

**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 432
[2021 No. 198 JR.]

BETWEEN

F.C.

APPLICANT

AND

MENTAL HEALTH TRIBUNAL

RESPONDENT

JUDGMENT of Mr. Justice Mark Heslin delivered on the 24th day of June, 2021

Introduction

1. The applicant in this case challenges a decision made by the respondent on 12 February 2021 (“the decision”). The applicant, who was born in 1981, has a long history of mental ill-health and he suffers from paranoid schizophrenia. He is currently detained in an “approved centre” for the purposes of the Mental Health Act, 2001 (“the 2001 Act”). He was admitted there on 07 April 2019 on foot of an “admission order”, at which stage the applicant was not taking the medication prescribed for him, was extremely paranoid, was hearing voices and, *inter alia*, threatening to burn his own apartment. No challenge is made in respect of the foregoing admission order, which was made under s. 14 of the 2001 Act, on the basis that the applicant was suffering from a mental disorder as defined in ss. 3(1)(a) and 3(1)(b)(i) and (ii) of the 2001 Act. The applicant has been an involuntary patient since that date. An admission order lasts for 21 days and, by virtue of s. 15 of the 2001 Act, the respondent may extend the period of a patient’s involuntary detention for periods not exceeding six months. On 25 January 2021, a “Renewal Order” was made by the applicant’s responsible consultant psychiatrist, pursuant to the provisions of s. 15(3)(a) of the 2001 Act. This extended the applicant’s detention for a period ending on 26 July 2021, subject to the applicant’s right to seek a further review after three months, pursuant to s. 15(3)(b). On 12 February 2021, the respondent reviewed the 25 January 2021 Renewal Order and, by a majority decision, dated 12 February 2021, the respondent affirmed the Renewal Order. This is the decision challenged in the present proceedings. On 15 March 2021, the applicant moved an *ex parte* application seeking leave to apply for judicial review and the court directed that the respondent, as well as the then notice party, the Mental Health Commission, be put on notice of the application, which was listed for 22 March 2021. It was noted at that stage, as this Court noted during the hearing which took place on 13 May 2021, that the applicant was seeking a recommendation under the Legal Aid (Custody Issues) Scheme. On 22 March 2021, the leave application was adjourned, on consent, and on 12 April 2021, the court was informed that the respondent consented to the granting of leave to apply for judicial review and that the applicant consented to the Mental Health Commission being removed from the proceedings. At the commencement of the hearing on 13 May, this Court made an order formally granting leave to the applicant to seek judicial review, as well as making an order pursuant to s. 27 of the Civil Law (Miscellaneous Provision) Act, 2008, prohibiting the publication or broadcast of any matter relating to the proceedings which would or which would be likely to identify the respondent as a person suffering from a medical condition.

Relevant Legislation

2. The role of the respondent is set out in s. 18(1) of the 2001 Act, as follows:-

"18.— (1)Where an admission order or a renewal order has been referred to a tribunal under section 17, the tribunal shall review the detention of the patient concerned and shall either—

(a) if satisfied that the patient is suffering from a mental disorder, and

(i) that the provisions of sections 9, 10, 12, 14, 15 and 16, where applicable, have been complied with, or

(ii) if there has been a failure to comply with any such provision, that the failure does not affect the substance of the order and does not cause an injustice,

affirm the order, or

(b) if not so satisfied, revoke the order and direct that the patient be discharged from the approved centre concerned."

3. There is no dispute between the parties about the fact that the respondent carried out the "review" referred to in s. 18(1). Later in this judgment, I will look closely at the evidence which was before the respondent in the context of the review which took place on 12 February last. For present purposes, it is sufficient to note that it comprised the report of the applicant's treating psychiatrist, Dr. Angela Noonan, dated 11 February 2021 (following a review on 10 February 2021); the report of an independent consultant psychiatrist, Dr. Cosgrave, dated 31 January 2021 (following a review on 29 January 2021); the report of Dr. John B Frazer, dated 9 February 2021 (following a review, on 17 November 2020, at the request of the applicant's legal advisors,) and; the applicant's psychiatric records from the approved centre between 25 January 2021 (the date of the making of the Renewal Order) and 11 February 2021 (the day before the review by the respondent).

4. It is clear from the provisions of s. 18 that the respondent has a very important (but clearly defined and confined) jurisdiction, namely, to decide if the patient in question is suffering from a "mental disorder" and, if so satisfied, to affirm the Renewal Order and, if not so satisfied, to revoke the order. It is plain that the fundamental question relates to whether the patient is suffering from a "mental disorder". Before looking at the meaning of that term, having regard to s. 3 of the 2001 Act, it is appropriate to note that s. 18 requires the respondent to consider if certain procedural matters have been complied with and, if not, whether such non-compliance affects the substance of the relevant order such that it should be revoked. There was no challenge made to the respondent at any stage, nor is there any challenge in the proceedings before this court, which relates to procedural matters. The sole issue with which this Court is concerned relates to the respondent's determination that the applicant suffers from a mental disorder and the reasons in respect of same. In essence, the applicant's case is that no, or no sufficient, reasons were given. It is plain from s. 18 that if the respondent is satisfied that the

patient is suffering from a mental disorder then, absent any procedural issues (and none arise in the present case) the respondent is required to affirm the admission/Renewal Order.

5. The term "*mental disorder*" is dealt with in s. 3 of the 2001 Act which provides as follows:-

"3.—(1) In this Act "mental disorder" means mental illness, severe dementia or significant intellectual disability where—

(a) because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, or

(b)(i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission, and

(ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent.

(2) In subsection (1)—

"mental illness" means a state of mind of a person which affects the person's thinking, perceiving, emotion or judgment and which seriously impairs the mental function of the person to the extent that he or she requires care or medical treatment in his or her own interest or in the interest of other persons;"

6. It is clear from the foregoing that the respondent has the statutory power to affirm an admission or Renewal Order where it is satisfied that the patient is suffering from a mental disorder as per s. 3(1)(a), which provision refers to the risk of harm to a patient or to others, or on the basis of s. 3(1)(b)(i) and (ii), which grounds relate to treatment. In the present case, the respondent held that the applicant met the definition of mental disorder by reference to the criteria set out in s. 3(1)(b)(i) and (ii) of the 2001 Act. This is confirmed in the decision and, later in this judgment, I will set out the decision, in full, in the context of examining its contents, having regard to the evidence which was before the respondent when the decision was made.

7. Section 18(5) of the 2001 Act provides as follows:-

"(5) Notice in writing of a decision under subsection (1) and the reasons therefor shall be given to—

(a) the Commission,

- (b) *the consultant psychiatrist responsible for the care and treatment of the patient concerned,*
- (c) *the patient and his or her legal representative, and*
- (d) *any other person to whom, in the opinion of the tribunal, such notice should be given."*

8. In the present case, there is no dispute about the fact that the respondent gave written notice of the decision, nor is there any dispute about the fact that it was given to the parties entitled to receive it. The key issue in the case before this Court concerns the adequacy of reasons for the decision. Another statutory provision of relevance is s. 49 of the 2001 Act, subs. (1) of which provides as follows:-

"49.(1)A tribunal shall hold sittings for the purpose of a review by it under this Act and at the sittings may receive submissions and such evidence as it thinks fit."

There is no controversy about the fact that the respondent held a sitting, being a "remote" sitting on 12 February 2021 and I will presently look at the evidence which was before the respondent in the context of the review in question. Section 49(6)(j) of the 2001 Act makes clear that:-

"(6) The procedure of a tribunal in relation to a review by it under this Act shall, subject to the provisions of this Act, be such as shall be determined by the tribunal and the tribunal shall, without prejudice to the generality of the foregoing, make provision for—

...

(j) the making of a sufficient record of the proceedings of the tribunal."

9. The duration and renewal of admission orders is specifically addressed by s. 15 of the 2001 Act which provides the following:-

"15.—(1)An admission order shall authorise the reception, detention and treatment of the patient concerned and shall remain in force for a period of 21 days from the date of the making of the order and, subject to subsection (2) and section 18(4), shall then expire.

(2) The period referred to in subsection (1) may be extended by order (to be known as and in this Act referred to as "a renewal order") made by the consultant psychiatrist responsible for the care and treatment of the patient concerned for a further period not exceeding 3 months.

(3) (a) The period referred to in subsection (1) may be further extended by order made by the consultant psychiatrist concerned for a period not exceeding 6 months beginning on the expiration of the renewal order made by the psychiatrist under

subsection (2) and thereafter may be further extended by order made by the psychiatrist for periods each of which does not exceed 6 months (each of which orders is also referred to in this Act as "a renewal order")."

The Relief sought by the Applicant

10. In the present proceedings, the applicant seeks relief in the following terms:-

- "(i) A Declaration by way of an application for judicial review, that the Decision of the respondent dated 12 February 2021, affirming a renewal order dated 25 January 2021, made pursuant to the Mental Health Act 2001, s. 15(3), detaining the applicant as an involuntary patient in [the approved centre], for a period ending on 26 July 2021 in failing to give any, or any adequate or proper reasons therefore was made in breach of the respondent's statutory duty, pursuant to s. 18(5) of the Act of 2001, to give reasons for its decision and/or in breach of its common law duty to do so, and/or in breach of the applicant's rights to natural and/or constitutional justice and is, accordingly, unlawful, unreasonable, invalid, void and of no effect.*
- (ii) Further, or in the alternative, a Declaration, by way of an application for judicial review, that the Decision as aforesaid, in failing to engage with the evidence before it, as it relates to the statutory criteria for a person's (including the applicant's involuntary detention pursuant to the Mental Health Act, 2001, s. 3(1)(b)(i) and (ii) and/or given the recital of the evidence on which it relied is unreasonable and irrational.*
- (iii) Certiorari, by way of an application for Judicial Review, quashing the Decision as aforesaid.*
- (iv) Damages for breach of statutory duty and/or pursuant to the European Convention on Human Rights Act, 2003, s. 3.*
- (v) Further or other relief.*
- (vi) Costs."*

11. The relevant statement of grounds is dated 11 March 2021 and, as well as detailing the relief sought and brief background facts which are not in dispute, the grounds relied upon by the applicant can fairly be summarised as follows:-

- That the respondent breached s. 18(5) of the 2001 Act by failing to give reasons, also breaching the duty to give reasons under common law and as a matter of constitutional justice;
- The decision fails to give any adequate or proper reasons;
- The reasoning and rationale underpinning the decision cannot be ascertained from its terms and the applicant cannot know the basis for the decision and what, if anything, he can or must do to achieve a different outcome in a further review or

whether the respondent interpreted and applied the statutory criteria for involuntary detention correctly in his case or whether the decision ought to be challenged in another forum;

- By reason of a failure to give any proper reasons, the decision is unlawful, unreasonable, invalid, void and of no effect;
 - The decision fails to engage with the evidence before the respondent insofar as it relates to the criteria for the applicant's involuntary detention under the dual limbs of s. 3(1)(b)(i) and (ii) of the 2001 Act and is, accordingly, unreasonable and irrational and ought to be quashed;
 - The respondent's decision, in light of its recital of the evidence on which it relied, is unreasonable and irrational and ought to be quashed.
12. On 11 March 2021, the applicant's solicitor, Mr. Albert Llussà, swore an affidavit verifying the facts referred to in the applicant's statement of grounds. It is not necessary to comment on a paragraph by paragraph basis on Mr. Llussà's affidavit. This is in circumstances where there is no material dispute in relation to the sequence of relevant events or what comprises the relevant documents. The dispute between the parties relates exclusively to the adequacy of reasons in the decision. It is, however, appropriate to note the documents which Mr. Llussà has helpfully exhibited.
13. Exhibit "AL1" comprises copies of the 06 April 2019 "Application" and "Recommendation" in respect of the applicant's admission, as an involuntary patient, to an approved centre. The reasons stated on the Application is:- *"relapse of paranoid schizophrenia with non-compliance of medications. Risk of harm to others & himself."* The applicant is named as Áine Keogh of the Mater Hospital, Dublin 7. The Recommendation, which was completed by registered medical practitioner, Natasha Paramanathan, of the Emergency Department of the Mater Hospital, confirmed their view that the applicant was suffering from a mental disorder and the following was stated with regard to the grounds for that opinion:- *"Relapse of paranoid schizophrenia due to non-compliance to medications. Patient is a risk to himself and others."* The third item in exhibit "AL1" comprises the Admission Order dated 07 April 2019 and it was signed by Dr. C. Aobhinn Lynch, consultant psychiatrist, who stated the following with regard to the reasons for their opinion:- *"Diagnosis of schizophrenia; off medication in the community. Currently paranoid, thought disordered, hallucinating. Having thoughts of burning down his apartment building."*
14. Exhibit "AL2" to Mr. Llussà's affidavit comprises a copy of his most recent letter of appointment as the applicant's legal representative. As Mr. Llussà avers at para. 6 of his affidavit, he was appointed by the Mental Health Commission, pursuant to the provisions of s. 17 of the 2001 Act, as the applicant's legal representative for the purposes of each Tribunal review.
15. Exhibit "AL3" comprises the Certificate grounding the Renewal Order, pursuant to s. 15(4) of the 2001 Act. It is dated 25 January 2021 and it records the opinion of Dr. Angela

Noonan that the applicant continued to suffer from a mental disorder within the meaning of both ss. 3(1)(a) and 3(1)(b)(i) and (ii) of the 2001 Act. Dr. Noonan is the applicant's responsible consultant psychiatrist ("RCP") and it is not in dispute that she made an order, pursuant to s. 15(3)(a) of the 2001 Act, extending the applicant's involuntary detention in the approved centre for a period of six months as and from 25 January 2021, subject to the applicant's right to seek a further review after three months, pursuant to s. 15(3)(b) of the 2001 Act. No review has been sought under the latter section in circumstances where the applicant awaits the outcome of the present proceedings.

16. In the present proceedings, no complaint is made in relation to the making of the renewal order on 25 January 2021 and the applicant's case is confined to a complaint based on the alleged inadequacy of the reasons for the decision of the respondent on 12 February 2021 affirming the renewal order. As can be seen from the 25 January 2021 renewal order, which constitutes a document incorporating the certificate which grounds it, Dr. Noonan confirmed that she examined the applicant at 11 a.m. on 25 January 2021 and she "ticked" the "box" by way of confirming her opinion that the applicant continued to suffer from a mental disorder as per s. 3 (1) (a) and (b) (i) and (ii). As to the grounds upon which Dr. Noonan based her opinion, Dr. Noonan gave the following clinical description of the applicant's mental disorder: -

"[F.C.] has schizophrenia. He has an established history of rapid discontinuation of medication following discharge and behaviour driven by psychotic symptoms that could have led to the death or serious injury of others".

17. There is no dispute about the fact that the foregoing renewal order, containing Dr. Noonan's opinion was before the respondent tribunal when it made the decision which is challenged in the present proceedings. It is fair to say that the certificate completed by Dr. Noonan constitutes confirmation of her opinion that the applicant does not merely suffer from a mental illness but, in fact, suffers from a "mental disorder" within the meaning of s. 3 of the 2001 Act and the grounds for Dr. Noonan's opinion are stated.
18. It is also a matter of fact that, as provided for in s. 17 (1) (c) of the 2001 Act, the applicant was examined by an independent consultant psychiatrist, appointed from a panel maintained by the Mental Health Commission. This independent consultant psychiatrist, Dr. Mary Cosgrave, furnished a written report which is dated 31 January 2021. It is a matter of fact that this was before the tribunal when it made the decision. In addition to what Dr. Noonan certified in the 25 January 2021 renewal order, Dr. Noonan also prepared a report, which is dated 11 February 2021, and she did so in her capacity as responsible consultant psychiatrist, or RCP, pursuant to s. 17 of the 2001 Act. It is a matter of fact that this report was before the tribunal when it made the decision. A third report was also made available to the tribunal, being a report dated 09 February 2021 by Dr. John B. Frazer, consultant psychiatrist. This was a report commissioned from Dr. Frazer by Mr. Llussà on behalf of the applicant. It was based on an examination of the applicant conducted by Dr. Frazer on 17 November 2020. The context in which the foregoing took place was an earlier appeal to the Circuit Court which is no longer

proceeding, events having overtaken same. For the purposes of the present proceedings, nothing turns on the context in which this report was commissioned, the relevant fact being that it was produced by Dr. Frazer and was the third of three reports from three different consultant psychiatrists, all of which reports were provided to the respondent and which the respondent considered in the context of the decision made. Exhibit "AL 4" to Mr. Llussà's affidavit comprises a copy of each of these three reports and it is appropriate to look in some detail at the contents of each.

