



This briefing is not legal advice. It provides information on human rights in this area of law. Other laws, and more up-to-date information may apply and we recommend that you seek further advice.

Introduction

This briefing looks at: admission to hospital for assessment, detention in hospital for treatment, voluntary patients and making decisions about treatment.

Many people receive mental health care and treatment in the community. However, sometimes admission to hospital for assessment and treatment is necessary. You can only be admitted to hospital if strict legal criteria are met. Failing to meet the criteria or to follow the correct procedures may mean that the detention is not legal.

In Northern Ireland, the assessment, treatment and rights of persons with mental health issues are covered by the Mental Health (Northern Ireland) Order 1986 (MHO). Under this law a mental disorder is defined:

- 3.—(1)** In this Order—“mental disorder” means mental illness, mental handicap and any other disorder or disability of mind;
- (2)** No person shall be treated under this Order as suffering from mental disorder, or from any form of mental disorder, by reason only of personality disorder, promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.

The Human Rights Act 1998

The Human Rights Act 1998 (HRA) brings most of the rights of the European Convention on Human Rights (ECHR) into domestic law. This means that you can rely on ECHR rights in the local courts.

A number of human rights are important for persons who are detained under the MHO. These include; the right to life; the right not to be

subjected to torture, inhuman or degrading punishment; the right to liberty and the right to private and family life.

Right to life:

Article 2 of the ECHR protects the right to life. This includes a positive obligation which means government and public authorities must also take steps to protect life in certain circumstances.¹ When the authorities know, or ought to know, there is a risk to the life of a particular person they must take steps to protect them.

In *Rabone v. Pennine Care NHS Foundation Trust*² the Supreme Court looked at the case of a voluntary patient on a mental health ward, who committed suicide while on home leave. The Court decided that, even though she was a voluntary patient, the Trust was under an obligation to safeguard her life as they were aware of the risk of suicide.

Prohibition on torture, inhuman or degrading treatment:

Article 3 of the ECHR says that no one shall be tortured or treated in an inhuman or degrading way. 'Inhuman' means treatment that causes severe mental or physical harm and 'degrading' means treatment that is undignified.

For example, the case of *Kaprykowski v. Poland*³ involved a person with epilepsy who was being held at a remand centre. He complained that his medical care was inadequate. Several doctors stressed that he should receive specialised psychiatric and neurological treatment but he had to rely solely on the prison health care system.

The European Court of Human Rights (ECt.HR) ruled that the lack of adequate medical treatment had undermined Mr Kaprykowski's dignity and caused him anxiety and suffering. The ECt.HR decided that his continued detention without adequate medical treatment was inhuman and degrading treatment. This breached his rights under Article 3.

Right to liberty:

Article 5 of the ECHR applies where a person is deprived of their liberty; for example, after conviction by a court or detention under mental health laws.

¹ *Osman v. the United Kingdom* [1998] ECHR 101, para 116

² *Rabone v. Pennine Care NHS Foundation Trust* [2012] UKSC 2

³ *Kaprykowski v. Poland* (2009) ECHR 198

Article 5 sets out the situations when liberty can be restricted. One of these is for persons with a mental disorder.⁴ In order for a health authority to detain you, you must be suffering from a recognised mental disorder. This is a medical decision and your liberty cannot be removed because of unusual views or behaviour.

The ECt.HR explains that in order to satisfy Article 5, three conditions must be met:

- the patient must be shown to have a true mental disorder;
- the mental disorder must require detention; and,
- continuing detention must be based on a continuing disorder.⁵

Also protected under Article 5 is the right to challenge a decision to remove your liberty. This must be decided by a Court and must be done speedily. If detention is not required, you must be discharged and Article 5 also gives you a right to compensation if you have been detained unlawfully.

The case of *Houtman and Meeus v. Belgium*⁶ looked at the failure to provide compensation for unlawful detention in a psychiatric institution. The ECt.HR accepted that Mrs Houtman had been deprived of her liberty which created a right to compensation.

