the transcript which has been put before this court the judge was entitled to reach the finding which he made. That is sufficient to dispose of the grounds of appeal and I would dismiss the appeal.

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Delivered:	**18/03/10**

Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURTS OF JUSTICE
IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

BIJAN SHAYEGH

Plaintiff/Appellant;

AND

1. **SOUTH EASTERN HEALTH AND SOCIAL SERVICES BOARD TRUST (Formerly known as Ulster Community and Hospitals Trust)**

AND

2. **NORTHERN HEALTH AND SOCIAL SEVICES TRUST (Formerly known as Home First Community Trust)**

Defendants/Respondents.

Before: Higgins LJ, Girvan LJ and Treacy J

GIRVAN LJ

[1] The appellant who appeared in person both before the learned trial judge, Coghlin J and this court claims damages for negligence and false imprisonment in relation to his detention at Newtownards and Holywell hospitals for a period of 26 days commencing on 5 November 1998. Although his claim is pleaded in negligence as well as false imprisonment the substance

of his case is that his detention throughout the relevant period was not justified under the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order"). If he is correct in that argument his detention was unlawful and he is entitled to damages. The alleged negligence, if any, did not raise issues independent of the question of the lawfulness of his detention.

[2] Since it was not in dispute that he was detained the onus of proof on a balance of probabilities lies upon the respondents who detained him to prove lawful justification for the detention. The defence as delivered by the respondents failed to properly plead the legal basis upon which the legality of the detention was asserted. However, no pleading point was taken on that point by the appellant though had he been legally represented at the trial there may have been a better focus on that issue. In the trial and before this court the respondents made the case that all proper steps had been taken to compulsorily detain the appellant under Part II of the 1986 Order.

[3] The 1986 Order specifies procedural safeguards which must be fulfilled if an individual may lawfully be deprived of his liberty by detention in hospital. As Article 4(2)(a) makes clear, an application to compulsorily admit a person appearing to suffer from mental disorder may be made only on the grounds, firstly, that he is suffering from mental disorder of a nature and degree which warrants his detention in a hospital for assessment or for assessment followed by medical treatment and, secondly, that failure to detain him "would create a substantial likelihood of serious physical harm to himself or to other persons." Article 4(3) and (4) provide:

> "(3) An application for assessment shall be founded on and accompanied by a medical recommendation given in accordance with Article 6 by a medical practitioner which shall include –
>
> (a) a statement that, in the opinion of the practitioner, the grounds set out in (2)(a) and (b) apply to the patient;
>
> (b) such particulars as may be prescribed or the grounds for that opinion so far as it relates to the grounds set out in paragraph (2)(a);
>
> (c) a statement of the evidence for that opinion so far as it relates to the ground set out in paragraph (2)(b).
>
> (4) An application for assessment shall
>
> (a) be made in the prescribed form; and

(b) be addressed to the responsible Board.

The application for assessment must be made either by the person's nearest relative or an approved social worker, that is a Board officer appointed to act as an approved social worker for the purposes of the Order.

[4] Article 6 provides:

> "The medical recommendation required for the purposes of an application for assessment shall be in the prescribed form and shall satisfy the following requirements, namely –
>
> (a) the recommendation shall be given and signed by a medical practitioner who has personally examined the patient not more than two days before the date on which he signs the recommendation;
>
> (b) the recommendation shall, if practicable, be given by the patient's medical practitioner or by a medical practitioner who has previous acquaintance with the patient;
>
> (c) the recommendation shall not, except in the case of urgent necessity, be given by a medical practitioner on the staff of the hospital to which admission is sought;
>
> (d) the recommendation shall not be given by any of the persons described in schedule 1."

[5] Article 9 makes provision for what is to happen during the assessment period. The patient must be examined by the responsible medical officer ("the RMO") or a medical practitioner appointed for the purposes of Part II of the Order by the Commission or by any other medical practitioner on the staff of the hospital. Time limits are specified for the carrying out of the assessment subject to extension of the assessment, the extension again being set about with statutory safeguards. Following assessment and dependent on the conditions in Article 12(1)(a) to (d) being satisfied the patient may be detained for treatment. The patient has the right under Article 71 of the Order to apply to the Tribunal which must order his release unless it is satisfied that the conditions for detention are not satisfied.

[6] Thus, the first necessary step in the compulsory detention process is the provision by a medical practitioner of a statement that the conditions set out in Article 4(2)(a) and (b) are satisfied and the statement of the evidence for such opinions. If practicable the recommendation should be given by the patient's medical practitioner. In this instance that statement was provided by Dr Armstrong who was the appellant's general practitioner.

