

# Common Law Detention of Medical Inpatients Before and After the AC v CUH Ruling

Migdam Ahmed<sup>1</sup>, Elaine Greene<sup>2</sup>, Martha Finnegan<sup>2</sup>

<sup>1</sup> Department of Psychological Medicine, St James's Hospital, Dublin

<sup>2</sup> Department of Liaison Psychiatry for the Elderly, St James's Hospital, Dublin

## BACKGROUND

- The outcome of the supreme court's AC vs. Cork University Hospital (CUH) 2019 has significant implications for healthcare providers when managing patients who lack capacity and desire to leave the healthcare facility.<sup>1</sup>
- While the Doctrine of Necessity may permit a hospital to detain a patient (for no longer than necessary), the supreme court advised that the hospital has no general power of detention and it must seek the courts' assistance for a Ward of Court application (**WoC**).<sup>1</sup> This approach has been endorsed by the HSE for all hospital settings in 2022.<sup>2</sup>
- St James's Hospital received independent legal advice outlining that court authorisation would be required for inpatient detention for any non-negligible period of time after this ruling. **Detention order applications (DO) must be accompanied by applications for WoC, even where incapacity is temporary.**<sup>3</sup> This system will be repealed by commencement of the Capacity Act 2015.<sup>4</sup>
- In our anecdotal clinical experience across liaison services, we observed medical team's uncertainty and anxiety about detaining patients under the doctrine of necessity and seeking court support in situations that had heretofore been managed with common law detention, i.e. delirium.

### Objectives/Aims:

- We examined wardship and detention order applications at St James's Hospital for eighteen months before and after the AC v CUH ruling (Oct 2019) to assess for any change in practice.

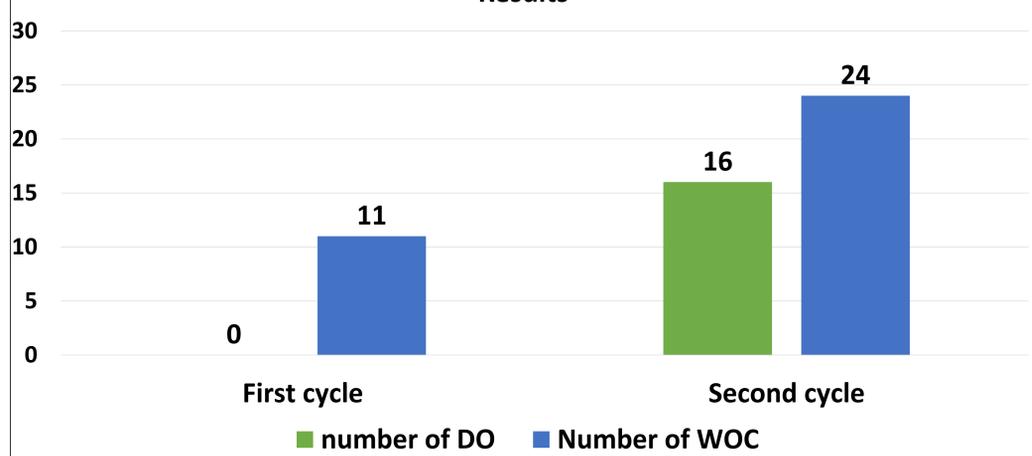
## METHODS

- After audit approval, records from the legal and social work departments were examined for both periods, and clinical information was gathered.
- Outcomes:**
  - Diagnosis of patients and the specialty of the physician making the application.
  - Number of WoC applications 18 months before and after October 2019.
  - Status of WoC application 18 months before and after October 2019.
  - Number of DO applications 18 months before and after October 2019.
  - Status of DO applications 18 months before and after October 2019.

## RESULTS

- Audit Cycle 1 (April 2018 - October 2019)
- Intervention: AC v CUH ruling in October 2019 - the COVID-19 pandemic also co-occurred during this period.
- Audit Cycle 2 (October 2019 - April 2021)

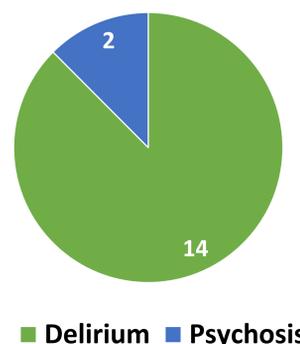
Results



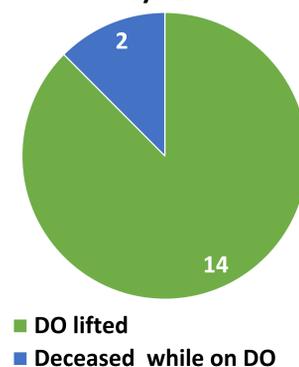
- There were no DO applications in the first cycle.**
- Clinicians initiating DO applications were from a wide range of inpatient disciplines. The majority of DO in the second cycle were lifted and did not proceed to WoC applications.

- The majority of WoC applications came from geriatrics and most patients had a dementia diagnosis.

DO application diagnoses in second cycle



Status of DO applications in second cycle



Deceased before WoC

1

Made WoC

10

WoC application status in first cycle

Application withdrawn

3

Deceased before WoC

1

Made WoC

20

WoC application status in second cycle

## CONCLUSION

- The ruling in one case has resulted in a dramatic change in practice, with new use of temporary DO for temporarily incapacitated inpatients, mostly for delirium, as well as a significant increase in WOC applications.
- The vast majority of DOs were withdrawn on the restoration of patients' capacity and their wardship applications were made redundant. This practice is arguably overly restrictive, expensive, and time-consuming.
- The MHA 2001 is the appropriate legislation for the protection of people with psychosis or other primary mental disorders, but the use of DOs possibly points to a lack of clarity among medical specialties.
- The results describe a lacuna in the legal framework for clinicians caring for temporarily incapacitated patients and point to the urgent need for implementation of the Capacity Bill.

### References:

- A.C. v Patricia Hickey General solicitor and Ors & A.C. v Fitzpatrick and Ors. (2019) IESC 73, Supreme Court of Ireland. <https://www.casemine.com/judgement/uk/5dfc6a614653d042431b0cbc>.
- HSE (2022). Wardship Applications – A Guide for Health Care Workers.
- (Correspondence)
- The National Safeguarding Committee (2017). Review of current practice in the use of wardship for adults in Ireland. [https://www.sageadvocacy.ie/media/1153/review-of-current-practice-in-the-use-of-wardship\\_dec-2017.pdf](https://www.sageadvocacy.ie/media/1153/review-of-current-practice-in-the-use-of-wardship_dec-2017.pdf)