



ANNUAL REPORT 2018

AN BORD ATHBHREITHNITHE MEABHAIR-SHLÁINTE (AN DLÍ COIRIÚIL) MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

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1. **CHAIRPERSON'S FOREWORD**

I am pleased once again to present the Annual Report of the Mental Health (Criminal Law) Review Board. This is the 12th Annual Report of the Review Board, which sets out the activities of the Board during 2018.

In 2018, the Board held 188 review hearings into the detention of patients detained in the Central Mental Hospital compared with 187 the previous year. The number of patients whose detention was reviewed by the Board increased slightly to 89 from 83 in 2017. Of the 89 patients, six were granted a conditional discharge. By comparison in 2017 four conditional discharges were approved by the Board.

During the reporting period, the Board progressed to holding 28th, 29th and 30th reviews into the detention of some patients.

As well as reviewing the detention of patients, the Board held hearings to consider applications for unconditional discharge which had been received from patients who were conditionally discharged for 12 months or more. Three such applications were received in 2018 and there was one outstanding application from the previous year. Of the three applications received, one unconditional discharge was granted, one was refused and the third application was adjourned for further consideration in 2019. The Board also adjourned the application which had been brought forward from 2017 into 2018, for further consideration in 2019.

As well as applications for unconditional discharge, the Board received two applications to amend the conditions of discharge of patients in 2018. One

application, from the Clinical Director of the Central Mental Hospital was granted. The other application, on behalf of a patient, was refused.

A matter of concern which the Board has been aware of, but which has come to the fore in 2018, is the length of time patients in the Central Mental Hospital have to wait to engage in some of the therapeutic programmes. Because of the effect the delay in participating in these programmes has on the progress of patients, the Board raised this matter with the Clinical Director of the hospital. The Clinical Director informed the Board that this is a resource issue as there is a shortage of staff in the hospital to deliver the programmes. The Board would like to emphasise its view of the importance of active participation by patients in therapeutic programmes in a timely manner. These programmes cover important issues such as offending behaviour, in particular in the context of a patient's index offence and how to prevent a repeat of such behaviour; the use and/or abuse of drugs and alcohol and how this may have contributed to a patient's mental illness and how to prevent such abuse in the future; a patient's understanding of their illness, gaining insight into their illness and how to manage their illness and prevent relapse in the future. All of these programmes are essential tools in assisting patients on the pathway to recovery and rehabilitation which, hopefully, will lead to a return to the community to lead fulfilling and productive lives.

Once again on behalf of my colleagues, I thank the Clinical Director of the Central Mental Hospital Professor Harry Kennedy and the team of forensic consultant psychiatrists, nursing, social services and administrative staff of the hospital for their assistance during the year. The Board is mindful that on the day of review hearings

the normal routine of the hospital for patients and for staff is disrupted and is appreciative of the co-operation of all those involved.

I would also like to thank the members of the Board's Legal Representatives Panel who continue to ably and conscientiously represent patients coming before the Board for review of their detention. Because of their illness many patients are unable to speak for themselves and their legal representatives assist them in ways which far exceed their remit. This is much appreciated by the Board.

Finally, I wish to thank the staff of the Board Mr. Greg Heylin, Chief Executive Officer, Ms. Catherine Hayes and Ms. Ann Casey for their assistance throughout the year.

Iarfhlaithe O'Neill
Chairperson

March 2019

2. FUNCTION OF MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

Section 11 of the Criminal Law (Insanity) Act 2006 established the Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shláinte (An Dlí Coiriúil), which came into being on 27 September 2006. The Review Board is responsible for reviewing the detention of patients who have been referred to designated centres arising from a decision by the courts that they are unfit to stand trial or having been found not guilty of an offence by reason of insanity. Under the 2006 Act, as amended by the Criminal Law (Insanity) Act 2010, the Board has the power to order the continued detention of patients or to order either their conditional, or unconditional discharge, having regard to the welfare of the patient and to the public interest. The Board also reviews the detention of prisoners, including military prisoners, who have been transferred to a designated centre suffering from a mental disorder. The Board can order their continued detention in a designated centre or their return to prison. The Board is statutorily independent in the exercise of its functions. The Central Mental Hospital is currently the only designated centre under the 2006 Act.