Report by Dr. Mary Cosgrave

19. At the outset, it is appropriate to note that, pursuant to s. 18 (3) of the 2001 Act, the respondent is required, before making a decision, to have regard to the report by the independent consultant psychiatrist. There is no dispute about the fact that the report was prepared, was furnished to the respondent and that the latter had regard to same. It is appropriate to look at what this report says. As well as providing details in respect of the applicant and confirming that the responsible consultant psychiatrist is Dr. Angela Noonan, the report confirms that Dr. Cosgrave, in her capacity as independent consultant psychiatrists, examined the applicant on 29 January 2021 and interviewed the responsible consultant psychiatrist on the same date and also reviewed the records relating to the applicant on 29 January 2021. On the second page of the report, Dr. Cosgrave confirms, at section 10, her opinion that the applicant "*is suffering from a mental disorder*". By "ticking" the relevant "box", Dr. Cosgrave confirms her opinion that the applicant's "mental disorder" satisfies s. 3 (1) (a) and (b) (i) and (ii) of the 2001 Act. Section 11 of the report requires the independent consultant psychiatrist to "*give a clinical description of the patient's current mental condition*" and the description given includes, *inter alia*, the following: -

"He said he would take his medication if discharged but he did not believe Dr. Noonan's opinion re his needing it was correct. He said he expected to be on a monthly injection in the future. He had no insight the (sic) his illness or that his relapses are leading to his behaviour that could cause serious harm to self, others or property".

20. The foregoing constitutes clear evidence that, although the applicant stated an intention to take his medication if discharged, the applicant did not believe that he needed to take this medication. It is also clear evidence that the applicant does not merely lack insight but has "*no insight*" that his illness or relapses lead to behaviour that could harm himself, others, or property.
21. It seems appropriate to make the foregoing observations because the evidence is not, for instance, that a patient indicated that he would take his medication if discharged and believed that he needed it and had insight into his illness, including insight into relapses resulting from not taking medication and the consequent risk of harm. On the contrary, the evidence was that the applicant did not believe he needed medication, had no insight into what would happen if he didn't take it and it was in that context that he was expressing a willingness to take medication if discharged.

22. Section 12 of the report requests details of the responsible consultant psychiatrist's diagnosis in respect of the applicant, and what is appears there is: "*chronic paranoid schizophrenia*". There is no dispute as to the fact that this is the applicant's diagnosis. Section 13 calls for a brief outline of the previous history and duration of the applicant's illness, in response to which Dr. Cosgrave has stated, inter alia, the following: -

"[] has had schizophrenia for many years. He has had many admissions. He has a consistent history of stopping medication and acting out causing harmful consequences. . . ."

23. The foregoing is clear evidence that the applicant has a consistent history of stopping medication with harmful results. This was undoubtedly evidence before the respondent, and there was no evidence to the contrary before the respondent, when it made the decision.
24. Section 14 of the independent consultant's report concerns any change in the patient's condition since the commencement of their involuntary admission, in respect of which Dr. Cosgrave states the following:-

"[] is settled and co – operative on the unit. He does not accept the need for him to stay. He takes medication because he has to while he is there. He is aware of the MHA and his rights. His consent to accept medication is reviewed every 90 days under s. 60 of the Mental Health Act".

25. The foregoing is clear evidence that the applicant "*takes medication because he has to*" while he is "*on the relevant unit in the approved centre*". It is entirely consistent with the fact, stated by Dr. Cosgrave at s. 11 of her report, that the applicant did not believe that he needed medication, i.e. the applicant did not believe Dr. Noonan's opinion regarding his need for medication to be correct.
26. Section 15 of the report details the current medication the patient is "*receiving for treatment of mental disorder*" as well as dosages and any side effects. Section 16 records that the applicant had been diagnosed with COVID – 19 and was then symptomatic, whereas s. 17 of the report confirmed that there were no relevant tests of note. Section 18 required the independent consultant psychiatrist to "*outline the patient's attitude to treatment and his/her likely compliance with it in the future*". In response, Dr. Cosgrave provided the following: -

"[] is very likely to stop his psychiatric medication if he is not in a position where he has to take them".

27. The foregoing view by the independent consultant psychiatrist is clear and emphatic. It is not a view that there is a *possibility* that the applicant *possibly* could or *might* stop his psychiatric medication. It is a view that the applicant is *very likely* to stop taking his psychiatric medication if he is not in a position where he is required to take same.

28. Section 19 of the report related to risk factors and Dr. Cosgrave details these including a risk of relapse, risk of imprisonment, as a result of the applicant's actions, risk of harm to self in response to psychosis and risk to others based on actual history of the applicant's behaviour when he relapses. Section 20 of the report calls for details of the interview between the independent consultant psychiatrist and the applicant's responsible consultant psychiatrist and Dr. Cosgrave states the following: -

*"Dr. Noonan said he thinks [] continues to satisfy criteria for detention under Sections 3 (i) (a) and 3 (i) (b), parts 1 and 2 of the Mental Health Act 2001. **She is positive that [] would stop medication and relapse if he is discharged.** She is sure this would lead to further illness related risk to [], other persons and property.*

Dr. Noonan said that [] does not give keys to his apartment to anyone else and it can be very hard to access him in cases of a relapse in his illness.

Dr. Noonan says that [] does not believe her re the diagnosis and need for medication.

Dr. Noonan told me that [] has had several reviews by other psychiatrists who have affirmed her opinion regarding the risks above. He has had a local forensic opinion. Apparently another forensic opinion organised by []'s representatives is awaited". (emphasis added)

29. Thus, as part of the evidence before it, the respondent had, *inter alia*, the expressed view by the applicant that he would take his medication if discharged. That, however, was a view accompanied by uncontroverted evidence that the person who said they would take medication if discharged did not believe that they needed to take medication, had no insight into their illness or the adverse consequences of relapses. The respondent also had before uncontroverted evidence that the applicant was, at that stage, taking medication, not because he knew he needed it, not because he had insight into his illness, not because he was aware that without his medication he would relapse, not because he appreciated the adverse consequences of relapses, but because he had to take the medication while he remained an involuntary inpatient in the relevant unit of the approved centre. Furthermore, the respondent had before it the view of an independent consultant psychiatrist to the effect that the applicant was "very likely" to stop taking his medication as well as the view of the treating consultant psychiatrist who was "positive" that the applicant would stop taking his medication and would relapse if he were to be discharged. Nor is there any dispute whatsoever about the fact that it was necessary that the applicant receive the relevant medication.
30. Section 21 of the report concerned any information which, in the independent consultant psychiatrist's view, should not be disclosed to the patient and Dr. Cosgrave stated the following: -

"[] can be hostile towards people that he feels are against him and it is for the best that he should not see the report in its entirety.

*Based on the history of very serious acting out on delusions and the actual events that have been documented, plus the **history of ongoing noncompliance with medication**, I am in agreement with Dr. Noonan's assessment that [] satisfies criteria for detention under s. 3 (i) (a) and 3 (i) (b), parts 1 and 2 of the MHA 2001". (emphasis added)*

31. In the foregoing manner, the independent consultant psychiatrist was satisfied that the applicant was suffering from a mental disorder and that he met the criteria set out in s. 3 (i) (a) and the criteria in s. 3 (1) (b) (i) and (ii). At the risk of stating the obvious, the foregoing is not merely evidence that the applicant was suffering from a *mental illness*, it is clear and uncontroverted evidence that the applicant was suffering from a *mental disorder*. It will be recalled that the central issue which the respondent is required to determine pursuant to s. 18 (1) is whether the patient was suffering from a "mental disorder". It is also appropriate to observe that, in light of the contents of the independent consultant psychiatrist's report, the respondent had uncontroverted evidence that the applicant had a history of non – compliance with medication. Thus, the applicant's expressed willingness to take medication in the future was, not only a statement made by someone who did not believe that he needed the medication, who had no insight into his illness or the adverse effects of a relapse due to not taking his medication and who only took it because he was an involuntary patient, the respondent also had uncontroverted evidence of a history of non – compliance with medication.
32. Section 22 of Dr. Cosgrave's report includes certain other relevant information, namely that the report was prepared under the 2020 alterations to the 2001 Act and that "[] owns his own apartment. He is currently repaying a debt of several thousand to his father for damage he caused to the father's house"
33. This is not a situation where the independent consultant psychiatrist proffered her opinion that the applicant suffered from a mental disorder within the meaning of s.3 of the 2001 Act *without* considering the fact that the applicant said he would take his medication if discharged. Dr. Cosgrave clearly states in her report, and plainly considered, the fact that the applicant said he would take medication if discharged. Dr. Cosgrave's report also referred to *other* facts which are of obvious relevance to the question of the applicant taking medication, but which indicate the opposite of what the applicant stated. These other facts which appear in Dr. Cosgrave's report can be summarised as follows:
 - (1) the fact that the applicant did not believe he needed to take this medication and did not believe his treating psychiatrist's opinion in this regard;
 - (2) the fact that the applicant had no insight into his illness.
 - (3) The fact that the applicant had no insight into relapses having negative consequences for him, others or property;
 - (4) the fact that failure to take medication causes relapse;

- (5) the fact that the applicant takes medication because he has to as a consequence of being in the relevant unit;
- (6) the fact that the applicant does not believe Dr. Noonan regarding his diagnosis and his need for medication;
- (7) the fact that the applicant has a history of ongoing non-compliance with medication.

It is also very clear from Dr. Cosgrave's report how she resolved the difference between, on the one hand, the applicant's stated intention to take medication if discharged and, on the other hand, all the facts which speak to the contrary. In short, Dr. Cosgrave formed the view, which is very clearly stated in her report, that the applicant: "*is very likely to stop taking his psychiatric medication if he is not in a position where he has to take*" same. Nobody reading the report could come away with the impression that Dr Cosgrave was in any way unsure or unclear in her view as to what the applicant said about his willingness to take medication if discharged or the factors on which the view was based. On this same point, Dr. Cosgrave also cited Dr. Noonan as being "*positive*" that the applicant "*would stop medication and relapse if he is discharged*". All of the foregoing is clear from the face of Dr. Cosgrave's report. There are no unresolved questions in the report. There are no internal inconsistencies. The opinion that the applicant is a person suffering from a mental disorder is stated clearly and without reservation and the reasons why the independent consultant psychiatrist holds this view are equally clear.

Report by Dr. Angela Noonan

34. The report by the responsible consultant psychiatrist, Dr. Angela Noonan, is dated 11th February 2021 and it relates to an examination of the applicant which took place the previous day. Section 1 relates to the "*history of the patient relevant to this admission*" and Dr. Noonan states *inter alia* the following under this heading:

"[] has had many admissions with relapses of schizophrenia. He has always discontinued antipsychotic medication. Weeks have passed between my becoming aware of his relapse and involuntary admission. His family have contacted me but have not been able to access his home. He has changed the locks because of beliefs that nurses copied his keys when he was in hospital and family members have not had keys. Authorised officers cannot access [] and when I asked gardai to go to his home they were not prepared to forcibly enter. [] sent a text message to his father wondering if he should burn down his apartment building. [] previously set fire to his father's home, while his father and brother were in it and caused €30,000 worth of damage. He was never charged. When he set the fire he was experiencing auditory hallucinations. Prior to this admission in April 2009 he was experiencing hallucinations and delusions..."

35. For the purposes of the present proceedings, there is no dispute as to the accuracy of any of the three reports by the three different consultant psychiatrists. There is no suggestion that any of the facts set out in any of those reports are not correct. It will be recalled that when Dr. Cosgrave, in her role as independent consultant psychiatrist, examined the applicant on 29th January, 2021, the applicant said he would take his medication if

discharged and I have already looked at the other facts relevant to this issue and the manner in which Dr. Cosgrave formed her view based on the facts set out in her report, both in relation to the likelihood of the applicant taking his medication if discharged and the key question which was for the respondent to determine, namely, whether the applicant was suffering from a mental disorder within the meaning of s.3 of the 2001 Act. Of obvious relevance to the applicant's stated intention to take medication if discharged is the clear and uncontroverted statement by Dr. Noonan in her report that the applicant *"has always discontinued antipsychotic medication"*. It is equally clear that discontinuing medication has resulted in relapses and that the applicant *"has had many admissions with relapses of schizophrenia"*. None of the foregoing is in dispute for the purposes of the application before this court.

36. Section 2 of Dr. Noonan's report confirms the applicant's diagnosis as that of schizophrenia and section 3 *indicates the various medications prescribed in that regard. In section 4, in response to "why patient meets the criteria in s.3 of the Mental Health Act, 2001"*, Dr. Noonan has stated the following:

"He has a mental illness – schizophrenia. He has a very significant history of discontinuation of medication. Relapse of psychosis always follows discontinuation of medication. His delusions and hallucinations are persecutory and have led to arson and could have led to arson or violent assault in 2019."

None of the foregoing facts are in dispute and the foregoing constitutes a very clear statement by the applicant's treating psychiatrist that he suffers from schizophrenia; that medication is essential to his treatment; that the applicant has a very significant history of ceasing to take his medication which always results in a relapse of psychosis with negative effects for the applicant and risk to others. The foregoing, quite obviously, undermines the applicant's assertion of his willingness to take medication, being an assertion made by someone who neither believes his diagnosis of schizophrenia, nor believes he needs medication, and who only takes it because he is required to in the context of being an involuntary patient. Section 5 of Dr. Noonan's report poses the question *"why patient cannot be made voluntary?"* and Dr. Noonan sets out the following:

"He wishes to go home at once and said he is taking medication because he is being forced to do so. He does not believe he has schizophrenia and stated that he 'only hear(s) voices when coming off the medication'."

The uncontroverted evidence is that the applicant has schizophrenia yet does not believe he has and does not believe he needs to take medication. Although the applicant stated to Dr. Cosgrave his intention to take medication if discharged, the independent consultant psychiatrist was satisfied, in light of other facts plainly considered by her, that the applicant was very likely to stop taking necessary medication if discharged. When Dr. Noonan examined the applicant on 10th February, the applicant said he was taking medication because he was *"forced to do so"*. This is entirely consistent with the fact (recorded in s. 14 of Dr. Cosgrave's report) that the applicant takes medication *"because he has to"* while an involuntary patient in the approved centre. This fact is plainly entirely

supportive of the view expressed by Dr. Noonan (who was interviewed by Dr. Cosgrave on 29th January 2021) namely, that Dr. Noonan "is positive" that the applicant "would stop medication and relapse if he is discharged" (a view recorded at s. 20 of Dr. Cosgrave's report).

37. Section 6 of Dr. Noonan's report relates to "any other relevant information?" and Dr. Noonan has stated:- "Dr. Sally Linehan, forensic psychiatrist, prepared a comprehensive report and stated that with []'s lack of insight and the risks he poses to others when ill, involuntary detention is necessary." The conclusion reached by Dr. Noonan is confirmed in s. 7 of her report in the following terms: "[] meets criteria for mental disorder 3(1)(a) and (b)(i) and (ii)". It will be recalled that the central issue which was for the respondent to decide on 12th February, 2021 was whether the applicant was suffering from a mental disorder and Dr. Noonan's report is unequivocal as to the fact that this was so. It is also appropriate to note that, as regards the conclusions reached, Dr. Noonan's report is entirely consistent with the report of the independent treating consultant prepared ten days earlier. It is also appropriate to note that there is no dispute whatsoever between these two consultant psychiatrists on any issue. There is consensus as to the diagnosis; as to the necessity for the applicant to take medication; as to the applicant not believing his diagnosis; as to the applicant's lack of insight into his illness; as to the adverse effect on the applicant of not taking medication; as to the applicant's history of not taking medication when not required to do so; and as to involuntary detention being necessary in circumstances where the applicant satisfies both the criteria in s.3(1)(a) and s.3(1)(b)(i) and (ii) of the 2001 Act. There was a third report before the respondent on 12th February, 2021 namely a report by Dr. John B. Fraser consultant in general & forensic psychiatry an honorary senior lecturer to the University of Leeds. It is appropriate to look at its contents.

