

Annual Report

2007

An Bord Athbreithnithe Meabhair-Shláinte (An Dlí Coiriúil)
Mental Health (Criminal Law) Review Board

CONTENTS

1	Chairman’s Foreword	1
2	Introduction – Establishment of the Board	4
3	Members of the Board and Secretariat	5
4	Powers of the Board	6
5	Legal Aid Scheme	7
6	Procedure of the Board	7
7	Reviews by the Board	8
8	Meetings attended by the Board	9
9	Website	9

APPENDICES

1	Section 12 of Criminal Law (Insanity) Act	(i)
2	Terms & Conditions Pursuant to the Mental Health (Criminal Law) Legal Aid Scheme 2006	(v)
3	Procedure of Mental Health (Criminal Law) Review Board	(xiv)
4	Statistics	(xviii)

CHAIRMAN'S FOREWORD

The Mental Health (Criminal Law) Review Board was established on 27th September 2006, under the Criminal Law (Insanity) Act 2006 (the Act) and held its first review of the detention of a patient in the Central Mental Hospital on 14th December, 2006. In 2007, a further 133 reviews were undertaken.

The Board's primary function under the Act is to review the detention of patients detained in a designated centre. At the moment, the Central Mental Hospital is the only centre so designated. In doing so, the Board is required to have regard, inter alia, to the welfare and safety of the person whose detention it reviews and to the public interest. Having reviewed the detention of a patient, the Board is required to make such order as it thinks proper whether for further detention, care or treatment in a designated centre or for his or her discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both.

The Board, however, has serious concerns about the extent of its powers under Section 13 of the Act in respect of patients who may be suitable for a conditional discharge. In this regard, the Board sought legal advice and, on the basis of the advice received, it would appear that under the Act as it presently stands, there is a disjunction between detention and discharge (whether unconditional or conditional). While the Act provides that the Board is empowered to make an order for conditional discharge "subject to conditions for out-patient treatment or supervision or both" it does not, at least expressly, confer on the Board any function of monitoring compliance with (or altering) any such conditions nor any power to recall a patient who fails to comply with them. It is also not clear from the Act what consequences are intended to follow from a failure on the part of a discharged patient to comply with the conditions applicable to his or her discharge.

The majority of the patients reviewed to date by the Board have committed very serious offences including homicide and, although generally in the rehabilitative phase of their illness, are totally dependent on medication if a

relapse of the mental illness which gave rise to the index offence is to be avoided. As the Board is required by the Act to have regard to the welfare and safety of the person whose detention it reviews and to the public interest, it does not believe that it can protect either the welfare or safety of the patient or the public interest if it is not in a position to set and enforce conditions which it considers prudent – including compliance with medication – attaching to the discharge of a patient.

The Board has drawn its concerns in this regard to the attention of the Minister and very much welcomes his commitment to amending the Act to deal with these concerns.

The Board is also concerned that the Act would seem to limit its powers to impose conditions to those which relate to “out-patient treatment or supervision or both”. The experience of the Board over its first year shows that, in many cases, it would be desirable to be able to impose a much wider variety of conditions suited to the circumstances of individual patients. Many patients have had serious addiction problems, for example, and in such cases the Board feels it might be necessary to stipulate a condition of abstinence from alcohol or mandatory urine testing at regular intervals. The Board hopes that future legislation may widen their powers in that regard.

The Board also has concerns in relation to patients granted temporary release with the consent of the Minister, by the Clinical Director under Section 14 of the Act to reside in the newly opened high support Community Hostels. While the Board can continue to review the detention of patients spending only a number of nights a week in such hostels with the balance of the week being spent in the Central Mental Hospital, the Board has concerns in relation to those patients who could reside there in the future on a permanent basis, albeit that a patient who is in breach of a condition could be deemed to be unlawfully at large under section 14(5) of the Act or the Clinical Director may have included a provision for recall in certain circumstances in the conditions attaching to their temporary releases.