[7] Dr Armstrong signed a form in which he expressed himself satisfied as to the fulfilment of the two pre-conditions to compulsory detention for assessment. Applying the presumption *omnia praesumuntur rite esse acta* the statement as signed by Dr Armstrong is prima facie evidence that this expression of opinion correctly stated Dr Armstrong's view and that Dr Armstrong correctly understood the meaning of Article 4(2)(a) and (b). However, that cannot be the end of the inquiry. If a question arises as to whether Dr Armstrong did genuinely hold that opinion or if he properly understood the test to be applied in deciding whether the patient fell within Article 4(2)(a) or (b) it is for the respondents to prove both those matters. If a medical practitioner, albeit in good faith, signs an Article 6 form mistakenly believing that a mere possibility of physical harm to others would satisfy the requirements of Article 4(2)(b) his opinion would be based on an erroneous understanding of the law and the detention would have been obtained on an incorrect legal premise. Such a detention would thus be unlawful.

[8] Before turning to consider Dr Armstrong's evidence one may note the trial judge's serious concerns about the way in which the detention of the appellant was effected. To those concerns one must add the concerns expressed by the Tribunal in its short but trenchant decision:

> "The Tribunal had concerns about this matter even on the papers. Having heard the evidence it appears that there is a considerable amount of doubt over what the diagnosis is in this case. We were also concerned by the apparent patchy nature of his treatment. It appeared to the Tribunal that he probably has a low grade psychosis which has not prevented him carrying on his life reasonably successfully to date. We elicited only one serious incident of violence directed against his wife.
>
> He appears to suffer from delusions, but we saw evidence that in relation to his wife there may be some rational basis for his feelings towards her.
>
> He has been at home for some four weeks to date and his RMO did not seek his return to hospital. Neither

> had his wife complained of his behaviour over this period and he continues to reside at home.
>
> It does not appear to us that there is sufficient evidence that this man would create a substantial likelihood of serious physical harm to himself or anyone in the community. We direct that Mr Shayegh be discharged."

It must be a matter of concern that the appellant was detained compulsorily and was thereafter compulsorily transferred to Holywell Hospital for the best part of four weeks; provided with what the Tribunal considered to be apparently patchy treatment; sent home apparently without concern on the part of the authorities and then discharged by the Tribunal without any opposition from the RMO on the basis that there was no real evidence that he would create a substantial likelihood of serious physical harm to himself or anyone else (including, in the view of the Tribunal, his wife). Of course medical diagnosis and assessments can change and the fact that the appellant was not perceived in January 1999 as presenting any real risk and was perceived to suffer from a low grade psychosis does not of itself necessarily show that the medical practitioners were at fault in reaching an earlier diagnosis which subsequent events showed was very probably incorrect.

[9] Since it was Dr Armstrong's assessment as recorded in the form which he signed that led to his detention and thus his loss of liberty it is necessary to focus carefully on the evidence relating to Dr Armstrong. The trial judge's judgment and the transcript of the evidence of Dr Armstrong's evidence is important in this context. The following sequence of relevant events emerges from the evidence -

(a) On 1 October 1998 Dr Stelfox, the wife and a partner of Dr Armstrong, decided to refer the appellant to the Community Health Team following Dr Stelfox's examination of and discussion with the appellant's wife who alleges violence by the appellant. Dr Stelfox was not the general practitioner of the appellant. She subsequently referred the applicant to Dr Harbinson, a consultant psychiatrist at Newtownards, on 21 October 1998. She referred to the appellant's alleged violence, morbid jealousy and fixed delusions. Coghlin J in his judgment questioned the basis upon which the appellant was referred first to the community mental health team and then to Dr Harbinson. The matter, however, could be put somewhat more strongly. It was inappropriate for Dr Stelfox to have done so if, as appears to have been the position, she did so without any prior discussion with the appellant's own general medical practitioner Dr Armstrong. Dr Harbinson was not

the consultant psychiatrist for the relevant area and it appears that she was a doctor on the staff of the hospital to which admission was sought.

(b) On 3 November 1998 the appellant was seen by Dr Armstrong who had apparently been advised that Dr Harbinson was raising the possibility of a formal detention. He considered that the plaintiff's mental state was quite disturbed. While in evidence he said that there appeared to be a *potential* risk to the plaintiff's wife his note at the time noted

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

It appears, accordingly, that as of 3 November 1998 Dr Armstrong could not have confirmed that the patient required to be compulsorily detained.

(c) On the same day Dr Harbinson saw the appellant, concluded that he was mentally ill and posed a substantial risk of serious personal harm to his wife. She was of the view that he ought to be compulsorily detained.

(d) The appellant was seen by Dr Armstrong on 4 November. The appellant in his evidence stated that he was told by Dr Armstrong that he believed that the appellant would be discharged since there was nothing in his report to justify detention. The trial judge noted this but did not in his judgment make a finding of fact one way or the other as to what was in fact said by Dr Armstrong. Since it accorded with what he had noted on 3 November it is quite probable that Dr Armstrong said what the appellant alleged.