Report by Dr. Frazer dated 09 February 2021

38. The context in which this report by an English expert came to be generated has already been referred to, but there is no dispute about the fact that it was furnished to the respondent and considered by same in the context of the decision which is challenged in the present proceedings. It is a very lengthy and detailed report running to 36 pages, including the author's curriculum vitae, pp. 4 – 27, inclusive, being of most relevance. In his report, Dr. Frazer provides information by way of introduction, followed by an account of the respondent which deals with "past medical & psychiatric history"; "background history"; "current circumstances"; "sexual history & premorbid personality"; "mental state examination"; the applicant's "account of his current appeal"; "account of Dr. Angela Noonan"; the author's review of the applicant's "medical records (March 1999 – February 2011)"; "clinical records"; "documents received from [the approved centre]"; "correspondence"; "adapted risk of violence assessment" and "opinion & recommendations". It is appropriate to set out verbatim and in full the final section of Dr. Frazer's report:

"18. OPINION & RECOMMENDATIONS

18.1 *I am of the opinion that [] is currently suffering with partially treated symptoms of chronic paranoid schizophrenia. I am including the diagnostic criteria as set out in ICD10 in the appendix to this report. He continues to experience auditory hallucinations, although does not disclose these symptoms to nursing staff on superficial observation. On close questioning, his psychotic experiences and delusional beliefs are still present particularly in relation to being the victim of high frequency sound which he misinterpreted as meaning that he was under threat from his neighbours. He wished to set of fire to destroy his property and harm his neighbours at the time of his admission in 2018. He remains angered by his family who he believes wrongly had him admitted to hospital. He acknowledges that he sent texts stating that he would set fire to his flat. I note that there is a previous history of fire setting in the context of similar hallucinations and delusions in 2014.*

18.2 *Given that previous behaviour predicts current behaviour, I believe that there was a substantial risk of fire setting in response to command hallucinations at the time that he was admitted in 2018. His previous admissions have been the result of him being non-compliant with medication. He tends to be ambivalent about medication, in particular because of weight gain and other side effects. I note that he has a substantial concern about weight gain in hospital and has been deliberately restricting his diet so as not to gain any more weight than necessary. This is clearly an ongoing concern for him and increases the risk of him being non-compliant with antipsychotic medication in the community. "*

39. Before proceeding to set out the balance of Dr. Frazer's opinion and recommendations, it is appropriate to make a number of short observations in relation to the foregoing. Dr. Frazer's view is entirely consistent with that of Drs. Cosgrave and Noonan. This report, commissioned by the applicant's solicitor, is unequivocal as to the fact that the applicant suffers from chronic paranoid schizophrenia, continuing to experience auditory hallucinations with psychotic experiences and delusional beliefs still present. Dr. Frazer is of the opinion that previous behaviour is a predictor of current behaviour and, as well as referring to risk, Dr. Frazer provides an opinion which plainly undermines the applicant's stated intention to take medication if discharged. Rather, Dr. Frazer describes the applicant as tending to be ambivalent about medication and he goes on to offer the view, for reasons stated, that the applicant is at an increased risk of being non-compliant with antipsychotic medication in the community. As will be seen from the balance of Dr. Frazer's report this issue was revisited in the clearest of terms at s. 18.6. The remainder of Dr. Frazer's report continues as follows:

"18.3 In the United Kingdom a patient such as [] would be eminently suitable for discharge under the terms of a Community Treatment Order. He needs to maintain compliance with medication which would be best given in the form of depot medication. This would be an essential condition of any Community Treatment Order imposed if he were resident in England.

18.4 However, given the fact that in Ireland there is no legislation to enforce treatment in the community, currently he is not safe to discharge. There is a substantial risk of non-compliance with a recurrence of the substantial risks to himself and others. These are of fire setting and violence to others. His father, neighbours and ex-girlfriend are particularly at risk if he becomes unwell."

40. The foregoing views by the applicant's expert could hardly be clearer. As Dr. Frazer states himself, there is no provision in Ireland for a Community Treatment Order. It is common case that the respondent is not in a position, and has no jurisdiction, to make a Community Treatment Order. Thus, the regime in a different jurisdiction and the applicant's suitability in respect of a regime which does not exist in this State is of no relevance to the application before this court. That said, Dr. Frazer is absolutely clear as to the fact that it would be an essential condition of a Community Treatment Order that the applicant maintain compliance with medication. Dr. Frazer is also unequivocal, in his 09 February 2021 report, that there is "a substantial risk of non-compliance" as regards the applicant taking the medication which is essential to treat his condition and Dr. Frazer is equally clear as to the adverse consequences of not taking the necessary medication.

41. It will be recalled that the applicant told Dr. Cosgrave that he would take his medication if discharged and I have already looked at the views formed by Dr. Cosgrave and by Dr. Noonan on this issue in light of a range of other relevant facts to which they referred. It is clear that Dr. Frazer considered the very same issue and reached a similar view to Drs. Cosgrave and Noonan which is contained at para. 18.6 of his report. The final paragraphs of Dr. Frazer's report state the following:

"18.5 At the time of my examination, [] did not consider that those risks were substantial and was dismissive of the views of his treating team and consultant psychiatrist in particular. I share her concern and consider therefore that he is correctly detained under the terms of the Irish Mental Health Act. His illness is of both a nature and degree to warrant ongoing detention in hospital. I note that the risks are currently well maintained and would not recommend transfer to a more secure forensic psychiatric setting.

18.6 Given his lack of insight, I fear that were he to be released from detention, he would rapidly become non-compliant with medication and the risks would escalate substantially, both to himself and to others. This has been the pattern of his previous admissions. I note the concerns of Dr. Noonan that it is very difficult to supervise him in the community when he is informal and not under any obligation to take medication. This would rapidly increase the risk of him becoming non-compliant as he does not consider that he requires treatment in hospital and lacks insight into the long standing nature of his mental illness that dates to at least 2011.

18.7 Whilst [] been stable and well maintained for the duration of this admission, given the current legal framework in Ireland and the absence of Community Treatment Orders there is no real prospect of him ever being safely discharged into the

community. This suggests that there is a real possibility that he may have to be detained for the rest of his life."

42. It is very clear from the foregoing that the applicant's expert consultant psychiatrist shares the view formed both by the applicant's treating consultant psychiatrist, Dr. Noonan, and by the independent consultant psychiatrist, Dr. Cosgrave, that the applicant meets the relevant criteria for involuntary detention under the 2001 Act. Indeed, Dr. Frazer's views accord with those of Drs. Cosgrave and Noonan on *all* issues, including the applicant's lack of insight into his illness; and the necessity to take medication; and the likelihood that the applicant would rapidly become non-compliant with medication if released into the community. There is no internal inconsistency in the views offered by Dr. Frazer, nor is there any inconsistency between his views and those of Drs. Cosgrave and Noonan. In short, it is plain that all three referred to, and gave consideration to, relevant facts and, for the reasons which are clear from the face of their reports, all three agree that the applicant suffers from a mental disorder within the meaning of the 2001 Act and all three were satisfied that if not detained in the approved centre, the applicant would become non-compliant with medication, which is essential to treat the applicant in respect of a diagnosis he does not accept, and lacks insight into, being medication he does not accept that he needs, which medication he only accepts by reason of his detention in the approved centre in question, against an established history of failing to take medication when in the community. Dr. Frazer's views also include that the applicant's previous behaviour is a predictor of his future behaviour.

43. It is not in dispute that the respondent had before it and considered prior to making the decision impugned in the present proceedings, all three reports by the Consultant Psychiatrists which I have examined in some detail above. It is also a fact that in its record of the proceedings, the respondent recorded, at s. 20, that it had access to the applicant's medical records. Nor is it in dispute that the respondent heard evidence from Dr. Noonan and from the applicant as well as submissions made on behalf of the applicant. The records which were before the respondent comprise "Exhibit FC4" to the affidavit of Fiona Crawford BL, sworn 26 April 2021. Ms. Crawford swore that affidavit on behalf of the respondent for the purposes of supporting the statement of opposition dated 26 April 2021 in circumstances where Ms. Crawford was the Chair of the respondent. It is common case that a mental health tribunal comprises a legally qualified Chairperson, a doctor and a lay member, being a tribunal of three. It is open to such a tribunal to reach either a unanimous or a majority decision and either outcome will constitute, in fact and in law, a decision. In the present case, the respondent's decision was by majority and there is no claim made that the decision is in any way flawed by reason of being a majority, rather than a unanimous decision. In her affidavit, Ms. Crawford avers, at para. 4, that both the decision and the record of same were completed by her and in her handwriting, in Ms. Crawford's capacity as Chair of the respondent and she avers that she signed the record for and on behalf of the other two members of the respondent after obtaining their consent, in circumstances where the hearing was conducted remotely, by telephone, due to Covid-19 public health requirements.

44. At para. 5 of her affidavit, Ms. Crawford refers to a small and inconsequential amendment which was made in order to reflect the accurate start time of 11.05am, the finish time being 1.30. Nothing turns on the foregoing. Ms. Crawford exhibits the handwritten notes made by Mr. Manus Hanratty, the lay-person member of the respondent which, she avers, were taken in the course of the proceedings and these comprise her Exhibit "FC2", whereas the final version of the record of the proceedings constitutes her Exhibit "FC1". Ms. Crawford also exhibits the handwritten notes made by her during the course of the proceedings, being Exhibit "FC3". At para. 10, Ms. Crawford avers that the contents of the following reports and records were considered by the members of the respondent in their deliberations, namely Dr. Cosgrove's report, Dr. Frazer's report, Dr. Noonan's report and the applicant's psychiatric records from the approved centre between the making of the renewal order (25 January 2021) and 11 February 2021 (the day before the respondent sat).

The applicant's medical records

45. The aforesaid records comprise Exhibit "FC4". These include the certificate and renewal order dated 25 January 2021 signed by Dr. Noonan to which I have referred earlier in this decision. They also include a "*Patient Notification of the making of an Admission Order or a Certificate and Renewal Order*" pursuant to the 2001 Act and there is no dispute about the fact that this Notification was given to the applicant, in compliance with the relevant provisions of the 2001 Act, specifically s. 16. The records which were before the tribunal include *inter alia* the applicant's "*medication record*" and records in relation to "*regular prescriptions*" detailing the medications administered and the relevant dates as well as records in relation to "*when required*" prescriptions for other medications and records concerning "*depot prescription*". In addition, the records include nursing notes with regard to the applicant which comprise manuscript entries completed, in chronological order, beginning on 24 January 2021 with an entry at 18:55 and ending on 11 February 2021 with an entry at 06:45. These include, *inter alia*, the following entries:-

Date Entry in Medical Record

25/1/21 "*Doesn't think he needs medication. Takes it currently because he feels he has to...*

[] *Has schizophrenia and no insight.*

Were he to leave hospital it is likely he would stop treatment, relapse and psychosis driven behaviour would cause a high risk of violence to others.

The only way to modify []'s risk to others is to treat him with anti-psychotic behaviour and the only way to ensure treatment is for [] to be treated as an inpatient.

Renewal order completed. [] advised of dates entitlement to tribunal in 3 months if the tribunal within 21 days leads to affirmation of order, Circuit Court appeal entitlement and communication with the inspector of mental health services.

Notification order given to [] ..."

46. The notes make reference *inter alia* to the applicant testing positive for Covid-19 and records his progress on a daily basis referring, *inter alia*, to physical health, mood, perceptions, behaviour etc. With regard to the period immediately prior to the respondent tribunal meeting, the records include *inter alia* the following entries:

Date Entry in Medical Record

10/2/21 "Reviewed. Tribunal discussed. I said I would be stating he had a mental disorder and required ongoing in-patient care.

[] said he only hears voices when he 'comes down off medication'.

He was first prescribed medication in St. Patrick's to where he was illegally (in his opinion) admitted and diagnosed with bipolar.

[] said he is taking medication because he is forced to do so and would like to come off it and be left alone.

He said if he gets married he and his wife will go abroad, away from his family and he will, with her support, come off medication.

[] remains insightful. Discharge would lead to discontinuation of medication and relapse.

Relapse of psychosis leads to behaviour that could result in the serious injury or death of others.

In my opinion [] meets 3(1)a and b criteria for mental disorder. A. Noonan 22588 ..."

10/2/21

(18.45)

"[] continues to be nursed in isolation with restricted movements as per Covid guidelines. Presents as pleasant and amenable to staff direction. Compliant with medication, however continues to remain insightful with regards to medication compliance 'I don't want to be on medication. There's nothing wrong with me'. Staff continue to monitor vital signs as per Covid guidelines ..."

47. The foregoing records were, without doubt, before the respondent and they contain, *inter alia*, not only evidence by a medical professional that the applicant remains "insightless" as regards his need for essential medication, but a contemporaneous record of the applicant's view that he does not need medication, that there is nothing wrong with him and of his intention, in the future, to come off medication were he to be discharged.

Statement of Opposition

48. The statement of opposition filed on behalf of the respondent takes issue with each and every aspect of the applicant's claim and asserts that the decision of the respondent to

affirm the renewal order in question was a valid one, properly reasoned and properly made within the respondent's jurisdiction. With regard to the hearing which took place on 12 February 2021, Ms. Crawford makes the following uncontested averments at para. 9 of her affidavit:

"The hearing was held remotely by telephone conference. The Tribunal heard evidence from Dr. Noonan, from the applicant himself, and submissions were also made by the applicant's legal representative on his behalf. The Tribunal then adjourned to consider its decision and convened privately by telephone at this time. After deliberations and discussions, by a majority decision of 2:1, the Tribunal affirmed the Renewal Order. This conclusion was reached by the members having considered the contents of all of the reports delivered, the evidence given, and submissions made by the applicant's legal advisor Mr. Llussà and then the subsequent deliberations of the Tribunal. Once the decision was made, the decision was written and thereafter the Tribunal was reconvened by telephone and as Chair of the Tribunal I read out section 20 of the record, being the Decision and the reasons for the Decision to the applicant as to his solicitor, Mr. Llussà. I also asked if provision would be made for a consultation between Mr. Llussà and the applicant herein after the decision and reasons were read out. There were no questions from the applicant or his solicitor after the decision was read out. The decision and the record were then transmitted to the Commission which then becomes available to the approved centre and the applicant's solicitors via the Commission's ID System, CIS, for Tribunals."

49. At para. 20, Ms. Crawford avers *inter alia* "...that the reasoning of the Tribunal is apparent from the decision and the record and that the decision is clearly based on the evidence given, the reports and records considered and the submissions made. I say and believe that it was a well-reasoned decision which decided on good and substantial grounds that the Renewal Order should be affirmed." She goes on, at para. 21, to aver that the decision engages with the evidence and applies the correct statutory test based on the evidence considered and that the decision is also in accordance with common law and constitutional principles and obligations. Ms. Crawford avers that the decision, taken by majority, being that the respondent considered that the applicant was suffering from a mental disorder within the meaning of s. 3(1)(b)(i) and (ii) of the 2001 Act which, is a conclusion supported by the evidence considered. She also avers that the decision reached was reasonable and rational and, on behalf of the respondent, she seeks that the reliefs sought by the applicant be refused. It is appropriate, at this stage, to look closely at the decision itself.

The decision of 12 February 2021 – "Form 8"

50. The decision is exhibited at "AL5" to Mr. Llussà's affidavit and also comprises exhibit "FC1" to Ms. Crawford's affidavit. As well as the applicant's name, address, date of birth and the details of the approved centre, the decision records the date of the applicant's involuntary admission (07 April 2019), the date of the order being reviewed (25 January 2021) and the date the respondent sat (12 February 2021). It is plain that the Mental

Health Commission have provided a pre-printed form, identified as a "Form 8 – Mental Health Acts 2001 to 2020 (As Amended) Sections 18, 21 or 28(5)". In the manner explained by Ms. Crawford, she completed the form and it is plain that this required both "ticking" appropriate "boxes" and inserting information in manuscript. Section 8 records the fact that the respondent considered the "Section 17 (1)(c) Report" prior to making its decision, the appropriate "box" having been "ticked". It will be recalled that this section refers to the report of the independent consultant psychiatrist (in the present case, Dr Cosgrave's report). Thus, the completed version of Section 8 of the decision evidences the fact that it involved a consideration of the independent consultant's report.

51. Section 9 clearly sets out what the respondent has decided in the context of the obligation upon it pursuant to s. 18(1), namely, the relevant "box" is "ticked" opposite the statement "*the patient is suffering from a mental disorder...*" In the manner explained earlier in this decision, there is no question of there having been any failure to comply with procedural matters. The fact that the respondent decided that the applicant was suffering from a mental disorder is perfectly clear from the face of the decision. Equally clear, from s. 10, is that the respondent's decision was to affirm the 25 January 2021 order, the appropriate box having been "ticked" opposite the words "*we affirm this order*". The fact that the respondent's decision was by majority, rather than unanimous, takes nothing away from the fact of the decision made or the clarity of same. It is noteworthy that the pre-printed form provided by the Mental Health Commission which records the decision does not require the respondent, if satisfied that a patient is suffering from a mental disorder, to state whether the respondent was so satisfied, in light of s. 3(1)(a) or s. 3(1)(b) or both. This is unsurprising given that the fundamental question is whether the patient is suffering from a mental disorder, or not, and if not so satisfied, the respondent is mandated to revoke the order whereas, if so satisfied, the respondent is obliged to affirm same.
52. The second page of "Form 8" comprising the decision was signed by Ms. Crawford on 12 February 2021, for and on behalf of the respondent. The foregoing is followed by ten pages, each of which is entitled "*Record of Mental Health Tribunal Proceedings*". The first of these identifies the applicant, the hearing date and those present, namely, the applicant, Ms. Crawford (as Chairperson), Dr. Aideen Moran (who is identified as the Tribunal Consultant Psychiatrist), Mr. Manus Hanratty, (identified as the Tribunal lay member), Mr. Llussà, (legal representative of the applicant) and Dr. Noonan, (the responsible Consultant Psychiatrist). The third page also includes information which is uncontroversial in the context of the present proceedings.
53. At section 6 thereof, the relevant box is "ticked" "yes" to indicate that all the relevant patient records were made available to the respondent. In submissions during the trial it was suggested on behalf of the applicant that not *all* his records were made available, in that the records furnished to the Tribunal were those between 25 January 2021 and 11 February 2021. It seems to me that nothing whatsoever turns on this submission. The records which were furnished appear to me to be the relevant ones, in circumstances where it cannot be disputed that the role of the respondent is to review the position as at

the date of the order in question, which in this case was a renewal order dated 25 January 2021. Thus, all relevant records were made available to the respondent Tribunal and I have already noted what they state.