Right to private and family life:

Article 8 of the ECHR protects the right to respect for private and family life, your home and correspondence. Family life covers close and personal relationships, not just blood relatives.⁷ Article 8 covers a wide range of issues such as contact with family, access to information and physical and psychological integrity.

Article 8 is a qualified right which means that restrictions may be allowed in certain circumstances. A restriction must be allowed in law, seek to achieve a legitimate aim and be reasonable in all the circumstances.

Private and family life covers your right to have visitors while you are detained in hospital. Ward staff may place restrictions upon visiting; for example, the length of a visit or requiring supervision. Such restrictions will not always be a breach of your rights; the staff must

⁴ Article 5(1)(e) ECHR

⁵ *Winterwerp v. the Netherlands* [1979] ECHR 4, para 39

⁶ *Houtman and Meeus v. Belgium*, Application no. 22945/07, 17 March 2009

⁷ *K. and T. v. Finland*, Application no. 25702/94, para 150

provide evidence of any concerns and explain why the restriction is necessary. Any limits on your rights must be the least restrictive option.

You have a right to access your medical records and information about your treatment. Refusal to provide this may be a breach of your right to private and family life, unless the staff can show that there is a good reason. For example, that giving you this information would cause you significant harm.

Physical integrity forms part of private life, meaning that decisions affecting your body are protected by Article 8. This includes medical examinations and treatment. In the case of *YF v. Turkey*⁸, the medical authorities carried out a gynaecological examination without permission. The ECt.HR found this was a breach of the woman's Article 8 rights. This was because there was no law permitting the examination and there was no medical reason for it being necessary.

Psychological and moral integrity also form part of private life. In the case of *Bensaid v. United Kingdom*⁹ the ECt.HR said that:

Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life.

Additionally, respect for your correspondence is protected by Article 8. The case of *Krawiecki v. Poland*¹⁰ involved an individual with schizophrenia who complained that his post was being monitored. The ECt.HR found that the monitoring of his post was a breach of his Article 8 rights.

UN Convention on the Rights of Persons with Disabilities

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) is an international human rights treaty which protects the rights of individuals who have a disability. It is not part of our local law but the government has signed the treaty and has agreed to the rights contained in it. This means that you can refer to the rights when dealing with government and authorities.

⁸ *YF v. Turkey*, Application no. 24209/94, 22 October 2003

⁹ *Bensaid v. the United Kingdom*, Application no. 44599/98, 6 February 2001

¹⁰ *Krawiekcki v. Poland*, Application no. 49128/07, 9 June 2009

The UNCRPD does not produce a new set of rights, but interprets existing rights taking into account the vulnerabilities of people with a disability. Persons with a mental disorder are protected by the UNCRPD. Some relevant rights are as follows:

Article 12 provides that persons with disabilities must be treated equally before the law. This means that they are capable of making decisions about their own lives and their decisions must be respected.

Article 13 requires that persons with disabilities have access to the justice system in the same way as everyone else. This may mean that rules or procedures are adapted for persons with disabilities to ensure that they are involved in all stages of the process.

Article 19 protects the right to live independently. It allows people with disabilities to have the same opportunities as others to choose where they live and are not forced to live in institutions.

Admission for Assessment

If you have a mental health disorder or there are concerns about your mental health you may need help from mental health services. A referral to those services can be made by anyone with a serious concern, such as a family member, GP or the PSNI.

An Approved Social Worker (ASW) will conduct an assessment with your GP and both must agree that your admission into hospital is necessary. Article 4(2) of the MHO sets out when you can be admitted into hospital for assessment; you must be:

- (a) 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.

If those conditions are met, the ASW will complete the paperwork for admission for assessment and you will be brought to hospital. The ASW will explain what is happening and advise you of your rights.

Once admitted, you can be kept in hospital for 48 hours and you will be assessed by a doctor. The MHO allows you to be kept in hospital for another 7 days, at which point another assessment must be carried out. A final period of 7 days is then allowed. A decision is then made if

you will stay in hospital for treatment. You may be discharged at any time if detention is no longer required.