3. REVIEWS BY THE BOARD

The number of patients detained at any one time in the Central Mental Hospital under the Criminal Law (Insanity) Act 2006 Act as amended, is approximately 80. This number fluctuates because, apart from the longer-detained patients, patients are transferred from prison, either by consent or involuntarily, for care or treatment which is not available to them in prison. However the detention of some of these patients in the Central Mental Hospital may not be reviewed by the Board as they may be transferred back to prison by the Clinical Director prior to having a review hearing,

which is usually scheduled four to five months after a patient is admitted to the hospital.

The Board must review the detention of each patient at intervals of not greater than six months. Therefore, long-term patients usually have two review hearings per year. Outside the regularly scheduled hearings, the Board can, on its own initiative, review the detention of a patient as it considers appropriate. A review may also be requested by a patient or by the Clinical Director of the Central Mental Hospital. The Minister for Justice and Equality can also direct the Board to hold a review into the detention of a prisoner who is involuntarily in the hospital.

During 2018, a total of 89 patients had their detention reviewed compared with 83 in 2017, representing a 7% increase in the number of patients whose detention was reviewed by the Board. Of the 89 patients, 10 or 11% were female and 79 or 89% were male. A total of 188 review hearings were held compared with 187 the previous year. Of the 89 patients, 67% had been diagnosed as suffering from schizophrenia, 17% were suffering from schizoaffective disorder and 16% were diagnosed with other disorders. The percentage figures per diagnosis for patients whose detention was reviewed in 2018 are the same as those for 2017. It should be noted that it is primarily the same core group of patients reviewed by the Board each year. (Appendices A and B refer).

For the first time, the Board conducted 28th, 29th and 30th reviews into the detention of some patients in 2018. Of the 188 review hearings, 10 were a 28th review, five were a 29th review and one was a 30th review. A total of 9% of the hearings were at 28th to 30th review stage. 27% of hearings were at 1st to 5th review stage, compared

with 29% in 2017. Of these, 13 reviews or 7% were a 1st review, compared with 2017 when there were 15 such reviews, which was 8% of the total. (Appendix C refers).

The majority of review hearings were of patients who had been committed to the Central Mental Hospital under Section 5(2) of the 2006 Act, having been found not guilty of an offence by reason of insanity. In 2018, 144 hearings, which is 76% of the total, were into the detention of patients committed under Section 5(2). The number in this category in 2017 was 135 which is 72% of the total number of hearings that year. Again in 2018 the second largest number of review hearings was of patients detained under Section 15(2) of the Act, being prisoners transferred involuntarily to the Central Mental Hospital for care or treatment which could not be provided in prison. This group accounted for 13% of review hearings in 2018 compared with 17% in 2017. (Appendix D refers).

4. MOST SERIOUS OFFENCE OR ALLEGED OFFENCE

The offences, or alleged offences, which patients detained in the Central Mental Hospital in 2018 were charged with, or convicted of, included murder, attempted murder, manslaughter, assault causing serious bodily harm and arson. Of the 89 patients whose detention was reviewed, 37 had been charged with, or convicted of, murder. The majority of the victims of this offence, or alleged offence, were a family member of the patient. A total of 10 patients were charged with, or convicted of, attempted murder/manslaughter/death by dangerous driving. 26 patients were charged with, or convicted of, assault causing harm/serious bodily harm and 5 with arson. Other offences include sexual assault, threat to kill, harassment, false imprisonment, attempted abduction of a child, trespass and possession of knife with

intention to cause harm, possession of knives and intimidation, and threat to set a Garda station alight. (Appendix G refers).

5. **ORDERS FOR DISCHARGE**

During the reporting period, the Board approved the conditional discharge of six patients from the Central Mental Hospital, compared with four in 2017. The average duration of detention in the hospital for the conditionally discharged patients was 10 years. The two shortest durations averaged 4 years and the two longest averaged 15 years. It should be noted that the length of time a patient is detained in the hospital is neither a necessary nor a sufficient ground, in itself, for granting a conditional discharge. (Appendix F refers).