54. The fourth page of the record of the proceedings refers to the start and finish time and nothing turns on this. The fifth page contains *inter alia*, section 15 which states: "Provide details of any oral and/or written submissions and associated documents received from the legal representative and/or patient (NOTE: These may be attached to the record of proceedings)". Directly under this, Ms. Crawford has written the following:

- "- Copy of psychiatric forensic report Dr. Frazer 8/2/21 circulated to Tribunal.
- All paperwork in order.
- Submission that detention only option at moment within the Act. Act falls short of protecting patients. Patient functions well on medication. If order to continue indefinitely, due to lack of insight that RCP & forensic agree – disproportionate. Art. 5 & 8 ECHR & Art. 40.3 – alternative community treatment orders available UK, NZ & Australia. Insight will not improve – therefore in hospital forever. Other option of living in community."

55. Thereafter, section 20 of the printed form states: "Please provide Reasons for the Decision of the Mental Health Tribunal" and it is appropriate to quote, in full and verbatim, what appears in s. 20 under the foregoing heading and the applicant's name on what is the seventh page of the record of the decision:

"By a Remote hearing of a Mental Health Tribunal held on the 12th day of February 2021, it was hereby decided by majority to affirm the admission order/renewal order of 25th January 2021, in respect of the above service user.

The Tribunal had access to the medical records of [], the section 17 report from Dr. Cosgrave dated 31st January 2021, the medical report of Dr. Noonan (RCP) pursuant to s. 17(1)(d) of the Act, the forensic psychiatric report of Dr. Frazer dated 8th February 2021 & also heard evidence from Dr. Noonan & Mr. [] in the making of this decision. The Tribunal further heard submissions on behalf of Mr. Noonan."

56. It is plain that the latter reference to "Mr. Noonan" is a typographical error and it is common case that the reference was to submissions which were made on behalf of the applicant. Nothing turns on this slight error.
57. It is appropriate to state at this juncture that the reasons given for the decision make explicit reference to the material which was before the respondent, which included the 3 reports from three different Consultant Psychiatrists. I have looked at those 3 reports in some detail and it is fair to say that there is no dispute between any of the medical experts as to the fact that the applicant is suffering from a *mental disorder* for the purposes of s. 18 of the 2001 Act, having regard to the definition of that term set out in

s. 3 of the said Act. It is also clear from those reports that the three Consultant Psychiatrists are unanimous as to the fact of the applicant's diagnosis with schizophrenia, the fact that he does not accept this diagnosis, the fact that he lacks insight, the fact that he does not accept that he needs to take any medication, the fact that he has a history of non-compliance with medication, the fact that he only takes medication because he has to in the context of his involuntary admission, the fact that were he to cease to take medication, it would have very serious adverse consequences including for him and there is no dispute whatsoever between all three clinicians that, if discharged into the community, the applicant would cease taking medication.

58. Section 20 continues (on what is the eighth page of the record) as follows:

"Dr. Noonan provided evidence to the Tribunal of the history & medical treatment afforded to Mr. [] since admission in April 2019. Mr. [] has a history of schizophrenia & has presented with delusions & hallucinations. Mr. [] himself accepted that can hear voices. When hospitalised, Mr. [] takes anti-psychotic medication & with this medication he is well settled, has excellent self-care & good social functioning. When in the community in the past, he stops taking medication which results in further hospitalisations. Dr. Noonan outlines [] lacks insight. Dr. Frazer is also in agreement on this aspect in his report."

The foregoing summary is entirely consistent with the views expressed by the relevant Consultant Psychiatrists in the reports to which the record of the decision refers. It is true, for obvious reasons, that Ms. Crawford did not write into this record, verbatim and in full, the contents of the three reports by the three Consultant Psychiatrists. It could hardly be suggested that there was an obligation upon her to do so, in circumstances where, in the record of the decision, explicit reference was made to those 3 reports which, it is not in doubt, were available to all relevant parties (including each of the members of the respondent Tribunal, the applicant and the applicant's legal representative).

59. The statement in the decision that *"When hospitalised [the applicant] takes anti-psychotic medication"* is entirely consistent with what doctors Noonan and Crawford make clear in their reports, namely, that the applicant only takes the medication he requires because he has to in the context of being an involuntary patient. The statement made by Ms. Crawford that *"When in the community in the past, he stops taking medication which results in further hospitalisations"* is also entirely consistent with the facts set out in all three reports by the Consultant Psychiatrists. The statement in the decision that the applicant *"lacks insight"* is also entirely consistent with what all three Consultant Psychiatrists have said in their respective reports (the facts detailed in same including that the applicant, once in the community, ceases to take medication which he does not believe he needs, in respect of a mental illness he does not believe he has, resulting in lapses causing adverse consequences in respect of which he has no insight).

60. Section 20 of the respondent's record continues, on the ninth page, in the following terms:

"Dr. Noonan outlined to the Tribunal that [] currently satisfies the criteria for mental disorder within the terms of section 3(1)(a) & (b)(i) & (ii) as of today's date.

Mr. [] gave evidence that he would take medication on discharge or if in the community. (continued on next page)"

61. At this juncture it is appropriate to make the following observations. It is a matter of fact that Dr Noonan outlined to the respondent that the applicant satisfied the criteria for mental disorder within the meaning of both s. 3(1)(a) and s. 3(1)(b)(i) & (ii). It is a matter of fact that no evidence whatsoever was put before the respondent to the effect that he was not suffering from a mental disorder within the meaning of s. 3, for the purposes of s. 18 of the 2001 Act. The evidence that the applicant was suffering from a mental disorder was consistent, unanimous and overwhelming. It was also unchallenged. It is, of course, true that the applicant gave evidence that he would take medication if discharged and this is recorded in the record of the proceedings. It is equally clear, however, that the fact the applicant stated this intention was given careful consideration in the reports prepared by both his treating consultant psychiatrist and the independent consultant psychiatrist. It is not necessary to repeat here what was said on this topic earlier in this judgment. Suffice to say that, as well as considering the fact that the applicant stated that he would take medication if discharged, other relevant facts were also considered by Dr. Cosgrave, including that the applicant did not believe that he needed to take this medication, had no insight into his illness, had no insight that relapses due to non-compliance with medication lead to adverse effects, had a consistent history of stopping medication with adverse consequences and only takes medication because he has to in the context of being an involuntary in-patient. All these facts are clearly identified in Dr. Cosgrave's report. Thus, I am entitled to conclude that Dr. Cosgrave took account of them in the context of the view which she formed and expressed. The view formed by Dr. Cosgrave is very clear, namely, that the applicant was *"very likely to stop taking his psychiatric medication if he is not in a position where he was required to take same"* (and he is required to take same by reason of being an involuntary in-patient). Similar views were expressed to Dr. Cosgrave by Dr. Noonan, who was *"positive that [the applicant] would stop taking medication and relapse if discharged"*. This is also a view shared by Dr. Fraser who, as is clear from s. 18 of his report, applied his mind to the question of whether the applicant would or would not be likely to take medication if discharged into the community. Dr. Fraser was equally clear in his view that, given the applicant's *"lack of insight"*, he would *"rapidly become non-compliant with medication"* if he were released into the community, being *"the pattern of his previous admissions"*. In other words, the applicant's assertion, during his evidence to the Tribunal, that he would take medication on being discharged into the community was specifically addressed by all three consultant psychiatrists in their respective reports and all three were of the view, as is entirely clear from their reports, that, if released from the approved centre, the applicant would rapidly become non-compliant with the medication which is essential in the context of his treatment, resulting in a serious deterioration which would require treatment in the approved centre to alleviate. In short, release would, in the view of the three consulting psychiatrists result in non-compliance

with medication leading to a relapse with adverse consequences leading inevitably to a re-admission in order to provide treatment in the approved centre. The foregoing is, of course, a view entirely congruent with the meaning of the term "*mental disorder*" as per s. 3(1)(b) of the 2001 Act.

62. The final two pages of s. 20 of the respondent's record state the following:

"There were no submissions on the paperwork. The Tribunal heard submissions that the current in-patient treatment in circumstances where insight is not improving & where patient functions well on medication but this only being provided as an in-patient at present, with no facility for a community treatment order is disproportionate on a constitutional basis & also under Articles 5 & 8 of the ECHR.

By dissenting decision, it was decided to revoke the order. In support of this decision, the RCP stated that Mr. [] had benefitted fully from treatment in all aspects of his illness except still appears to have no insight. Mr. [] disputes this & acknowledges he has a psychiatric illness and would take his medication on discharge.

By majority decision, the Tribunal hereby is satisfied that Mr. [] suffers from a mental disorder & affirms the renewal order under section 3(1)(b)(i) and (ii) of the Mental Health Act, 2001."

63. The foregoing comprises the end of the record of the decision which was signed by the chairperson, on behalf of the respondent, on 12 February 2021. The reference to there having been no submissions "*on the paperwork*" represents a confirmation that there were no issues raised as to procedural compliance. The reference to the applicant's "*insight ... not improving*" is entirely consistent with the evidence which was before the respondent in the form of reports from three consultant psychiatrists each of whom offered the view that the applicant lacks insight, not believing he has schizophrenia, not believing that he needs medication and also lacking insight in relation to the adverse consequences of ceasing to take medication, something he has an established history of doing, leading to adverse consequences requiring re-admission.
64. The reference to the applicant functioning well on medication but only in the context of being provided same as an in-patient is, also, entirely consistent with the views expressed by all three consultant psychiatrists. The reference to there being no facility for a "*community treatment order*" reflects the fact that no such order was, or is, within the jurisdiction of the respondent to grant. Earlier in this judgment I referred to what is an important but very limited jurisdiction insofar as what the respondent Tribunal was required to decide and it is common case that the respondent had no power to grant a "*community treatment order*" as an alternative to the decision it had to make. It will also be recalled that Dr. Fraser's report is the one which mentioned the significance, in a *different* jurisdiction, of a community treatment order, an essential component of which, if granted, would be the requirement that the applicant take medication. It will be recalled that Dr. Fraser was equally clear in his view that, in the absence of a regime providing for

such a community treatment order, the applicant was correctly detained under the 2001 Act, his illness being both of a nature and degree to warrant ongoing detention. Dr. Fraser was also clear that it was very difficult to supervise the applicant in the community when he was not under any obligation to take medication and Dr. Fraser was very clear in his view that the applicant would rapidly become non-compliant with his medication as he does not consider that he requires treatment and lacks insight.

65. The sentence: "*By dissenting decision, it was decided to revoke the order*" is not the most elegant of phrases, but there is no doubt as to what it means, in the context of the overall decision. It means that one member of the respondent expressed a dissenting view. It is equally clear that the respondent went on to record the view of the dissenting member who was in favour of revoking the order on the basis of the applicant's evidence of his intention to take medication if discharged. Plainly, this was not a majority view, and quite apart from the medical evidence in the form of the three consultant psychiatrists' reports, the face of the record of the respondent's decision also identifies key factors constituting the reasons for the majority decision, namely (1) the applicant's schizophrenia; (2) the symptoms thereof including the applicant's acknowledgment that he can hear voices; (3) the fact that, when hospitalised, the applicant takes anti-psychotic medication; (4) the fact that when he takes medication, in the hospital context, the applicant is well settled, has excellent self-care and good social functioning; (5) the fact that the applicant has a history, when in the community, of not taking medication; (6) the fact that the applicant's history of failure to take medication in the community has resulted in the need for readmission for treatment; (7) the fact that the applicant lacks insight; (8) the fact that the applicant's lack of insight is not improving; (9) the fact that, were he to be released into the community, there is no facility for a community treatment order which would oblige the applicant to take medication outside of the approved centre and setting. All of the foregoing is clear from the fact of the record of the decision before, as I say, one even looks at the contents of the 3 reports by 3 different consultant psychiatrists, which reports were specifically referred to in the decision itself.
66. It can also be said that, whereas the record of the proceedings notes that the applicant "*acknowledges he has a psychotic illness and would take his medication on discharge*", both of those assertions are wholly and entirely undermined by all of the medical evidence. Each and every one of the three consultant psychiatrists are satisfied that the applicant lacks insight into his illness and does not accept his diagnosis. Furthermore, both assertions made during the applicant's evidence on 12 February 2021 are wholly at odds with the contemporaneous record of the applicant's expressed views just two days earlier, i.e. on 10 February 2021 (18:45), where the applicant's first-person statement is recorded in an entry from his medical records, which states inter alia, the following:

"...Compliant with medication. However continues to remain insightful with regard to medication compliance. 'I don't want to be on medication. There's nothing wrong with me.' Staff continue to monitor vital signs as per Covid guidelines."
(emphasis added)

The applicant's evidence on 12 February (that he acknowledges that he has a psychotic illness and would take his medication on discharge) is also wholly undermined by other statements made by the applicant, on 10 February 2021, as recorded in his medical records, namely, that the applicant **"...said he is taking medication because he is forced to do so and would like to come off it and be left alone"** (the relevant entry being dated "10.2.21" and appearing on the third last page of the medical records which were provided to the respondent), which entry goes on to record the applicant's statement that **"...if he gets married he and his wife will go abroad away from his family and he will, with her support, come off medication"**. The same record also states very clearly that the applicant *"remains insightful"* and that *"discharge would lead to discontinuation of medication and relapse"*.

67. The decision made, by majority, by the respondent is very clearly set out both in the two-page "form 8" decision and in the reasons for the decision, comprising section 20 of the record of the respondent's proceedings, namely the decision that the respondent *"is satisfied"* that the applicant suffers from a *"mental disorder"*, relying specifically on s. 3(1)(b)(i) & (ii) of the 2001 Act. It will be recalled that the role of the respondent pursuant to a s. 18 review was to decide whether satisfied, or not, that the applicant was suffering from a mental disorder. Being so satisfied, the respondent affirmed, as it was required to do, the renewal order dated 25 January 2021.
68. There was ample evidence to support the decision made by the respondent. There was un-contradicted evidence by no less than three Consultant Psychiatrists who identified the condition from which the applicant suffers and also confirmed his lack of insight, his pattern of a refusal to take medication due to this lack of insight, the adverse consequences including for the applicant when off his medication, and the fact that his lack of insight and the resultant non-compliance with medication inevitably leads to readmission for necessary treatment. The record of the respondent's proceedings clearly set out that the statutory elements of the term *"mental disorder"* as defined in s. 3(1)(b) were met. Earlier in this judgment, I set out s. 3 in full. The first element of s. 3(1)(b) is that the severity of the illness in question is causing the judgment of that person to be impaired. It is perfectly clear from the record of the respondent's proceedings that consideration was given to this element and that in the respondent's view this element was met on the evidence. Given the unanimous views of the three consultant psychiatrists who prepared reports which the respondent explicitly referred to in the reasons for its decision, it is plain that there was overwhelming evidence before the respondent entitling it to hold that this element had been met.
69. The second necessary element of *"mental disorder"* as defined in s. 3(1)(b) is that a failure to detain the person concerned would lead to a serious deterioration in their condition or would prevent the administration of appropriate treatment. Again, it is clear from the reasons given by the respondent that it considered this element as having been met on the evidence and the three reports by the Consultant Psychiatrists undoubtedly expressed the unanimous view that a failure to detain the applicant would lead to non-

compliance with medication, resulting in a serious deterioration in his condition, namely a relapse in circumstances where he would not be receiving appropriate treatment.

70. The third element is that detention would be likely to benefit or alleviate the person's condition to a material extent and it is clear from the reasons given by the respondent that this aspect was also considered and that the respondent came to the view that this element of s. 3 (1)(b) was met on the evidence. Once again, the reports of all three Consultant Psychiatrists make very clear that the applicant would benefit to a material extent from detention and treatment. The evidence on this issue was overwhelming and included the fact that, by reason of detention, the applicant avails of medication he requires in the context of his condition and the consequence of receiving necessary medication, with which he would be non-compliant if in the community, is that, in the hospital setting (but not otherwise), the applicant is well settled, has excellent self-care and good social functioning. The summary provided in section 20, which provides reasons for the decision, is entirely consistent with the evidence, both written and oral, which was before the respondent Tribunal and this evidence undoubtedly satisfied the essential elements of "*mental disorder*".
71. Having looked at the decision, the evidence upon which it was based, and the reasons given for it, it is appropriate to look to the legal submissions made to this court.