Detention for treatment

Some patients may need to be detained for treatment. For this to happen, you must have a recognised mental disorder that requires detention and be at risk of seriously physically harming yourself or another person. The legal basis for this power is Article 12 of the MHO.

Article 12 allows you to be detained for up to 6 months. At this point your detention must be reviewed. Your detention can be renewed for a further 6 months and then periods of one year. You may be discharged at any time if detention is no longer required.

Challenging decisions

If you are detained under the MHO, you have the right to challenge the detention. The law allows you to bring your case to the Mental Health Review Tribunal (MHRT). You are entitled to seek legal advice and have someone represent you at the hearing.

You can challenge your detention straightaway or within 6 months of admission to hospital. However, if 2 years passes without your case being considered by the MHRT, the hospital itself must refer your case to the MHRT.

If the MHRT decides that you do not have a recognised mental disorder or that continuing detention is not required, you will be discharged from hospital.

You should seek legal advice from a Solicitor or advice agency if you wish to go to the MHRT.

Voluntary Patients

If you need hospital treatment for your mental health, a referral is usually made by your GP or community mental health team. If you have not been involved with mental health services before, you may need to be admitted urgently for assessment (see previous section on admission for assessment).

You can be admitted to hospital on an informal basis, without being detained under the MHO. This means that you agree to being admitted

to hospital for treatment. You will be known as a voluntary or informal patient. Voluntary patients can discharge themselves and leave hospital at any time without the agreement of medical staff.

Making decisions about treatment

If you are an adult with capacity,¹¹ you must give your informed consent for medical treatment. This means that you must agree to treatment after understanding all the relevant information. You cannot be treated against your wishes. If you refuse, or change your mind about treatment, your decision must be respected.

If you are detained under the MHO, you may be given some types of treatment without your consent. The circumstances when this can happen are set out in law.¹² This only allows treatment for your mental disorder and not for physical health issues.

Summary

Admission for assessment:

- To be admitted for assessment, the conditions under Article 4 of the MHO must be met;
- The individual must be suffering from a recognised mental disorder and there must be a risk of serious harm to themselves or other persons;
- Admission for assessment is for an initial period of up to 48 hours, with a further period of 14 days allowed. The patient may be discharged from hospital at any time or detained for treatment.

Detention for treatment:

- For an individual to be detained in hospital for treatment, the conditions under Article 12 of the MHO must be met;
- The patient must be suffering from a mental disorder which requires detention in hospital for treatment and there must be a risk of serious harm to themselves or others;
- Detention can be for an initial period of up to 6 months. Detention can be renewed for a further 6 months and then for periods of 1

¹¹ This means that you are able to make your own decisions. The law will look at whether you can understand, remember and believe information about your options and weigh up the advantages and disadvantages of the choices available to you.

¹² Part IV, Mental Health (NI) Order 1986

year. The authorities must be able to show that continuing detention is required.

Voluntary patients:

- Voluntary patients have exactly the same rights as anyone else going into hospital for treatment;
- Voluntary patients can leave whenever they want.

Making decisions about treatment:

- Adults with capacity can make their own decisions about treatment. They must give their permission for treatment;
- Detained patients can receive some treatment without their permission. This treatment must be for the mental disorder and not for physical health reasons

Other issues:

- For issues not covered by this briefing, for example, day to day concerns that you have, you can raise them with a member of staff involved in your care (such as a social worker or nurse).
- You may also wish to speak to an independent advocate for further advice or to raise issues on your behalf.

Points of Further Contact

For further information, advice and support you may wish to contact the Northern Ireland Mental Health Association (NIAMH):

NIAMH
80 University Street
Belfast, BT7 1HE
Telephone: 028 9032 8474

For a list of Solicitors' Firms, you may wish to contact the Law Society for Northern Ireland:

The Law Society
96 Victoria Street
Belfast, BT1 3GN

Telephone: 028 9023 1614

For advice or representation, you may wish to contact the Law Centre:

The Law Centre
124 Donegall Street
Belfast, BT1 2GY
Telephone: 028 9024 4401

End.