Three applications for unconditional discharge were received in 2018 from patients who had been conditionally discharged for 12 months or more. Of these, the Board granted one unconditional discharge and refused one. The third application was adjourned for further consideration in 2019. The Board also further adjourned an application for unconditional discharge which had been brought forward to 2018 from the previous year.

In addition to the applications for unconditional discharge, the Board received two applications to vary or amend the conditions of Conditional Discharge Orders. One application was received from the Clinical Director of the Central Mental Hospital and the other was on behalf of a patient. The Board granted the requested amendment by the Clinical Director and refused the amendment requested by the patient.

6. MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME

Section 12(1)(c) of the 2006 Act, as amended, requires the Board to assign a legal representative to each patient whose detention is the subject of review, unless the patient proposes to engage legal representation at their own expense. To this end, the Board put in place the Mental Health (Criminal Law) Legal Aid Scheme 2006, under which a panel of legal representatives was established. Patients may if they wish decline the services of an assigned panel solicitor and request another solicitor from the panel or they can engage a non-panel solicitor at their own expense. For continuity for patients, having regard to the fact that they are suffering from a mental disorder, the Board endeavours to assign the same solicitor to represent a patient at subsequent review hearings.

At the beginning of 2018 there were 25 solicitors on the Legal Representatives Panel. During the year one solicitor resigned and two solicitors were added to the Panel bringing the total at the end of the 2018 to 26.

The average number of cases assigned to solicitors on the Panel in 2018 was 7. The top quartile of solicitors was assigned an average of 13 cases each, compared with 11 in 2017. The second and third quartiles combined were assigned an average of 8 cases, the same as last year. The bottom quartile was assigned an average of one case each, compared with two in 2017. The member who resigned is included in figures for 2018 as he represented clients during the year. (Appendix E refers).

7. LEGAL PROCEEDINGS

As reported last year, an appeal was lodged to the Court of Appeal by the applicant in judicial review proceedings against the Clinical Director of the Central Mental

Hospital (*MC v. Clinical Director, Central Mental Hospital and Mental Health (Criminal Law) Review Board (Notice Party)*). The appeal was heard in November 2018 and judgment was delivered by Mr. Justice Peart on 18 January 2019. The Court of Appeal agreed with the High Court that the proceedings were moot. The Court, in offering some guidance, noted that there is clearly a tension between Sections 13A(1) and 13A(2) of the Criminal Law (Insanity) Act 2006 as amended, and said that any final word on the interpretation of Section 13A must await a case where the controversy is not moot.

8. FINANCE INFORMATION

The Review Board is funded from Subhead B.10 of the Vote of the Office of the Minister for Justice and Equality. In 2018, the Review Board received a budget allocation of €400,000. The Board's total expenditure in 2018 was €414,149. The Review Board adheres to the Public Spending Code. The main expenditure items are set out beneath:

Free Legal Aid	€113,691
Board members' fees	*€107,500
Pay	€101,000
Chairperson's fee	€70,875
Legal costs	€20,449

*Includes fees for December 2017 which were paid in January 2018.

Does not include fees for December 2018 which are paid in January 2019.

Includes all of Dr. Brown's fees for 2017 as she was not paid in 2017 due to a delay in payroll setup.

9. PROCUREMENT

Tenders for Interpretation Services at Review Hearings

Nine, once-off, e-mail tenders were issued by the Review Board in 2018 for the provision of interpretation services at review hearings.

10. PROTECTED DISCLOSURE

The Review Board has adopted the Protected Disclosure Policy of the Department of Justice and Equality as its policy on protected disclosures in the workplace. In line with reporting requirements, it is confirmed that there were no protected disclosure reports received in 2018.