Legal Submissions

72. The court was furnished with detailed written submissions by both parties and these were supplemented by means of oral submissions made with sophistication and skill by senior counsel for the applicant and respondent, respectively. I have very carefully considered the contents of all submissions made. Among those made on behalf of the applicant is that the reasoning and rationale underpinning the respondent's decision cannot be ascertained from its terms and thus, it is argued, the applicant cannot know what, if anything, he can or must do in order to achieve a different outcome in a further review or appeal. It is also submitted that the reasoning for the decision is so unclear that it is unknown whether the respondent has interpreted and applied, correctly, the statutory criteria for involuntary detention. It is submitted that neither the applicant, nor this court in the context of the judicial review application before it, can know whether the decision is reasonable or rational or otherwise in accordance with law. Without prejudice to the foregoing submission, it is argued that the decision is unreasonable and irrational. It is also submitted, with reliance on the decision in *Mulholland v An Bord Pleanála* (No. 2) [2006] 1 IR 453, that the decision fails to meet the burden on the respondent to give clear and cogent reasons for its decision in order to allow the applicant to have sufficient information to enable him to consider whether he has a reasonable chance of succeeding in an appeal and to "arm himself" for same. It is also submitted that, in failing to give proper reasons, the respondent fell into unconstitutionality and breached the requirements of natural justice and, thus, acted without jurisdiction and that the respondent's decision is liable to be quashed, *The State (Holland) v Kennedy* [1977] 1 IR 193 being relied on. Furthermore, with reliance placed on the decision in *Deerland Construction Ltd. v Aquaculture Licences Appeals Board* [2008] IEHC 289, [2009] 1 IR

673, the applicant submits that the respondent's decision fails to comply with the relevant statutory obligations upon it to state its reasons and it is submitted that the decision goes no further than stating the conclusion reached, without giving a clue as to how it was reached. Relying on the Supreme Court's decision in *EMI Records (Ireland) Ltd v Data Protection Commissioner* [2013] IESC 34, [2013] 2 IR 669, the applicant contends that there is reasonable doubt as to what the reasons actually were for the respondent's decision and, insofar as the respondent alleges that reasons can be inferred from the decision, it is submitted that this practice has been deprecated and that no, or no adequate, reasons have been given or can be discerned, the applicant submitting that legal certainty requires that reasons be determined with some reasonable measure of precision, said to be absent in the present case. Submissions are also made on behalf of the applicant, with reliance on the Supreme Court decision in *M.D. v Clinical Director of St. Brendan's Hospital* [2008] 1 IR 632, with the decision in *H.K. v Llanarth Court Hospital* [2014] UKUT 410 (AAC) said to be persuasive as to the type of reasoning that ought to be expected from the respondent. On behalf of the applicant, submissions are also made with reliance on Art. 6.1 of the European Convention on Human Rights and Fundamental Freedoms, 1950 ("the Convention") as interpreted by the European Court of Human Rights ("the ECtHR"). In essence, it is submitted that, contrary to the applicant's rights, the applicant has not been provided with the basis upon which the decision authorising his continued involuntary detention was made and it is submitted that, in respect of the giving of reasons, the respondent fell below the standards required of it by law.

73. The respondent's submissions engage fully with the foregoing, with particular reliance being placed on the decision in *M.R. v Byrne* [2007] 3 IR 211 and the later decision in *A.X. v Mental Health Tribunal* [2014] 1 IR 88. In essence, it is submitted on behalf of the respondent that the latter discharged its functions and duties pursuant to the 2001 Act. It is submitted that the respondent gave adequate and proper reasons for its decision and acted rationally in reaching its decision in accordance with the evidence, and not otherwise. It is submitted that the respondent at all times acted within jurisdiction and in accordance with the principles of natural and constitutional justice. It is submitted that the respondent was not bound to provide a discursive judgement, reliance being placed on *O'Donoghue v An Bord Pleanála* [1991] ILRM 750 and it is argued that the reasons given are both clear and sufficient. Reliance is also placed by the respondent on *Faulkner v Minister for Industry and Commerce* [1997] 8 ELR 107 wherein the Supreme Court referred to administrative tribunals being required only to give the broad gist of the basis for their decisions, a similar approach having been taken, submits the respondent, in *O'Connor v Minister for Agriculture* [2016] IEHC 336. Submissions are also made on behalf of the respondent, relying on the decisions in *EMI Records Ltd. v Data Protection Commissioner and Eircom Ltd.* [2013] 2 IR 669 and *Dehan v State Examinations Commission* [2016] IEHC 213 to the effect that a party is entitled to sufficient information to enable it to assess whether the decision is lawful but the reasons do not necessarily have to be elaborate, the extent to which elaboration is required being dependent upon the facts of the individual case. It is submitted on behalf of the respondent that, in the present case, the statutory, common law and constitutional duties to provide reasons were met. Having regard to the decision in *O'Keefe v An Bord Pleanála* [1993] 1 IR 39,

the respondent also submits that there is no basis to challenge the decision on rationality grounds.

Discussion and decision

74. Among the authorities drawn to the court's attention by learned counsel, the most useful starting point appears to me to be this court's decision (O'Neill J.) in *M.R. v Byrne* [2007] 3 IR 211. This decision post-dated the introduction of the 2001 Act, and, in the manner which will become clear, there are a number of similarities with regard to the issues which arose in that case and the application with which this court is concerned. As to the background, the responsible Consultant Psychiatrist made a renewal order pursuant to s. 15(2) of the 2001 Act, certifying his opinion that the applicant should continue to be detained for a further three month period. This certification was made on the basis that the applicant suffered from a mental disorder within the meaning of s. 2(1)(a) of the 2001 Act, in circumstances where the applicant continued to suffer from persecutory delusions, lacked insight and was not adherent to medication. A Tribunal affirmed the renewal order and the applicant challenged the legality of her detention on the grounds that, *inter alia*, there was no basis for the Tribunal's decision that the applicant suffered from a mental disorder within the meaning of s. 3 of the 2001 Act, that the Tribunal had not properly considered whether or not there had been compliance with s. 15 of the 2001 Act and at the Tribunal could not properly have considered that the failure to comply with s. 15 did not affect the substance of the order and did not cause injustice. As the head note makes clear, the court found that the applicant's detention was lawful and held -

"1, that a purposive approach should be adopted in interpreting the Mental Health Act, 2001. The court must bear in mind, in interpreting the Act of 2001, that it was of a paternal character, clearly intended for the care and custody of persons suffering from mental disorders."

In the body of the decision, Mr. Justice O'Neill stated, at para. 38, that:

"Before going on to deal with the facts of this case it is appropriate to draw attention to s. 4 of the Act of 2001 which in my opinion gives statutory expression to the kind of paternalistic approach mandated in Re. Philip Clarke [1950] I.R. 235 and approved in Croke v Smith (No. 2) [1998] 1 I.R. 101 and also as mentioned earlier, in Gooden v St. Otteran's Hospital (2001) [2005] 3 I.R. 617."

75. The reference to s. 4 of the 2001 Act is a reference to the section entitled "*Best interests etc., of person.*". It is appropriate to set out, at this point, what s. 4 provides, namely:

"4. -(1) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person), the best interests of the person shall be the principal consideration with due regard being given to the interests of other persons who may be at risk of serious harm if the decision is not made."

- (2) *Where it is proposed to make a recommendation or an admission order in respect of a person, or to administer treatment to a person, under this Act, the person shall, so far as is reasonably practicable, be notified of the proposal and be entitled to make representations in relation to it and before deciding the matter due consideration shall be given to any representations duly made under this subsection.*
- (3) *In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person) due regard shall be given to the need to respect the right of the person to dignity, bodily integrity, privacy and autonomy."*

76. Several comments seem appropriate to make with regard to the foregoing. There is no evidence whatsoever that the applicant was other than appropriately notified and in a position to make representations with the assistance of a legal representative. Nor is there any evidence which would allow the court to take the view that the respondent, or any of the Consultant Psychiatrists who provided evidence, written or oral, did not have due regard to the need to respect the applicant's right to dignity, bodily integrity, privacy and autonomy. It seems to me to be of some significance that the 2001 Act explicitly mandates that the principal consideration, with regard to a decision made by the respondent concerning the applicant, is the "*best interests*" of the applicant, with due regard to the interests of others, in the manner dealt with in s. 4. This seems to me to be an explicit recognition of the fact that what constitutes the applicant's best interests may differ from the applicant's wishes. Thus, the statutory framework within which the respondent made a decision is wholly unlike, for example the planning law regime. Plainly, it would be non-sensical to suggest that a Local Authority, or An Bord Pleanála, could lawfully make a decision to refuse an application for planning permission because it took the view that granting permission, although something the applicant wished for, was not in the applicant's best interests. That is not to suggest that the respondent merely applied a best interests test. On the contrary, they plainly made the decision which they were required to make, namely whether or not the respondent was satisfied that the applicant was suffering from a mental disorder within the meaning of s. 3 of the 2001 Act. I highlight the foregoing, however, to illustrate that, although undoubtedly an administrative body, whose decisions made under s. 18 of the 2001 Act, are amenable to judicial review, one is not dealing with, for example, rights asserted by commercial entities in the context of others asserting competing rights. Given what is at issue, the Act explicitly envisages that what might happen as a result of a s. 18 review could be something which the relevant patient objects to vociferously. It could also be, in such a scenario, that regardless of how detailed, extensive and discursive the reasons given, it may not be possible for the relevant patient to achieve a *different* outcome in a further review or appeal if the factual position remained unchanged. Again, this is wholly unlike, say, a theoretical scenario in the planning context where the unsuccessful applicant anxious, in this example, to build a 5-storey building is informed that, subject to identified alternations, planning would be granted for, say, a 4-storey development. The latter is a situation where parties are met on a level playing field insofar as their capacity is

concerned, each asserting rights, consistent with what they themselves identify as their best interests and having the capacity to make, unilaterally, material changes to relevant facts. By contrast, the court, in *M.R.*, has recognised the element of paternalism which, for entirely understandable reasons, is woven into the fabric of the 2001 Act. That is not for a moment to say that the respondent can or in the present case did give other than due weight to all evidence and submissions made by or on behalf of the applicant. It is, however to say that, unlike in commercial and other scenarios, the applicant's wishes may differ from the applicant's best interests and the applicant's expressed intentions as to future action may be undermined, as in this case, by evidence indicating the contrary.

77. Given the relevance of the *M.R.* decision, it is appropriate to quote from same at some length, beginning with para. 47, as follows:

"[47] The applicant's challenge as to the form of the order of the Mental Health Tribunal on the compliance issue is to the effect that the record of the decision of the tribunal does not reveal a consideration of and determination on the question of compliance and it was submitted on behalf of the applicant that a consideration of and determination on compliance was a necessary statutory task imposed upon the tribunal by s. 18(1)(a)(i) of the Act of 2001.

[48] The decision of the Mental Health Tribunal was to affirm the renewal order made by Dr. O'Neill on the 21st December, 2006, but its finding was that there was a 'mental disorder', but not on the basis as so found and certified by Dr. O'Neill, namely s. 3(1)(a) but on the second basis namely that set out in s. 3(1)(b).

[49] The applicant challenges the substance of this decision by the Mental Health Tribunal on the ground that the decision as revealed in the record of it and the reasons therein set out for the decision are invalid because the standard or test applied by the tribunal, as disclosed in the record of the decision, for the making of a finding of 'mental disorder' under s. 3(1)(b) was wrong and failed to have regard to the necessary elements as set out in s. 3(1)(b)(i) and (ii). Specifically in this regard it was contended that the record of the tribunal did not reveal any consideration of or determination on, whether or not the applicant's condition would deteriorate, that the absence of a renewal order would prevent the administration of appropriate treatment that could only be given by involuntary admission and that the applicant's condition would benefit to a material extent by the making of the renewal order. In addition, the applicant criticised the specific finding of the tribunal, viz 'In the event of her being changed to a voluntary status compliance with medication and occupational therapy, would not be guaranteed', as being the application of a wholly inappropriate test or standard; the use of the phrase 'would not be guaranteed' in the context in which it was used, created a standard not contemplated in the definition of mental disorder and if applied would mean that no applicant could ever have their liberty restored because in no conceivable circumstance could full compliance with medication ever be 'guaranteed'.

[50] *In addition it was submitted that insofar as the substance of the decision of the tribunal is not accurately or fully revealed in the record of it, the decision of the tribunal to affirm the renewal order is invalid because of a failure to comply with s. 18(5) which requires that notice in writing of the decision and the reasons for it must be given, inter alia, to the applicant and his or her legal representative.*

[51] *I propose to deal with the compliance issue first.*

In approaching an assessment of the decision of the tribunal as revealed by the record of it, both as to substance and form, in my view it is not appropriate to subject the record to intensive dissection, analysis and construction, as would be the case when dealing with legally binding documents such as statutes, statutory instruments or contracts. The appropriate approach is to look at the record as a whole and take from it the sense and meaning that is revealed from the entirety of the record. This must be done also in the appropriate context, namely the record must be seen as the result of a hearing which has taken place immediately before the creation of the record and it must be read in the context of the evidence, both oral and written, which has just been presented to the tribunal. The record is not to be seen as or treated as a discursive judgment, but simply as the record of a decision made contemporaneously, on specific evidence or material, within a specific statutory framework, i.e. the relevant sections of the Act of 2001, as set out above."

78. It seems to me that the contents of para. 51 of Mr. Justice O'Neill's decision in *M.R.*, being a case with significant echoes of the issues in dispute in the present application, gives clear guidance as to the appropriate approach for this court to take. Looking at the record of the respondent's decision as a whole and taking from it the sense and meaning revealed from the entirety of the record and reading same in the context of, *inter alia*, the evidence which includes three written reports by three different Consultant Psychiatrists, I am entirely satisfied that the respondent discharged its duties pursuant to the 2001 Act and the reasons given by the respondent comply with the provisions in the 2001 Act, including s. 18(5) and s. 49(6)(j). Guided by the principles which emerge from the *M.R.* decision, the 12 February 2021 record of the respondent's decision is not to be seen as or treated as a discursive judgment but as the record of a decision made contemporaneously on specific evidence. Earlier in this judgment, I looked closely at the evidence comprising the written reports and written records all of which were available to the applicant, to the applicant's legal representative and to the Tribunal in the context of the latter's decision.
79. Returning to the decision of Mr. Justice O'Neill in *M.R.* the learned judge continued from para. 52 onwards to state the following:

"[52] It is quite clear from the record of the decision that a submission was made to the Tribunal that the certification by Dr. O'Neill that the applicant suffered from a 'mental disorder' as defined in s. 3(1)(a) was invalid because there was no evidence to that effect. It is also clear that the Tribunal rejected that submission. This appears from the record of the Tribunal at para. 23(3).

[53] *I am satisfied therefore, as to form, that the record of the Tribunal does reveal that the issue of compliance with s. 15 was considered and determined by the Tribunal. As to the substance of the decision taken by the Tribunal in that regard, in my view there was ample evidence before the Tribunal to support the finding and certification by Dr. O'Neill in making the renewal order, and notwithstanding the fact that the Tribunal itself reached a different conclusion namely that there was a 'mental disorder', but within the meaning of s. 3(1)(b) rather than s. 3(1)(a), a conclusion or finding by the Tribunal that there was no basis for Dr. O'Neill's opinion would, in light of the evidence before the Tribunal, have been wholly unwarranted."*

80. In the present case, there was without doubt, ample indeed overwhelming evidence to the effect that the applicant was suffering from a mental disorder. In light of the evidence which was before the Tribunal, namely overwhelming and uncontested evidence by three Consultant Psychiatrists to the effect that the applicant was suffering from a mental disorder within the meaning of the 2001 Act, it is difficult to see how the respondent could have concluded otherwise. There is no doubt about the fact that this is what the respondent decided, relying on the evidence which was plainly before it, nor is there any doubt as to the reasons why the respondent came to the view that the applicant was someone suffering from a mental disorder. In contrast to the facts in the *M.R.* decision - where the Tribunal concluded that the applicant in that case met the criteria for mental disorder as per s. 3(1)(b), as opposed to Dr. O'Neill's view, in that case, that s. 3(1)(a) was satisfied - no such issue arises in the present case where all three Consultant Psychiatrists were satisfied that the applicant met the statutory criteria for detention and where both of the Irish Consultant Psychiatrists, being the treating Consultant Psychiatrist, Dr. Noonan and the independent Consultant Psychiatrist, Dr. Cosgrave were satisfied that both s. 3(1)(a) *and* (b) applied.
81. This court is not engaging in a merits-based analysis of the decision made by the Respondent and that is not the court's proper function in judicial review. It is, however, necessary to look at the evidence in a manner I have done in this judgment, in circumstances where, as O'Neill J. made clear in *M.R.*, the contemporaneous record of the respondent's decision of 12 February 2021 must be read in the context of the evidence given that day to the respondent, including the written reports and records all of which I have referred to earlier. Engaging in that exercise undoubtedly demonstrates that the decision and reasons were clear and sufficient to comply with all relevant obligations with regard to the giving of reasons, be they statutory or derived from common law, the Constitution or the Convention. If one looks at the decision and reasons in the context of the evidence, including written reports and records, in the manner outlined in *M.R.*, there can be no doubt as to the reasoning and rationale which underpinned the respondent's decision. Nor can there be any doubt about the fact that the respondent properly interpreted and applied the statutory criteria for involuntary detention.
82. Later in the *M.R.* decision, O'Neill J. stated the following from para. 55 onwards:

"[55] Paragraph 24 of the record of the decision sets out the reasons of the Tribunal for affirming the renewal order and it reads as follows:

'In affirming the order the Tribunal held that: -

- (1) there was clear evidence from Dr O'Neill's report and the patient's oral evidence that the patient continues to suffer from a mental disorder persecutory delusions and schizophrenia;*
- (2) the patient benefits from the structured environment which her involuntary status ensures. She herself accepts that she is not ready for discharge and also that the treatment she is receiving has been beneficial to her;*
- (3) in the event of her being changed to voluntary status compliance with medication and occupational therapy would not be guaranteed.'*

It has to be borne in mind that all of the evidence before the Tribunal, that is to say, the report of Dr. Hill and the report of Dr. O'Neill, together with his oral evidence, concluded that the applicant was suffering from a 'mental disorder'. The only difference of opinion was as to which category of 'mental disorder' provided for in s. 3 she came under. Dr. Hill was of opinion that s. 3(1)(b) applied whereas Dr. O'Neill in his evidence was of opinion that both s. 3(1)(a) and s. 3(1)(b) applied, and it was his evidence to the Tribunal that he had ticked the box opposite 3(1)(a) on Form 7 because he felt in the first instance it was appropriate and secondly, because in his view the form did not provide for or allow both boxes to be ticked, i.e., the boxes opposite s. 3(1)(a) and s. 3(1)(b).