It appears to the Board, based on legal advice received, that the status of patients permanently residing in such hostels pursuant to a temporary release order is in considerable doubt. Either their release might not be considered to be temporary, and, therefore, section 14 of the Act and any conditions imposed under that section would not apply, or such patients might be considered to have been unconditionally released. This uncertainty casts considerable doubt on the powers of the Board to review such cases, although clearly the intention of the Act is that such patients should be entitled to a review under the Act as an important safeguard of their human rights. The Board is concerned to do whatever it can in keeping with its powers under the Act to vindicate the human rights of such patients and would welcome the support of the Minister in this regard, if necessary by amending legislation.

I would like to take this opportunity to record my thanks to the staff of the Board and to Professor Harry Kennedy and his colleagues and the nursing and administrative staff in the Central Mental Hospital and look forward to continuing the work of the Board into the future.

The Hon. Mr. Justice Brian McCracken

April, 2008

INTRODUCTION

ESTABLISHMENT OF THE BOARD

The Mental Health (Criminal Law) Review Board was established by the Minister for Justice, Equality & Law Reform under Section 11 of the Criminal Law (Insanity) Act 2006 on 27th September, 2006.

The Board is statutorily independent under the Act. Its role is to review the detention of patients in the Central Mental Hospital (currently the only designated centre defined by the Act) who have been referred there arising from a decision by the courts that they are unfit to be tried or have been found not guilty of an offence by reason of insanity. It is also responsible for reviewing the detention in the Central Mental Hospital of prisoners, including military prisoners, suffering from mental disorders who have been transferred there from prison and military personnel referred by tribunals operating under the relevant Defence Acts.

In performing its functions under the Act, the Board is required to have regard, inter alia, to the welfare and safety of the person whose detention it reviews and to the public interest.

MEMBERS OF THE BOARD

The chairperson of the Board is the Hon. Mr. Justice Brian McCracken, a retired Judge of the Supreme Court. The other members are Dr. Michael Mulcahy, a Consultant Psychiatrist and Mr. Tim Dalton, former Secretary General of the Department of Justice, Equality & Law Reform.

SECRETARIAT

- Mr. Pat Wylie - Principal Officer / Chief Executive Officer
- Mr. Paul Laycock - Executive Officer
- Ms. Ann Casey - Clerical Officer

POWERS OF THE BOARD

Section 12(1) of the Act requires that the Board shall:-

“(a) 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;

(b) take account of the court record (if any) of the proceedings of the court to whose decision the request for review relates and, where such a record exists, the court shall make it available to the Board;

(c) Assign a legal representative to a patient the subject of the review unless he or she proposes to engage one.”

Details of the powers of the Board as further provided for by Section 12 of the Act are set out in Appendix 1.

MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME

The Board has, with the consent of the Minister for Justice, Equality & Law Reform and the Minister for Finance, put in place a legal aid scheme for patients. The Scheme is known as the Mental Health (Criminal Law) Legal Aid Scheme 2006 and a copy of the terms and conditions of the Scheme can be found at Appendix 2. There are currently 25 solicitors enrolled on the legal panel which operates under the Scheme.

PROCEDURE OF THE BOARD

Section 12(6) of the Act provides that the procedure of the Board in relation to a review by it under the Act shall, subject to the provisions of the Act, be such as shall be determined by the Board with the consent of the Minister for Justice, Equality & Law Reform. A copy of the Procedure of the Mental Health (Criminal Law) Review Board as approved by the Minister is at Appendix 3 of this report.

REVIEWS BY THE BOARD

The first review of the detention of a patient in the Central Mental Hospital took place on 14th December, 2006. In 2007, 133 reviews took place. A table giving a breakdown of the hearings which have taken place to date is at Appendix 4.

Reviews generally take place in the Central Mental Hospital. Reviews of patients, outside those regularly scheduled, can be triggered as follows:-

- At the behest of the Board
- At the request of the Minister for Justice, Equality & Law Reform
- At the request of the patient
- At the request of the Clinical Director

Section 13(1) of the Act requires the Board to ensure that the detention of a patient is reviewed at intervals of such length not being more than 6 months as it considers appropriate.