11. GOVERNANCE AND INTERNAL CONTROLS

Membership and Structure of the Review Board

The Mental Health (Criminal Law) Review Board is a quasi-judicial body which reviews the detention of patients detained in the Central Mental Hospital under the Criminal Law (Insanity) Act 2006. The Review Board is not a governance board. The Board consists of a Chairperson and any number of ordinary members as the Minister for Justice and Equality, having consulted with the Minister for Health, may require. The current Chairperson is a retired High Court Judge and there are three ordinary members, two of whom are consultant psychiatrists and one is a counsellor psychotherapist. As provided by the 2006 Act, Board members are appointed by the Minister for a period of five years. Membership of the Board in 2018 and the date of appointment of members is set out beneath:

Member	Appointed
Mr. Justice Iarfhlaith O'Neill	September 2014
Dr. Katherine Brown, Consultant Psychiatrist	May 2017
Ms. Nora McGarry, Counsellor Psychotherapist	September 2011 Re-appointed September 2016
Dr. Elizabeth Walsh, Consultant Psychiatrist	January 2013 Re-appointed January 2018

Attendance at Hearings and Fees

The Review Board convenes only for hearings in the Central Mental Hospital. When reviewing the detention of patients, the Board sits in a panel of three, with the Chairperson and at least one consultant psychiatrist always on the panel.

Ordinary members are paid a fee of €250 per review hearing attended. The same fee is paid for attendance at hearings in connection with applications for unconditional discharge and applications to amend or vary conditions of discharge. In 2018 all Board members attended those hearings which they were scheduled to attend. Dr. Brown attended 116 hearings, Ms. McGarry attended 196 hearings and Dr. Walsh attended 80 hearings.

The Chairperson chairs all review hearings and hearings to consider applications for unconditional discharge and applications to amend conditions. The Chairperson also advises and guides the CEO in the management of the business of the Board and in managing any legal cases to which the Board is a party. The Chairperson is paid an annual fee of €70,875.

Employees

The Chief Executive Officer of the Board, Mr. Greg Heylin, is a Principal Officer in the Department of Justice and Equality who devotes a portion of his time to the duties of CEO of the Board. The CEO is responsible for the day-to-day management and administration of the business and resources of the Board. The CEO is not paid a separate salary for his work with the Review Board.

The Review Board is supported by two full-time staff, a Higher Executive Officer and a Clerical Officer, seconded from the Department of Justice and Equality. The staff of the Review Board are civil servants and are paid the appropriate civil service pay rates for their grade.

The payment of Board members' fees and payroll processing is provided by the Payroll Shared Services Centre of the Department of Public Expenditure and Reform. Other payments are processed by the Financial Shared Services Centre of the Department of Justice and Equality.

Oversight and Internal Controls

An Oversight Agreement for 2018 was reached with the Department of Justice and Equality and signed on behalf of the Review Board by the CEO. In that Agreement, it was agreed that, because of the statutory independence of the Board, the Board's very small size and because of the narrow legislative functions of the Chairperson, the CEO rather than the Chairperson, would furnish the Compliance Statement to the Minister in accordance with the *2016 Code of Practice for the Governance of State Bodies*. The 'Comply or Explain' provision of the *Code of Practice* has been applied by the Department to the Review Board.

Regarding internal controls and risk management, the CEO carries out an assessment of the principal risks of the Board on an annual basis and any risks identified are included in the Board's Risk Register. It is not deemed feasible for the Board to establish its own Audit Unit or Audit and Risk Committee because of its size. Instead, alternative arrangements have been put in place to allow the Board to have

access to the Department's Internal Audit Unit and Audit and Risk Committee in relation to financial governance.

The Review Board is not required to produce Financial Statements by its founding legislation. The CEO of the Board liaises with the Financial Shared Services Centre of the Department of Justice and Equality which reports on the Board's income and expenditure in the Department's monthly management reports. The monthly reports are kept under review by the CEO and procedures are in place to ensure that expenditure is authorised in accordance with the Department's guidelines.

The Review Board publishes relevant statistics with regard to its output in its Annual Report which is submitted to the Department and is published on the Board's website. Having regard to the Board's size and the statutory basis for its remit, which does not change unless legislation is amended, it has not been deemed necessary for the Board to prepare a strategic plan.

With regard to procurement, all competitions conducted by the Review Board are done in consultation with the Procurement Strategy Group of the Department of Justice and Equality and the Board adheres to all public service procurement policies and guidelines.