[56] Counsel on behalf of the Tribunal which was a notice party to this application submitted that a finding or determination by the Tribunal that there was no 'mental disorder' as provided for in s. 3 would have flown in the face of all the evidence. I agree with that submission.

[57] That state of evidence had to be a dominant consideration for the Tribunal and it must now be a feature which must be given great weight in assessing whether the decision of the Tribunal, as reflected in the record of it, was, both in substance and form, valid."

83. In submissions on behalf of the applicant, it was argued that the decision by the relevant Tribunal in the *M.R.* decision, as quoted by Mr. Justice O'Neill in para. 55 of his judgment, constituted a far superior setting out of the decision and the reasons for it, of such a different character as to render the decision in *M.R.* distinguishable. Regardless of the skill with which such a submission is made, I cannot agree with it. Fairly considered, I am satisfied that the decision and reasons given by the Tribunal and detailed at section 20 of the respondent's record is no less clear, coherent and comprehensive as the relevant decision of the tribunal with which the *M.R.* case was concerned. In the reasons for the respondent's 12 February 2021 decision, the respondent referred, *inter alia*, to the

applicant's suffering from schizophrenia, to the applicant accepting that he can hear voices; to the applicant taking anti-psychotic medication when hospitalised; to the views by the relevant Consultant Psychiatrists that the applicant lacks insight; reference was also made to Dr. Noonan outlining to the respondent Tribunal that the applicant currently satisfies the criteria for mental disorder within the terms of s. 3 as of the date of the hearing. The reasons also refer *inter alia* to the applicant functioning well on medication but only in the context of being an in-patient, with reference also made in the reasons to there being no facility for a community treatment order, being an order which would require compliance with medication in the context of discharge to the community. I have also referred at length to the contents of the three reports in conjunction with which the decision and reasons of 12 February 2021 must be read. Just as was the position in the *M.R.* decision, all of the evidence before the respondent tribunal on 12 February 2021 concluded that the applicant was suffering from a "mental disorder". Unlike this situation in *M.R.*, there was no dispute between any of the Consultant Psychiatrists as to which sub-section of s. 3(1) applied. Just as O'Neill J. held in *M.R.*, it is entirely uncontroversial to say that, in light of the evidence which was before the respondent Tribunal on 12 February 2021, a determination by the Respondent that the applicant was not suffering from a "mental disorder" within the meaning of s. 3 of the 2001 Act, would have flown in the face of all of the evidence. Whilst stressing that this is not a merits-based analysis of the respondent's decision, it is entirely clear that the state of the evidence before it on 12 February 2021, was, as it had to be, a dominant consideration for the respondent.

84. The same observations made by O'Neill J. at para. 57 of his decision in *M.R.* seemed to me to be appropriate on the facts of the present case and fortifies me in the view that the reasons given by the respondent were undoubtedly adequate given that those reasons referred explicitly to the three reports by the three Consultant Psychiatrists, the contents of all three reports supporting unequivocally the conclusion reached by the respondent and providing, in each of those reports, fact-based reasons underpinning the clinical views expressed.
85. In short, the sense and meaning revealed by reading the decision and record as a whole, in the context of the evidence, in particular the medical reports and medical records which are explicitly referred to in same, paint a very clear picture that the respondent concluded, by majority, that if the applicant was not an involuntary patient, he would not take the medication necessary in the context of his treatment for a serious mental illness into which he lacks any insight, being medication he does not believe he needs to take and only takes in the context of being an involuntary patient and that, if released into the community, he would rapidly become non-compliant, resulting in a relapse, with serious adverse consequences including, very obviously, that he would not be receiving the treatment he needs and this would inevitably result in the need for the applicant to be readmitted once more. The foregoing is the clear sense which emerges from reading the decision and reasons in the context of the evidence, including the medical reports. In truth, none of the foregoing was in controversy. In the manner already examined in this judgment, all three Consultant Psychiatrists addressed, in their respective reports, the likelihood, or otherwise, of the applicant taking medication if discharged and all three

came to the view that that, just as he had done repeatedly in the past, he would become non-compliant. There was no dispute between any of the Consultant Psychiatrists on this point. Their views were consistent and unanimous as regards the likelihood of non-compliance with medication. Nor was it the case that the applicant's statement of his intention to take medication if released was made for the first time during the hearing before the respondent on 12 February. On the contrary, and in the manner examined earlier in this judgment, the applicant stated as much to the independent Consultant Psychiatrist, Dr. Cosgrave (who refers to this at s. 11 of her 31 January 2021 report). Dr. Cosgrave, however, also refers to a range of *other* factors relevant to compliance with medication and offered a very clear view which was plainly given after a consideration of all such factors, being a view that the applicant was very likely to stop his psychiatric medication if he was not in a position where he had to take it. In short, there is no unresolved controversy anywhere, either in the decision, or in the record of same, or in the evidence in the context of which the decision and reasons must be read.

86. It will be recalled that, in the relevant renewal order dated 25 January 2021, the responsible consultant psychiatrist is required to state grounds for their opinion. The grounds detailed at s. 8 of the said renewal order, in response to the question "*Give clinical description of the person's mental disorder*", is stated by Dr. Noonan to be the following: -

"[] has schizophrenia. He has an established history of rapid discontinuation of medication following discharge and behaviour driven by psychotic symptoms that could have led to the death or serious injury of others".

87. It seems appropriate for this court to ask whether, in considering the adequacy of reasons, one can or should, ignore the contents of the report submitted by the responsible consultant psychiatrist which, in the present case, is that of Dr. Noonan, dated 11 February 2021. It will be recalled that, pursuant to s. 18 of the 2001 Act, the respondent has a binary decision to make *i.e.* to satisfy itself that the patient *is*, or is *not*, suffering from a mental disorder, with the Act specifying mandatory consequences which flow from each alternative. Given that Dr. Noonan's 11 February 2021 report addressed, specifically, the single question which the respondent was mandated to decide, in my view, it cannot seriously be suggested that, in assessing the adequacy of reasons given by the respondent, this Court is entitled to ignore, or, for that matter, must disregard, the contents of that report by the responsible consultant psychiatrist. I am satisfied that the contrary is the position. In assessing the adequacy of reasons for the decision, it is entirely appropriate to have regard to the contents of the RCP's report.
88. Similar comments apply in relation to the report by the independent consultant psychiatrist. It will be recalled that, pursuant to s. 17 of the 2001 Act, once the Mental Health Commission receives a renewal order, it is required, pursuant to s. 17 (1) (c) to direct a member of the panel of consultant psychiatrists to examine the patient, interview the responsible consultant psychiatrist and review the patient's records " . . . *in order to determine in the interest of the patient whether the patient is suffering from a mental*

disorder and to report in writing within 14 days on the result of the examination, interview and review to the tribunal to which the matter has been referred and to provide a copy of the report to the legal representative of the patient". Earlier in this judgment I looked at the contents of the report by the independent consultant psychiatrist, Dr. Cosgrave, which is dated 31 January 2021. In circumstances where the Act mandates that this report be prepared and furnished to the respondent and to the applicant's legal representative, and in circumstances where the report addresses the sole question which the respondent is mandated to decide pursuant to s. 18 (1), in my view, it cannot seriously be suggested that, insofar as assessing the adequacy of the reasons given by the respondent for the binary choice it made, the court can, or should, ignore the contents of the report by the independent consultant psychiatrist which spoke to the very issue which was before the respondent to decide. An analysis of matters from first principles seems to me to produce that result and it is also a view consistent with the M.R. decision.

89. Insofar as it is suggested that, for the purposes of determining whether the reasons given by the respondent for the decision were sufficient, this Court can, or should ignore the *evidence* which was specifically referenced in the decision itself (including the contents of the three psychiatrists' *reports* and the relevant medical *records*), I regard myself as bound to reject that suggestion, having regard to the principles which flow from the decision in *M.R.* Rather, the decision and reasons given by the respondent on 12 February 2021 for the decision can, and should, be read in the context of, and alongside the contents of, the evidence which was proffered in respect of the single issue the respondent was required to decide. That evidence plainly includes, in this case 3 reports by consultant psychiatrists, 2 of which, under statute, are required to be before the tribunal and which speak to the single issue it has to determine. When one reads the decision and reasons alongside the evidence, including that proffered by three consultant psychiatrists, it is abundantly clear why the respondent made the decision it made and the reasons can fairly be described as clear, cogent, consistent with the evidence, rational and wholly adequate to meet all obligations which apply to the respondent insofar as the giving of reasons.
90. It is also appropriate to cite, at this juncture the following analysis in the *M.R.* decision by O'Neill J. in respect of the nature of the 2001 Act and the proper approach to the construction of same: -

"Before embarking upon a consideration of the issues which have arisen in this case it is well to establish in general the correct approach when dealing with legislation of the kind involved here. It has been said and indeed it is common case that in approaching the construction of the Act, the purposive approach is to be adopted, and the following passage from the judgement of McGuinness J. Gooden v. St. Otteran's Hospital [2005] 3 I.R. 615 where she is speaking of the Mental Treatment Act of 1945 and says the following at p. 633, illustrates the point;

"I respectfully accept Denham J.'s analysis of the principles of interpretation as set out in that judgment. In interpreting s. 194, therefore, it would in my view be right to consider the purpose of the Act of 1945 as a whole. It is a wide ranging statute dealing with all aspects of provision of treatment for those suffering from mental illness ranging from the building of mental hospitals to details of their administration and staffing and to the reception and care of patients.

It is divided into distinct but related parts. Section 194 occurs in the part of the Act which deals with the voluntary patients in mental hospitals. They cannot however be read entirely in isolation from those parts of the Act which deal with patients who have been committed to mental hospitals as a result of Reception Orders. Still less should it be read isolated from the surrounding sections in the same part and in particular s. 195"

. . . .

In In Re Philip Clarke [1950] I.R. 235 the former Supreme Court when considering the constitutionality of s. 165 of the Mental Treatment Act of, in the judgment of O'Byrne J., delivering the judgment of the court described the general aim the Act of 1945 as follows at pp. 247 and 248:

"The impugned legislation is of a paternal character, clearly intended for the care and custody of persons suspected to be suffering from mental infirmity and for the safety and well - being of the public generally. The existence of mental infirmity is too widespread to be overlooked, and was, no doubt present to the minds of the draftsman when it was proclaimed in Article 40.1 of the Constitution that though, all citizens, as human persons are to be held equal before the law, the State, may, nevertheless, in its enactments have due regard to differences of capacity, physical and moral, and social functions. We do not see how the common good would be promoted or the dignity and freedom of the individual assured by allowing persons, alleged to be suffering from such infirmity, to remain at large to the possible danger of themselves and others.

The section is carefully drafted so as to ensure that the person alleged to be of unsound mind, shall be brought before, and examined by, responsible medical officers with the least possible delay. This seems to us to satisfy every reasonable requirement and we have not been satisfied, and do not consider that the Constitution requires, that there should be a judicial enquiry or determination before such a person can be placed and detained in a mental hospital.

The section cannot, in our opinion be construed as an attack upon the personal rights of the citizen, on the contrary it seems to us to be designed for the protection of the citizen and for the promotion of the common good".

[20] In my opinion having regard to the nature and purpose of the Act of 2001 as expressed in its preamble and indeed throughout its provisions, it is appropriate

that it is regarded in the same way as the Mental Treatment Act 1945, as of a paternal character, clearly intended for the care and custody of persons suffering from mental disorder”.

91. In *A.X. v. Mental Health Tribunal* [2014] 1 IR 88, Keane J. cited with approval from the dicta in *M.R.* As to the facts in that case, the applicant was admitted as an involuntary patient, pursuant to the provisions of the 2001 Act, to the second respondent’s hospital for treatment for a mental disorder. The first named respondent, being the relevant tribunal, carried out a statutory review of the admission order and affirmed it. The applicant applied for judicial review, seeking, *inter alia*, to quash the decision of the tribunal on the grounds that it failed to make a finding that the applicant was suffering from a mental disorder within the meaning of s. 3 (1) (a) or (b) of the 2001 Act and that the tribunal in question failed to provide proper reasons for its decision. Keane J. upheld the validity of the first respondent’s decision in both substance and form, dismissing the application in circumstances where the court found that the reasons given by the tribunal clearly established the three essential elements for making a finding that a patient was suffering from a mental disorder within the meaning of s. 3 (1) (b) of the 2001 Act; namely (1) that the illness, disability or dementia caused impairment of the judgment of the patient concerned; (2) that a failure to make a renewal order would lead to a serious deterioration in the condition of the person concerned or would prevent the administration of appropriate treatment which could only be given by such admission; and (3) that a renewal order would be likely to benefit or alleviate the patient’s condition to a material extent.
92. Before looking further at the decision in *A.X.* it is appropriate to observe that, wholly unlike the position in the case before this Court, a substantive argument was made by the applicant’s solicitor in *A.X.* that the tribunal should revoke the admission order in respect of the applicant on the basis that the statutory criterion under s. 3 (1) (a) had not been met, because the applicant had never been detained for the purpose of treatment before. Having pointed out the foregoing distinction, it is appropriate to note that the reasons given for the tribunal’s decision in the *A.X.* case are set out in the following terms, at para. 33: -

“[33]. The tribunal gave the following reasons for that decision:

“Having read and taken into account the s. 17 report of [the independent consultant psychiatrist], and having heard the evidence of the patient's treating psychiatrist, the legal submission of her legal representative, as well as the evidence of the patient herself, the Tribunal is satisfied that the patient is currently suffering from a mental disorder as defined by s. 3 of the Mental Health Act 2001. The Tribunal accepted the diagnosis of the patient as being [one of] paranoid schizophrenia. As a consequence, the Tribunal affirms the admission order dated the 27th April 2014.”

The Tribunal noted that the patient was acutely unwell on admission, was incoherent and distressed. Prior to admission, the patient had not been engaging

with the medical services and was non-compliant with medications on admission. The patient received four injections, which helped improve the patient's cooperation and coherence. However, she remained thought disordered, had persecutory delusions and bizarre ideas. The patient has recently been commenced on Risperidone, and it has yet to achieve a full therapeutic effect.

The patient lacks insight into the severity of her illness, and the Tribunal shares the opinion of the responsible consultant psychiatrist that it would be premature to discharge the patient from the carefully controlled environment of the approved centre at this time. The Tribunal is of the opinion that the patient is benefiting from the treatment currently being administered to her, and that she is benefiting to a material extent. For all of the foregoing reasons, the Tribunal is satisfied that the affirmation of the admission order is in the best interests of the patient."

93. In the present case, it is submitted on behalf of the applicant that the decision in A.X. is of a materially different quality, going far further than the decision and reasons given on 12 February 2021. I take the view, however, that if one reads the decision and reasons in the present case alongside the contents of the evidence, in particular the reports by the relevant consultant psychiatrists, including that of the independent consultant psychiatrist, that there is no material difference in the quality of the decision, including the reasons, in the case before this Court and that provided in A.X. Furthermore, the fact that the decision and reasons given in the present case can, and should, be read in conjunction with the reports, including that of the independent consultant psychiatrist, is entirely consistent with the first sentence in the tribunal's decision in A.X. which begins: -

"Having read and taken into account the s. 17 report of [the independent consultant psychiatrist], and having heard the evidence of the patient's treating psychiatrist, the legal submission of her legal representative, as well as the evidence of the patient herself, the tribunal is satisfied that the patient is going to be suffering from a mental disorder as defined by s. 3 of the Mental Health Act 2001".