MEETINGS ATTENDED BY THE BOARD

In the course of 2007 the Board visited the Shannon Clinic in Belfast which is Northern Ireland's first medium secure unit and provides mental health services to patients who require intensive treatment and rehabilitation in a secure and therapeutic environment. The Board also visited the State Hospital in Carstairs in Scotland, which is one of four high security hospitals in the United Kingdom. While in Scotland, the Board also met with the President of the Mental Health Tribunal for Scotland and some of his colleagues.

During the year, the Board also had meetings with representatives of the Mental Health Commission and with Professor Harry Kennedy, Clinical Director of the Central Mental Hospital, and a number of his colleagues. The Chief Executive Officer has also met with representatives of the Carer's Group of the Central Mental Hospital.

WEBSITE

The Board has a dedicated website – www.mhclrb.ie

APPENDIX 1

Powers of
Review
Board.

12.— (1) The Review Board shall—

- (a) 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,
- (b) take account of the court record (if any) of the proceedings of the court to whose decision the request for review relates and, where such a record exists, the court shall make it available to the Board,
- (c) assign a legal representative to a patient the subject of the review unless he or she proposes to engage one.

(2) The Review Board may, for the purposes of its functions—

- (a) subject to *subsection (10)* , direct in writing the consultant psychiatrist responsible for the care or treatment of a patient the subject of the review concerned to arrange for the patient to attend before the Review Board on a date and at a time and place specified in the direction,
- (b) direct in writing any person whose evidence is required by the Review Board to attend before the Review Board on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or power specified in the direction,
- (c) direct any person in attendance before the Review Board to produce to the Review Board any document or thing in his or her possession or power specified in the direction,
- (d) direct in writing any person to send to the Review Board any document or thing in his or her possession or power specified in the direction, and
- (e) give any other directions for the purpose of the proceedings concerned that appear to the Review Board to be reasonable and just.

(3) The reasonable expenses of witnesses directed under *subsection (2) (b)* to attend before the Review Board shall be paid by the Board out of moneys at the disposal of the Board.

(4) A person who—

(a) having been directed under *subsection (2)* to attend before the Review Board and, in the case of a person so directed under *paragraph (b)* of that subsection, having had tendered to him or her any sum in respect of the expenses of his or her attendance which a witness summoned to attend before the High Court would be entitled to have tendered to him or her, without just cause or excuse disobeys the direction,

(b) being in attendance before the Review Board pursuant to a direction under *paragraph (b)* of *subsection (2)*, refuses to take the oath on being required by the Review Board to do so or refuses to answer any question to which the Review Board may legally require an answer or to produce any document or thing in his or her possession or power legally required by the Review Board to be produced by the person,

(c) fails or refuses to send to the Review Board any document or thing legally required by the Review Board under *paragraph (d)* of *subsection (2)* to be sent to it by the person or without just cause or excuse disobeys a direction under *paragraph (c)*, *(d)* or *(e)* of that subsection, or

(d) does any other thing in relation to the proceedings before the Review Board which, if done in relation to proceedings before a court by a witness in the court, would be contempt of that court,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) If a person gives false evidence before a Review Board in such circumstances that, if he or she had given the evidence before a court, he or she would be guilty of perjury, he or she shall be guilty of that offence.

(6) The procedure of the Review Board 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 Review Board with the consent of the Minister and the Review Board shall, without prejudice to the generality of the foregoing, make provision for—