Note:

An administrative consolidation of the Criminal Law (Insanity) Act 2006, prepared by the Law Reform Commission;

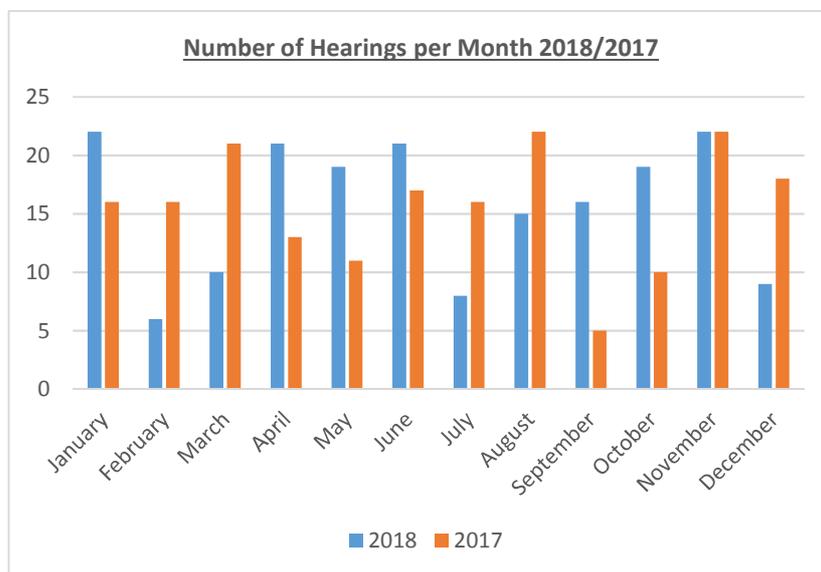
Procedures of the Mental Health (Criminal Law) Review Board, and

Terms and Conditions of the Mental Health (Criminal Law) Legal Aid Scheme 2006

Are available on the Board's website (www.mhclrb.ie).

Number of Hearings per Month 2018/2017

Month	No. of Hearings 2018	% of 2018 Total	No. of Hearings 2017	% of 2017 Total
January	22	12%	16	8%
February	6	3%	16	8%
March	10	5%	21	11%
April	21	11%	13	7%
May	19	10%	11	6%
June	21	11%	17	9%
July	8	4%	16	8%
August	15	8%	22	12%
September	16	9%	5	4%
October	19	10%	10	5%
November	22	12%	22	12%
December	9	5%	18	10%
Total	188	100%	187	100%