(e) On 5 November the appellant attended for assessment by a team including Dr Harbinson, Dr Moynihan, Dr Hughes and Sister Bell. The plan adopted by the meeting was that the appellant should be discharged but the assessment should be discussed with Dr Armstrong who was to be advised that the recommendation would be to proceed with the original course of action, namely detention and placement in a secure facility. In cross examination Dr Moynihan accepted that the only evidence of risk of violence to the plaintiff's wife was the report from Mrs McDonald which was itself based entirely on the wife's complaints. Mrs McDonald was the relevant social worker who on 26 October 1998 had taken a social history from the plaintiff's wife alleging acts of violence. It is obvious that considerable care must be taken in accepting without question or proper investigation allegations of such a nature.

(f) Dr Armstrong was contacted by Dr Harbinson during the course of the team meeting. From paragraph 25(b) of the trial judge's judgment it appears that Dr Armstrong initially maintained the view that the appellant should not be compulsorily detained. Strong words "may have been exchanged" and Dr Armstrong apparently told Dr Harbinson that "he was entitled to his opinion." This must relate to the opinion that he had formed on 3 November, namely that the appellant did not present a risk to himself or others. The judgment continued –

> "It was only after Dr Harbinson emphasised her concerns about the potential risk not only to Mrs Shayegh but also to the staff and patients in Newtownards Hospital and indicated that a voluntary admission was not appropriate that Dr Armstrong eventually signed a form 3 authorisation. In giving his evidence Dr Armstrong impressed me as a sensitive and humane GP who was doing his best in difficult circumstances to ensure that his patient received the treatment he obviously needed but that he should preferably receive it in the course of a voluntary rather than a compulsory admission. However I think that with hindsight he would accept that the course of action that he adopted was to say the lease unwise. I also consider that it is probable during the course of his negotiation with the plaintiff he helped to create the impression that his attendance at the hospital was something of a formality and that this impression may have contributed to the extent of the plaintiff's arousal when he became acquainted with the recommendation by the assessment team that he should be compulsorily detained."

It is not quite clear from this passage to what the judge was referring when he said that with hindsight the witness should accept that the course of action that he adopted was unwise. The inference to be drawn from the background to Dr Armstrong's signature of the form is that he did so reluctantly and that he had up until he signed it held the view that the plaintiff should not be compulsorily detained and did not present a risk to himself or others. Pressure from Dr Harbinson clearly played a significant role in leading him to sign the form.

[10] This being the context it is necessary to consider carefully Dr Armstrong's evidence relating to the reason why he signed the relevant form. When he was questioned by the appellant about the reference to the appellant being violent to his wife in the past Dr Armstrong said:

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

This falls far short of him saying that the failure to compulsorily detain him would create "a substantial likelihood of serious physical harm to himself or to other people" (in this context the wife). Even if Dr Armstrong had allowed Dr Harbinson's view to persuade him that the appellant should be detained he retained a duty to satisfy himself that the statutory pre-conditions were satisfied to justify him in giving the recommendation which he did. I consider that his evidence falls short of establishing that he did so satisfy himself. Subsequent events in fact confirmed the view that Dr Armstrong had initially reached on 3 and 4 November and maintained up until the point when he signed the form under the pressure from Dr Harbinson.

[11] In these circumstances I conclude that Dr Armstrong either misunderstood the proper test to be satisfied under Article 4(2)(b) or that his mind did not fully move with his pen when he gave the recommendation that is contained in the form that the appellant should be detained. I conclude, accordingly, that the statutory preconditions for detention had not in fact been satisfied and thus his detention was unlawful.

[12] Mr Stitt QC on behalf of the respondents initially appeared to accept that if the initial detention was unlawful the detention thereafter could not be shown to be lawful. However, he did not concede the issue. In view of the conclusion which I have reached I would allow the appeal and remit the matter to the trial judge to determine what damages should be awarded to the plaintiff arising out of the detention which was at least initially unlawful. The damages will depend on the length of the unlawful detention and thus the trial judge would have to consider whether the respondents could establish that the originally unlawful detention had at some point become lawful. That is a triable issue which has not been determined.

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*(subject to editorial corrections)**

Delivered: **18/03/10**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Between:

BIJAN SHAYEGH

Plaintiff / Appellant;

-and-

SOUTH EASTERN HEALTH AND SOCIAL SERVICES BOARD TRUST

-and-

NORTHERN HEALTH AND SOCIAL SERVICES TRUST

Defendants / Respondents.

Before: Higgins LJ, Girvan LJ and Treacy J

TREACY J

[1] I agree with the judgment of Girvan LJ.