94. In the case before this Court, the decision and reasons given by the respondent fall to be read alongside the evidence, including the reports, records and submissions and once that is done, it demonstrates, in my view, that the reasons are entirely sufficient and they clearly establish the essential elements for the making of a finding that the applicant was suffering from a mental disorder within the meaning of s. 3 (1) (b) of the 2001 Act. It is also appropriate to observe that, in the tribunal's decision in the A.X. case, the tribunal did not, in fact, specify whether it was s. 3 (1) (a) or (b) which applied. It will also be recalled that, in M.R. the tribunal, in providing reasons, did not explicitly refer to whether s. 3 (1) (a) or (b) applied. Despite this, the decisions by the respective tribunals in both cases were upheld. In the case before this Court, the respondent has made perfectly clear that it is satisfied the applicant suffers from a mental disorder and, in affirming the renewal order, the respondent referred specifically to s. 3 (1) (b) (i) and (ii) of the 2001 Act. Given the fact that, like the decision in M.R., the A.X. decision is specifically

concerned with reasons for a decision by a tribunal under the 2001 Act, it is appropriate to quote at some length, from para. 51 onwards where Keane J. set out the following analysis: -

"The law on reasons

50. *Section 18 (5) of the 2001 Act requires that notice in writing of a tribunal's decision on a review of the detention of a patient in respect of an admission order or a renewal order "and the reasons therefor" shall be given to the Commission; the consultant psychiatrist responsible for the care and treatment of the patient concerned; the patient and his or her legal representative; and any other person to whom, in the opinion of the tribunal, such notice should be given.*

51. *In M.D. v. Clinical Director of St. Brendan's Hospital [2007] IESC 37, [2008] 1 I.R. 632, Hardiman J. had the following to say about the statutory requirement that the Tribunal provide reasons for its decision on review (at p. 644): -*

'[17] This is an absolutely essential part of the tribunal's functions and necessary in law because of the tribunal's very considerable powers to affect directly the rights of a patient, including his right to liberty. It also arises from the terms of s. 49(6)(j) of the Act of 2001. This section deals in general with the obligations and procedures of a tribunal and the relevant sub-paragraph obliges it to attend to "the making of a sufficient record of the proceedings of the tribunal." The requirement to give reasons for a mental health tribunal's decision, in my view, arises both in natural justice and under statute.

[18] This, of course, is absolutely essential if the decisions of this powerful body are to be subject to proper review. It is important in the circumstances of this case to recall that neither the consultant psychiatrist nor the tribunal can avoid or frustrate the review simply by the making of an inadequate or insufficient record of the exercise by them of the very considerable powers conferred upon them by statute'

52. *M.R. v. Byrne [2007] IEHC 73, [2007] 3 I.R. 211 is a case in which the facts were, in several respects, strikingly similar to those at issue in the present application. It involved a challenge to a mental health detention based upon a renewal order that had been affirmed on review by a tribunal under the 2001 Act. A number of helpful principles were very clearly set out by O'Neill J. in the course of his judgment, with which I am in respectful and complete agreement.*

53. *First, O'Neill J. adopted the analysis of McGuinness J. in Gooden v. St. Otteran's Hospital [2001], [2005] 3 I.R. 617 and that of the former Supreme Court (per O'Byrne J.) in In re Philip Clarke [1950] I.R. 235 in respect of the Mental Treatment Act 1945, and applied each to the 2001 Act, concluding that a purposive approach to interpretation is appropriate in construing that legislation, which is of a paternal*

character, being clearly intended for the care and custody of persons suffering from a mental disorder”.

95. At para. 55 of his decision in *A.X.*, Keane J. cited, with approval, para. 51 of O’Neill J.’s decision in *M.R.* wherein O’Neill J. made clear, *inter alia*, that the appropriate approach, in terms of the assessing of a decision of a tribunal as revealed by the record of it, is to look at the record as a whole and take from it the sense and meaning revealed from the entirety of the record which must be done: -

“also in the appropriate context, namely the record must be seen as the result of a hearing which has taken place immediately before the creation of the record and it must be read in the context of the evidence, both oral and written, which has just been presented to the tribunal”.

96. Later, at para. 57, Keane J. observed that the reasons recorded by the tribunal in *M.R.* did not expressly invoke the terms of either s. 3 (1) (a) or (b) in providing reasons and:-

“Instead, it appears to have been deduced by the Court that the reasons provided, coupled with the decision to affirm the renewal order in that case, clearly establish that s. 3(1)(b) formed the basis for that decision”.

97. In contrast, the respondent in the present case has gone further than the relevant tribunals did in either the *M.R.* or *A.X.* cases in that, when confirming its (majority) decision that it was satisfied that the applicant suffers from a mental disorder, it went on to explicitly refer to s. 3 (1) (b) (i) and (ii) of the 2001 Act as applying. By so doing, the tribunal explicitly confirmed that it was satisfied that the elements of s. 3 (1) (b) had been established. A reading of the respondent’s reasons in conjunction with the evidence, including reports, explain with clarity why this was so in the manner I have already analysed with reference to the specific contents of the relevant reports. The overwhelming evidence is that the severity of the illness from which the applicant suffers is causing their judgment to be impaired. That is the first element of s. 3 (1) (b) and it was undoubtedly established, having regard to the evidence before the tribunals and there is, in truth, no issue taken with the fact and nature of the applicant’s diagnosis from a clinical perspective, albeit the applicant does not accept his own diagnosis according to the evidence by the consultant psychiatrists.

98. The tribunal also had before it clear and cogent evidence that a failure to detain the applicant would lead to a serious deterioration in their condition and would prevent the administration of appropriate treatment which could only be given in the context of their detention. The evidence reveals that the applicant is compliant with medication which is necessary for his treatment in the context of being an involuntary patient, not otherwise, in that there is an established history that the applicant, when in the community, discontinues medication (which he does not believe he needs), causing a rapid deterioration in his mental health with adverse consequences for him and others. This speaks to the second element of s. 3 (1) (b).

99. There was also undoubtedly evidence to the effect that the detention of the applicant would be likely to benefit or alleviate his condition to a material extent. The contents of the reports by all three consultant psychiatrists speak to this issue and undoubtedly establish that the applicant was benefitting from the treatment then being administered to him as an inpatient and was benefitting to a material extent and this benefit would be lost if the applicant were to be discharged.
100. I am entirely satisfied that the respondent's 12 February 2021 decision is valid, both in form and in substance, having regard to the evidence which was before the respondent and, reading that evidence (in particular, the three reports by three clinical psychiatrists) there is no doubt about why the respondent made its decision or the reasons for it.
101. Having been satisfied that the relevant decision by the relevant tribunal in *A.X.* was valid, Keane J., proceeded from para. 65 onwards to state the following:-

"[64] I am reinforced in that conclusion by the following observation of O'Flaherty J. in Faulkner v. Minister for Industry and Commerce (Unreported, Supreme Court, 10th December, 1996) at p. 9, a case which involved a challenge to a Labour Court recommendation that had been expressed in a single sentence:

"I would reiterate what has been said on a number of occasions, that when reasons are required from administrative tribunals they should be required only to give the broad gist of the basis for their decisions. We do no service to the public in general, or to particular individuals, if we subject every decision of every administrative tribunal to minute analysis."

102. With regard to the Supreme Court's observations in *Faulkner*, it is beyond doubt that, read alongside and in the context of the evidence which was before the Tribunal on 12 February 2021, its decision and the reasons for it go far further than "*the broad gist*" in terms of the basis for the decision taken. The question of whether the principle derived from *Faulkner* sets a lower standard for the respondent than the principles derived from *MR* and *A.X.* does not seem to me to be one which is necessary for this Court to determine, in circumstances where the reasons given by the respondent in the present case meet the standard set in all of the authorities I have referred to.
103. There can be no doubt about *MR* and *A.X.* decisions being of particular relevance to the case before this Court and at no stage in opposing the applicant's case was it submitted that the respondent could meet a lesser standard than set out in *MR* and in *A.X.* It is on the basis of the latter decisions that this Court has approached the matter, finding the respondent's reasons entirely adequate. It is also appropriate, at this juncture, to quote paras. 72-75, inclusive, from the decision of Keane J. in *A.X.*:-

"[72] The applicant's fourth and final argument on the principal issue is the general one that, quite simply, the tribunal failed to provide adequate reasons for its decision to affirm the admission order. This argument invokes what Kelly J. referred to in Deerland Construction Ltd v. Aquaculture Licence Appeals Board [2008] IEHC 289,

[2009] 1 I.R. 673, at 688, as the "abundance of case law indicating what must be done by a body, such as the first respondent [in that case], if it is to satisfy its obligation of setting forth reasons for its conclusions".

*[73] Counsel for the applicant sought to rely, in a general way, on the decision of Kelly J. in *Mulholland v. An Bord Pleanála (No. 2)* [2005] IEHC 306, [2006] 1 I.R. 453, a case involving a contested application for leave to seek judicial review of a grant of planning permission by the respondent board. The applicants argued that they had established substantial grounds, as required under s. 50 of the Planning and Development Act 2000, for challenging the validity of the board's decision on the ground, *inter alia*, that it had failed to comply with the significant obligation imposed on it under s. 34(10) of the 2000 Act to state the main reasons and considerations on which its decision was based. In particular, the applicant relies on the principles set out in the following passage from the judgment (at p. 465):*

"I am of the opinion that, in order for the statement of considerations to pass muster at law, it must satisfy a similar test to that applicable to the giving of reasons. The statement of considerations must therefore be sufficient to:-

- (1) give an applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision;*
- (2) arm himself for such hearing or review;*
- (3) know if the decision maker has directed its mind adequately to the issues which it has considered or is obliged to consider; and*
- (4) enable the courts to review the decision."*

*[74] I fully accept that the foregoing is a correct statement of the principles that govern the provision of adequate reasons for administrative decisions. What I am unable to accept, for the reasons I have already set out above, is that the reasons provided by the tribunal in this case do not comply with those principles. The definition of mental disorder under s. 3(1) of the 2001 Act is not open-ended. It requires the presence of mental illness, severe dementia or significant disability. In this case the applicant's mental illness is conceded, in circumstances where the evidence to that effect was, in any event, uncontroverted and conclusive. Thereafter, the person concerned must meet one of two other clearly expressed criteria. I can find nothing in the tribunal's decision that suggests the possibility, much less the presence, of a purported finding that there was a serious likelihood of the applicant causing immediate and serious harm to herself or other persons, as is required to meet the criterion under s. 3(1)(a). At the same time, applying the methodology adopted by O'Neill J. in *M.R. v. Byrne* [2007] IEHC 73, [2007] 3 I.R. 211, I have concluded that the reasons provided by the tribunal clearly support a finding that the applicant did meet the criterion under s. 3(1)(b). Accordingly, I cannot accept that, having been*

furnished with a copy of the decision, the applicant and her legal representatives were not in a position to consider her chance of successfully judicially reviewing that decision (an appeal would have been a hearing de novo with a reversed onus of proof); or that they could not arm themselves for such review; or that they could not know if the tribunal had directed its mind adequately to the issues which it had considered or was obliged to consider; or that this Court would not have been enabled to consider the lawfulness or vires of that decision.

[75] *It should not be overlooked that, in Deerland Construction v. Aquaculture Licence Appeals Board [2008] IEHC 289, [2009] 1 I.R. 673, Kelly J. also cited with approval the following dictum of Murphy J. in O'Donoghue v. An Bord Pleanála [1991] I.L.R.M. 750 at p. 757:-*

"It is clear that the reason furnished by the board (or any other tribunal) must be sufficient first to enable the court to review it and secondly to satisfy the person having recourse to the tribunal that it has directed its mind adequately to the issue before it. It has never been suggested that an administrative body is bound to provide a discursive judgment as a result of its deliberations."

104. The observations made by Keane J. in *A.X.* appear to me to be equally appropriate in the present case. Insofar as submissions were made on behalf of the applicant, relying on the decision in *Mullholland*, I am entirely satisfied that the reasons given by the respondent in the present case were clear and cogent and that they meet the test outlined at para. 34 of *Mullholland*.

105. I am also equally satisfied that there has been no breach of any principle derived from *Deerland Construction*. In submissions on behalf of the applicant, reference is made, *inter alia*, to para. 59 of the decision by Kelly J. (as he then was) in *Deerland* where he stated:-

"I do not accept that a pro forma recitation of the matters which are contained in the [Appeal Board's] decision amounted to a compliance with its statutory obligation to state its reasons... The reference to it being satisfied that it was in the public interest to make the determination is a conclusion reached by it but no clue is given as to how such a conclusion was reached."

The position in the case before this Court is entirely different. There is no doubt about how or why the respondent concluded that the applicant was, at that point, someone suffering from a mental disorder. The respondent (going further than the tribunal did in either *MR* or in *A.X.*) stated that s. 3(1)(b)(i) and (ii) applied. The foregoing was entirely consistent with the evidence before the respondent. Nor was any expert evidence given which took issue with the views proffered by the treating, or responsible, consultant psychiatrist, Dr. Noonan, and the independent consultant psychiatrist, Dr. Cosgrave. The detailed report by the applicant's consultant psychiatrist, Dr. Frazer, did not undermine or impeach in any way, the evidence of either Dr. Noonan or Dr. Cosgrave. Rather, Dr. Frazer's views were entirely consistent with same, as recorded by the reasons for the

decision. The reasons provided by the respondent for its decision to affirm the admission order detaining the applicant in the case before this Court clearly set out that the statutory elements of mental disorder as defined by s. 3(1)(b) were met. The unanimous undisputed psychiatric evidence summarised in the reasons section of the decision manifestly supported the decision arrived at. In my view, the reasons proffered by the respondent, read in conjunction of and in the context of the evidence which was before the respondent on the very issue it was required to determine, did give the applicant and his legal representative sufficient information to enable a consideration as to whether the applicant had a reasonable chance of succeeding in appealing, or in judicially reviewing, the decision and to arm the applicant for such a hearing or review and it also enabled the applicant and his legal advisor to know whether the respondent directed its mind adequately to the issues it was obliged to consider. The reasons are also more than sufficient to enable this Court to review the decision. In my view, the applicant could not have been "*in any reasonable doubt as to what the reasons actually were*", to cite a phrase from the Supreme Court's decision in *EMI Records (Ireland) Ltd v. Data Protection Commissioner* [2013] IESC 34, [2013] 2 IR 669 (at 739, para. 71, per Clarke J. (as he then was)). There is no dispute as to the principle referred to in the same decision that "*legal certainty requires that the reasons can be determined with some reasonable measure of precision*", but I am entirely satisfied that there has been no breach of that principle in the present case.

106. Among the submissions made with skill on behalf of the applicant, reliance is placed on an English decision in *HK v. Llanarth Court Hospital* [2014] UKUT 410 (AAC) where the Upper Tribunal (Administrative Appeal Chamber) set aside a decision of the Mental Health Review Tribunal for Wales, because the reasons given by it were inadequate. On the need for proper reasoning in Tribunal's decision, it was stated, at para. 10:-

"By way of contrast, both the tribunal and the parties will have knowledge of the written and the oral evidence before the tribunal. Second, both the tribunal and the parties are very likely to be informed about the relevant law. The only exception to this may be when the patient is not legally represented. Finally, to quote the Court of Appeal in English v Emery Reimbold & Strick Limited [2002] 1 WLR 2409 at paragraph 16, justice will not be done if it is not apparent from the tribunal's reasons to the parties why one has won and the other has lost. That latter factor is of particular importance for patients who are detained under the Mental Health Act 1983, such detention being a serious interference with their right to liberty pursuant to Article 5 of the European Convention on Human Rights (now incorporated into English and Welsh law by the Human Rights Act 1998)."

107. In the case before this Court, I am entirely satisfied that it is very clear from the respondent's reasons why the respondent was satisfied that the applicant was then suffering from a mental disorder, being the sole question it was required to determine pursuant to s. 18. Given the issues involved (to which the 2001 Act constitutes a statutory response which is paternalistic in nature) to look at the situation through the lens of "winners" and "losers" does not seem to me to be helpful. The best interests of a

patient underpin the operation of the Act, regardless of the decision reached by the respondent. Can it really be said that the applicant has not “won”, in circumstances where it was determined that a renewal order should be affirmed, in order that the applicant can continue to be provided with treatment, including necessary medication, in respect of a serious mental health issue into which he has no insight, against the backdrop of consistently becoming non-compliant with medication in the community, resulting in relapses adversely affecting him, resulting inevitably in the need for readmission, in circumstances where all clinicians agree that he is likely to cease taking medication if released? It seems to me that it is not helpful for it to be suggested that the applicant has “lost” in circumstances where the decision made by the respondent ensures that he continues to receive the appropriate care and treatment which he requires but which he has no insight into and would not receive but for his ongoing involuntary detention. Even if, however, one were to see the decision by the respondent to affirm the January renewal order as meaning that the applicant *lost*”, the reasons for this are entirely apparent from the record of the respondent’s decision, read in conjunction with and in the context of the evidence which was before the Tribunal.