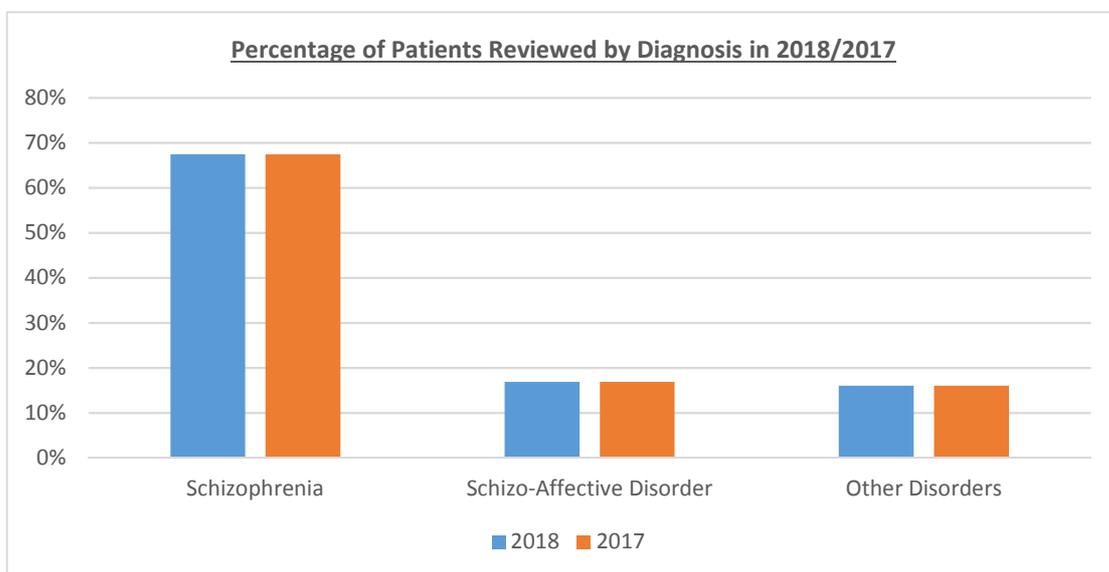


Number of Patients Reviewed per Diagnosis in 2018/2017

Diagnosis	No. of patients reviewed 2018	% of 2018 Total	No. of patients reviewed 2017	% of 2017 Total
Schizophrenia	60	67%	56	67%
Schizo-Affective Disorder	15	17%	14	17%
Other Disorders	14	16%	13	16%
Total	89	100%	83	100%

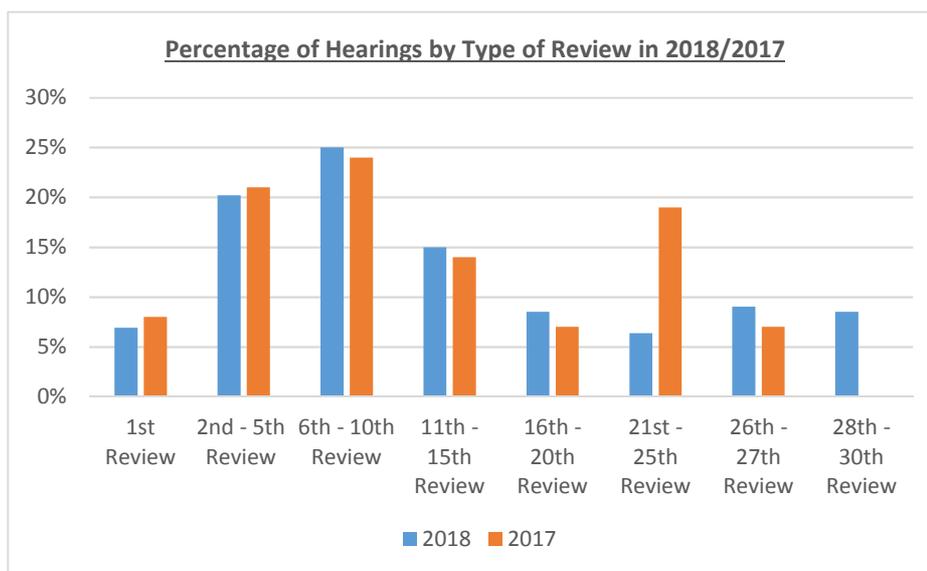
Other Disorders include:

- Bi-Polar Affective Disorder
- Psychotic Depression
- Autistic Spectrum Disorder
- Asperger's Syndrome
- Mood Disorder
- Affective Psychosis
- Organic Personality Disorder
- Organic Psychosis
- Recurrent Severe Depressive Disorder with Psychotic Features



Number of Hearings by Type of Review in 2018/2017

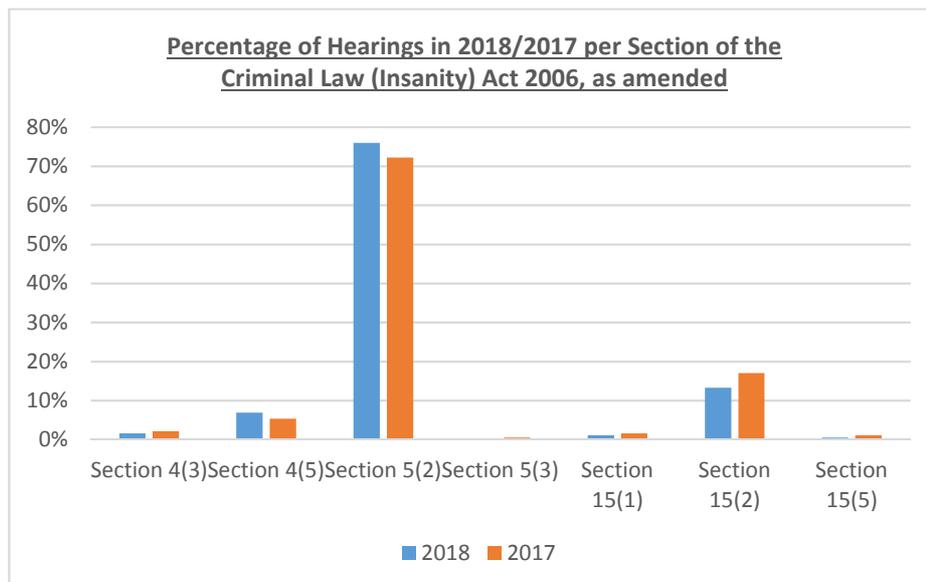
Type of Review	No. of Reviews 2018	% of 2018 Total	No. of Reviews 2017	% of 2017 Total
1st Review	13	7%	15	8%
2nd - 5th Review	38	20%	39	21%
6th - 10th Review	48	25%	45	24%
11th - 15th Review	28	15%	25	14%
16th - 20th Review	16	9%	14	7%
21st - 25th Review	12	6%	35	19%
26th - 27th Review	17	9%	14	7%
28th - 30th Review	16	9%		
Total	188	100%	187	100%