108. In *HK*, the Administrative Appeal Chamber went on to set out what it described, at para. 11, as “*not an exhaustive or novel treatise on the art of reason writing but merely an aide memoire of those matters, pertinent to this appeal, which may assist in the production of adequate and intelligible reasons*”. Paragraph 12 to 16, inclusive, of the decision in *HK* proceeded to set out that guidance including, first, that it would be helpful if Tribunal’s set out their reasons by reference to the relevant criteria for detention; second, that tribunal’s reasons should address how it dealt with any disputes as to either the law or the evidence; third, the reasons themselves must be clear and unambiguous, rather than for a party to deduce the reasons; fourth, what is required is to explain what facts the tribunal found as a result of that evidence and what conclusions on those facts the tribunal reached; and, fifth, it is not necessary for the tribunal’s reasons to mention all of the evidence in a case. It then looked at the specific reasons given in the particular case and came to the view that the Tribunal failed to provide adequate reasons for its decision and, therefore, erred in law.
109. With regard to the foregoing, it is useful to re-state the point that, pursuant to s. 18 of the 2001 Act, the respondent had a *single* question to determine, be that in the affirmative or in the negative, namely, whether the applicant was then suffering from a mental disorder (the foregoing term being defined in s. 3 of the same Act). Thus, it is not the case that there were, for example, a list of legal questions which the respondent was asked to determine. Rather, there was a single issue. In the case before this Court, I am satisfied that the respondent did set out their reasons by reference to the relevant criteria for detention. Nor was there, in reality, any dispute. It is, of course, true to say that the applicant is recorded by the respondent as stating that he acknowledged that he has a psychotic illness and also stating that he would take his medication on discharge. With regard to the foregoing, however, the overwhelming and consistent evidence by all three consultant psychiatrists was to the *contrary* on *both* issues. All three consultant psychiatrists were satisfied that the applicant had no insight into his illness. It is also a

matter of fact that the statement made by the applicant to the respondent on 12 February that he acknowledged having a psychotic illness, is wholly inconsistent with what the applicant stated 48 hours earlier, namely: "*I don't want to be on medication. There is nothing wrong with me.*" Earlier in this judgment, I referred to that particular entry which can be found in the records which were before the Tribunal, copies of which were available to the applicant and his legal representative (the relevant entry being dated 10 February 2021 at 16:45).

110. Not only was there unanimity amongst all three consultant psychiatrists on the foregoing issues, it will be recalled that the independent consultant psychiatrist's report, dated 31 January 2021, took on board the stated intention of the applicant to take his medication if discharged and it is perfectly clear why Dr. Cosgrave came to the view that, despite what the applicant stated, he was very likely to stop taking his psychiatric medication if he was not in a position whereby he had to take it, namely in the context of being an involuntary inpatient.
111. In short, there is no dispute whatsoever between any of the consultant psychiatrists and any difference between the expressed intention of the applicant (who, in fact, made utterly inconsistent statements), was clearly taken account of when the relevant consultant psychiatrists expressed their views which plainly, cogently and unanimously support the decision made by the respondent.
112. Nor was there any submission ever made by or on behalf of the applicant that the respondent should *disregard* all of the medical evidence before it and should listen only to or should prefer the statements made by or on behalf of the applicant.
113. In short, I am entirely satisfied that the decision and reasons given by the respondent in this case complies fully with the guidance given in the *HK* decision.
114. The decision and reasons given by the respondent in the case before this Court also comply, in my view, with the general guidance which emerges from an analysis of the 01 November 2019 document produced by the Mental Health Commission entitled "*Mental Health Tribunal – Information and Guidance for Panel Members*". It is appropriate to note that, at s. 4.8 of that guidance document under the heading "*Record of Proceedings*", specific reference is made, *inter alia*, to the decision by O'Neill J. in *MR*, with reference also being made to the UK decision in *HK*. Although satisfied that the reasons given by the respondent in the present case meet the principles outlined in *HK*, which decision does not appear to be inconsistent with Irish authorities, I would stress that the authorities of particular relevance to the case before this Court are, undoubtedly, the decisions in *MR* and *A.X.*
115. It is appropriate to observe that the facts in *Deerland* concerned a decision which was given in one line, precipitating a judicial review which arose out of long-running litigation concerning mussel beds in Wexford Harbour and involving an apparent conflict as between an aqua cultural licence and a particular planning permission. The factual background could hardly be more different to the situation in the case which is before this

court. It is, however, appropriate to note that, at para. 66 of his judgment in *Deerland*, Kelly J. (as he then was) cited with approval from the English decision in *South Bucks D.C. v. Porter* (No. 2) [2004] UKHL 33, [2004] 1 W.L.R. 1953, wherein Lord Brown summarised the law in relation to the obligation to provide reasons, in the following terms:-

"[36] The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example by misunderstanding some relevant policy or some other important matter, or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he is genuinely being substantially prejudiced by the failure to provide an adequately reasoned decision."

116. I am entirely satisfied that there has been no breach of the principles outlined by Lord Brown in the *South Bucks D.C.* and cited by the former High Court President in *Deerland*. The reasons given in the present case are intelligible and adequate. They undoubtedly enable the applicant and his legal representative to understand why the matter was decided as it was, there having been a single issue for determination, namely whether or not the respondent was satisfied that the applicant was someone suffering from a mental disorder as defined in the 2001 Act. The applicant was so satisfied and that is entirely consistent with the overwhelming evidence to that effect proffered by three consultant psychiatrists whose reports fall to be read in conjunction with the decision and reasons given on 12 February. The reference by Lord Brown to reasons needing to be such as would *"enable disappointed developers to assess their prospects of obtaining some alternative development permission"* highlights the very different context with which this Court is concerned. There is no question of the applicant, on receipt of the decision, amending matters and having *"a second go"* with a view to trying to get a different decision on different criteria. The test the respondent was mandated by statute to apply, and to approach informed by the applicant's best interests, was whether or not the respondent was satisfied that the applicant was then suffering from a mental disorder. The reasons given by the respondent are undoubtedly adequate.

117. The decision in *Faulkner* was referred to almost three decades later in the judgment by Mr. Justice White in *O'Connor v. Minister for Agriculture* [2016] IEHC 336 where, at para. 89, the learned judge stated as follows:

"The Court is also satisfied that the Tribunal failed to provide adequate reasons for a number of other findings. The Court accepts that previous decisions of the Court have established that the duty to give reasons does not require extensive analysis of every aspect of a complaint and indeed, as held in Faulkner, the "gist" of the basis for a decision is sufficient. However, in the present case I am satisfied that the brief determination of the Tribunal is wholly inadequate to meet even this low threshold. It is not clear how the Tribunal arrived at the determinations it did and there is not as much as a fleeting reference to vital matters such as the 'reduction or deduction' argument or why section 8.2 of the company handbook is not applicable. The determination states that 'the appellant did not advance its own case for a deduction as it opted not to fully engage with the respondents as to the reported serious financial situation it was facing at the relevant time.' There is no engagement whatsoever, however minimal, with the detailed submissions of the appellant in relation to its financial circumstances at the time and no consideration of the circumstances relied upon by the appellant for introducing the pay cut."

118. At issue in the *O'Connor* case was a statutory appeal, pursuant to the provisions of s. 11 of the Agriculture Appeals Act 2001, being an Act which provided for the appointment of appeals officers to review, on appeal, decisions of officers of the Minister for Agriculture, Food and Rural Development in relation to certain schemes, one being a single payment scheme governed by a particular EU Council Regulation which, as part of the Common Agricultural Policy, rewarded farmers who farmed to minimum standards. The facts and context in which the *O'Connor* decision arose could hardly be more different to the position before this court but, factual background aside, there certainly appears to be a recognition in *O'Connor* that the principle derived from *Faulkner* was still of relevance; and it was on the facts in the case before Mr. Justice White that the relevant tribunal was found to have fallen short of the "low threshold" set in *Faulkner*.
119. It is not through the lens of *Faulkner* or *O'Connor* that this court has considered the adequacy of the reasons given by the respondent for the decision. Although entirely satisfied that the respondent has met the threshold laid down in *Faulkner* (and described as a low one in *O'Connor*), this court's approach has been to apply the principles which emerge from *MR* and *AX*. Applying those principles (which appear to me to set the bar somewhat *higher* for the respondent than was outlined in *Faulkner*) results in a finding by this court that the decision was, and is, valid both in form and in substance, the reasons being clear, cogent, consistent with the evidence which was before the respondent and entirely adequate for the purposes of the statute, as well as sufficient to meet all obligations on the respondent derived from common law, the Constitution and/or the Conventions.

120. There is no dispute about the fact that, in the context of Article 6 of the Convention, the right to a fair trial includes the obligation on a court or tribunal to give sufficient reasons for its decisions, *H. v. Belgium* (Application No. 89504/80, 30 November 1987) being illustrative of that point. There has been, however, no failure to give sufficient reasons for the decision challenged in the present proceedings.

Decision summarised

121. Insofar as it is suggested that, for the purposes of determining whether the reasons given by the respondent for the decision were sufficient, this court can or should ignore the evidence which was before the respondent, including evidence which is specifically referenced in the decision itself such as the three reports by three consultant psychiatrists and the relevant medical records, I reject that submission and do so in light of the principles derived from this court's 2007 decision in *M.R. (O'Neill J.)* as later applied by this court in the 2014 decision in *A.X. (Keane J.)*.

122. Even if one confines the analysis to the decision and reasons, without having regard to the evidence which was before the respondent and available for the applicant, I am satisfied that the reasons given can fairly be said to convey "the gist" of the basis for the decision. Read, however, alongside and in the context of the aforementioned evidence, the reasons given by the respondent are detailed, clear, comprehensive, entirely consistent with the overwhelming evidence which was before the respondent, and undoubtedly sufficient to satisfy the respondent's statutory obligations pursuant to the 2001 Act.

123. Being, without doubt, sufficient for the purposes of the said Act of 2001, there is no question of any failure on the part of the respondent to meet any duties regarding the giving of reasons under common law, constitutional or Convention principles.

124. In the well-known decision in *O'Keeffe v. An Bord Pleanála* [1993] 1 IR 39 at 70, the then Chief Justice Finlay stated:

"I am satisfied that in order for an applicant for judicial review to satisfy a court that the decision-making authority has acted irrationally in the sense which I have outlined above so that the court can intervene and quash its decision, it is necessary that the applicant should establish to the satisfaction of the court that the decision-making authority had before it no relevant material which would support its decision."

In the present case, the applicant most certainly has not established that the respondent had before it no relevant material which would support its decision. On the contrary, any fair analysis of the evidence is that it overwhelmingly supported the decision made by the respondent. Neither the evidence which was presented to the tribunal, nor the written decision and reasons proffered by the respondent, provides a basis to challenge the decision on rationality grounds.

125. Section 19 (1) of the 2001 Act makes clear that *"a patient may appeal to the Circuit Court against a decision of a tribunal to affirm an order made in respect of him or her on the grounds that he or she is not suffering from a mental disorder."* If the applicant wished to challenge a finding by the respondent that the applicant suffered from a mental disorder within the meaning defined in the 2001 Act, it was open to the applicant to take an appeal to the Circuit Court under s. 19. That is not for a moment to say that the existence of such a right of appeal prevents this court from determining an application for judicial review. It is to say, however, that the present application is one underpinned by the proposition that the respondent failed to engage properly with the evidence before it and failed to give adequate reasons, the allegation being that neither the applicant nor his legal representative could understand the basis for the decision. The applicant has entirely failed to "bring home" that assertion. Judicial review is, of course, a discretionary remedy. The existence of a statutory entitlement, pursuant to s.19, to appeal against what was decided by the respondent in the present case seems to me to be a factor which might well be of relevance with regard to the proper exercise of this court's discretion in the event that the court took the view that the respondent's reasons were insufficient. This simply does not arise, given the undoubted adequacy of the reason given and the undoubted clarity of the decision and the basis for it which, as I say, is wholly consistent with the evidence which was before the respondent on 12th February.

126. Despite submissions made with clarity, skill and force on behalf of the applicant, it is very clear, when one reads the evidence which was before the respondent tribunal (which was also available to the applicant and his legal representative), why the respondent reached the majority decision it reached. One need only look at the report by the independent consultant psychiatrist, Dr. Cosgrave, to see why this was so. Her report is, of course, one which is entirely consistent with the responsible consultant psychiatrist's report and, it also has to be said, consistent with the key views expressed by Dr. Frazer, who was retained at the behest of the applicant's solicitor. What clearly emerges from Dr. Cosgrave's report is that:

- (1) the applicant has schizophrenia for many years;
- (2) He has had many admissions;
- (3) The applicant has a consistent history of stopping medication, with negative consequences for himself and others;
- (4) The applicant is currently well settled and cooperative in the context of being an involuntary patient;
- (5) The applicant takes his medication only because he has to (i.e. in the context of being an involuntary patient);
- (6) The applicant said he would take medication if discharged;

- (7) However, the applicant does not accept the need for treatment and the applicant does not accept that he needs to take medication;
 - (8) Nor does the applicant accept that if he does not take medication this will lead to relapses with adverse effects including for himself;
 - (9) The responsible consultant psychiatrist, Dr. Noonan is positive that the applicant would stop medication and relapse if discharged, resulting in a relapse and a deterioration in the applicant's condition with further illness-related risk to the applicant and others;
 - (10) Dr. Cosgrave is of the view that the applicant is very likely to stop his psychiatric medication if he is not in a position where he has to take same;
127. Dr. Cosgrave is in full agreement with Dr. Noonan's assessment that the applicant satisfies the criteria for detention under s. 3 (1) (a) and (b) of the 2001 Act. There is complete unanimity among all three consultant psychiatrists (including Dr. Frazer) and it cannot seriously be suggested that the applicant or his legal representative is unclear as to what evidence the respondent relied on in deciding, by a majority, that the applicant was someone suffering from a mental disorder and that the terms of s.3 (1) (b) applied, given the contents of the 3 reports.
128. Given that all consultant psychiatrists took the view that the applicant was someone suffering from a mental disorder, and given that there was no dispute whatsoever between any of the consultant psychiatrists as to which subsection of s.3 (1) was satisfied, there was no failure on the part of the respondent to explain why the majority of its members affirmed the renewal order, having regard to s.3 (1) (b).
129. In short, the evidence overwhelmingly demonstrates that the dual limbs of s. 3 (b) (i) and (ii) were satisfied.
130. There is no doubt about the basis upon which the respondent concluded that the failure to admit the applicant to an approved centre or, in this case, to continue his detention in the approved centre, would be likely to lead to a serious deterioration in his condition or would prevent the administration of appropriate treatment which could only be given by such admission. The overwhelming evidence is that, if discharged, the applicant was likely to become non-compliant with medication which is essential to his treatment, leading to a deterioration in his condition.
131. The evidence was overwhelmingly to the effect that the applicant is well settled and benefitting from medication purely because he is required to take same in the context of his involuntary detention for treatment with the evidence demonstrating that his condition would seriously deteriorate if he was released into the community in circumstances where, as is not in dispute, the respondent has no jurisdiction to make a community treatment order of the type available to an equivalent body in a *different* jurisdiction

(being an order which would require, as an essential condition of discharge into the community, that compliance was maintained with medication).

132. Similarly, it is entirely clear that the independent consultant psychiatrist took on board and engaged fully with the applicant's asserted intention to take medication if discharged, yet came to the view, having regard to the facts detailed in her report that, despite the stated intention, the applicant was very likely to stop taking his psychiatric medication if discharged into the community because he would be no longer required to take in the context of his involuntary admission to an approved centre, the applicant being someone with no insight into his illness and no insight into his need for medication.
133. The evidence before the tribunal also reveals that the applicant himself made wholly inconsistent statements with regard to his intention to take medication and his need for it and also made wholly inconsistent statements with regard to acknowledging that he had an illness.
134. There was nothing, however, inconsistent about the views expressed by all three consultant psychiatrists, all three of whom agreed that the applicant lacked insight and was likely to become non-compliant with medicating if discharged leading, inevitably, to a relapse leading inevitably to the need for readmission.
135. The evidence was very clear to the effect that the continued detention of the applicant was likely to benefit or alleviate his condition to a material extent, namely, because his continued detention would ensure that the applicant receives essential medication in respect of an illness he has no insight into, being medication he does not believe he needs to take, and only takes by reason of being an inpatient in the approved centre.
136. There was no dispute as to the fact that the applicant has benefitted very significantly from treatment but it was equally clear that, insofar as the issue of insight is concerned, there was consensus that the applicant had no insight.
137. All of the foregoing is plain to see from a reading of the evidence which was available to all relevant parties and before the respondent on 12th February 2021 when it made the decision (the report of the independent consultant psychiatrist being 7- pages long, whereas Dr. Noonan's report runs to 2- pages and, although the report by the applicant's consultant psychiatrist, Dr. Frazer, is a much lengthier document, his opinion and recommendations are set out in 2- pages, i.e. for paras. 18.1 to 18.7 of his report).
138. There are no material inconsistencies between any of the views expressed by any of the three consultant psychiatrists, nor are there any material inconsistencies as between any of the facts relied upon by those clinicians for the views reached.
139. The respondent Tribunal discharged the functions and duties imposed upon it pursuant to the 2001 Act. It gave adequate reasons for its decision and acted rationally in reaching its decision in accordance with the evidence before it, and not otherwise. The respondent

acted within jurisdiction and in accordance with the principles of constitutional justice. The applicant has not established an entitlement to any of the relief claimed.

140. For the reasons set out in this judgement, the application must be dismissed.

Final Order

141. On 24 March 2020 the following statement issued in respect of the delivery of judgments electronically: *“The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate.”* Having regard to the foregoing, the parties should correspond with each other with regard to the appropriate order to be made, including as to costs. A period of 7 days should be sufficient in that regard. In default of agreement between the parties, short written submissions should be filed in the Central Office within a further 14 days, i.e. within 21 days from the delivery of this judgment.