Number of Hearings in 2018/2017 per Section of the Criminal Law (Insanity) Act 2006, as amended

Section of 2006 Act	No. of Hearings 2018	% of 2018 Total	No. of Hearings 2017	% of 2017 Total
Section 4(3)	3	2%	4	2%
Section 4(5)	13	7%	10	5%
Section 5(2)	144	76%	135	72%
Section 5(3)			1	1%
Section 15(1)	2	1%	3	2%
Section 15(2)	25	13%	32	17%
Section 15(5)	1	1%	2	1%
Total	188	100%	187	100%

- Section 4(3)** Unfit to Plead, District Court
- Section 4(5)** Unfit to Plead, Other Court
- Section 5(2)** Not guilty by reason of insanity
- Section 5(3)** Examination and report in relation to not guilty by reason of insanity
- Section 15(1)** Voluntary transfer from Prison
- Section 15(2)** Involuntary transfer from Prison
- Section 15(5)** Continuation of voluntary transfer from Prison (after refusal of care or treatment)



Average Number of Cases Assigned to Legal Representatives on Legal Aid Panel in 2018/2017

Year	No. of Legal Representatives on Panel	Average no. of cases assigned	Average no. of cases assigned Top Quartile	Average no. of cases assigned 2nd & 3rd Quartiles	Average no. of cases assigned Bottom Quartile
2018	27*	7	13	8	1
2017	27**	7	11	8	2

* During 2018 two additional members were appointed and one member resigned. The member who resigned has been included in the 2018 figures because he was assigned cases during the year. At end of 2018 the number of members was 26.

** An additional member was appointed in 2017 and two members resigned. The members who resigned were included in the 2017 figures because they were assigned cases during the year. At the end of 2017 the number of members was 25.

**Number of Patients Conditionally
Discharged in 2018/2017**

Month of Conditional Discharge Order	No. of Patients 2018	No. of Patients 2017
January		1
February	1	
March		2
April	1	
May		1
June	2	
July	2	
Total	6	4

Most Serious offence or Alleged offence of patients whose detention was reviewed in 2018

Type of Offence or Alleged offence	No. of patients charged with, or convicted of, offence	
Murder of which victim was family member of which victim was known to patient of which victim was stranger	37	22 8 7
Attempted Murder / Manslaughter/Death caused by dangerous driving of which victim was family member/known to patient of which victim was stranger	10	7 3
Assault causing harm/serious bodily harm of which victim was family member of which victim was known to patient of which victim was stranger	26	6 4 16
Arson	5	
Other	11	
Total	89	

Note

- 1) Patients convicted of, or charged with, more than one offence/alleged offence, have been categorised according to the most serious offence/alleged offence.
- 2) In a minority of instances there was more than one victim of the offences with which a patient was charged, or convicted.
- 3) The category “**Other**” includes sexual assault, threat to kill, harassment, false imprisonment, attempted abduction of a child, trespass and possession of a knife with intent to cause harm, possession of knives and intimidation, threat to set a Garda station alight.