- (a) for the purpose of *subsection (1) (c)* , the making, with the consent of the Minister and the Minister for Finance, of a scheme or schemes for the granting by the Review Board of legal aid to patients,
- (b) notifying the consultant psychiatrist responsible for the care or treatment of the patient the subject of the review and the patient and his or her legal representative of the date, time and place of the relevant sitting of the Review Board,
- (c) giving the patient the subject of the review and his or her legal representative a copy of any document furnished to the Review Board and an indication in writing of the nature and source of any information relating to the matter which has come to notice in the course of the review,
- (d) subject to *subsection (10)* , enabling the patient the subject of the review and his or her legal representative to be present at the relevant sitting of the Review Board and enabling the patient the subject of the review to present his or her case to the Review Board in person or through a legal representative,
- (e) enabling the Minister, the Director of Public Prosecutions and, where appropriate, the Minister for Defence to be heard or represented at sittings of the Review Board,
- (f) enabling written statements to be admissible as evidence by the Review Board with the consent of the patient the subject of the review or his or her legal representative,
- (g) enabling any signature appearing on a document produced before the Review Board to be taken, in the absence of evidence to the contrary, to be that of the person whose signature it purports to be,
- (h) the examination by or on behalf of the Review Board and the cross-examination by or on behalf of the patient the subject of the review concerned on oath or otherwise as it may determine of witnesses before the Review Board called by it,
- (i) the examination by or on behalf of the patient the subject of the review and the cross-examination by or on behalf of the Review Board (on oath or otherwise as the Review Board

may determine), of witnesses before the Review Board called by the patient the subject of the review,

(j) the determination by the Review Board whether evidence at the Review Board should be given on oath or otherwise,

(k) the administration by the Review Board of the oath to witnesses before the Review Board, and

(l) the making of a sufficient record of the proceedings of the Review Board.

(7) A witness whose evidence has been, is being or is to be given before the Review Board in proceedings under this Act shall be entitled to the same privileges and immunities as a witness in a court.

(8) Sittings of a Review Board for the purposes of an investigation by it under this Act shall be held in private.

(9) The following shall be absolutely privileged:

(a) documents of the Review Board and documents of its members connected with the Review Board or its functions, wherever published;

(b) reports of the Review Board, wherever published;

(c) statements made in any form at meetings or sittings of the Review Board by its members or officials and such statements wherever published subsequently.

(10) A patient shall not be required to attend before the Review Board under this section if, in the opinion of the Review Board, such attendance might be prejudicial to his or her mental health, well-being or emotional condition.

APPENDIX 2

Terms and Conditions

Pursuant to the

Mental Health (Criminal Law) Legal Aid Scheme

2006

1 Introduction

- 1.1 The Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shlainte (An Dli Coiriuil)) was established by order of the Minister for Justice, Equality and Law Reform on 27th September, 2006 in accordance with Section 11 (1) of the Criminal Law (Insanity) Act 2006 (hereinafter referred to as “the Act”). The Review Board is independent in the exercise of its functions under the Act and it is responsible for reviewing the detention of patients in a designated centre (currently the Central Mental Hospital) who have been referred there arising from a decision by the courts that they are unfit to stand trial or found to be not guilty of an offence by reason of insanity. The Board will also review the detention of prisoners, including military prisoners suffering from mental disorders, who have been transferred to a designated centre from prison and military personnel who have been referred to a designated centre by tribunals under the relevant Defence Acts. Section 12 (1) (c) of the Act requires the Board to assign a legal representative to a patient the subject of a review unless he proposes to engage one at his own expense.
- 1.2 Section 12 (6) (a) of the Act requires that the Board make, with the consent of the Minister for Justice, Equality and Law Reform and the Minister for Finance, a scheme or schemes for the granting of legal aid to patients.
- 1.3 The arrangement through which the Board provides legal services is referred to as the Mental Health (Criminal Law) Legal Aid Scheme 2006 and is referred to hereinafter as “the Scheme”. The Scheme operates in relation to the provision of representation before the Mental Health (Criminal Law) Review Board. This document details the terms and conditions pursuant to the Scheme.
- 1.4 The Review Board shall provide legal services through legal representatives in private practice or through individual solicitors within firms.
- 1.5 In the Scheme a word importing the masculine gender shall be read as also importing the feminine gender.

2 Panel of Legal Representatives

- 2.1 The Review Board shall establish and maintain a panel of legal representatives or law firms who satisfy the criteria outlined in these terms and conditions and are willing to provide legal services in accordance with the provisions of the Criminal Law (Insanity) Act 2006 and the Scheme. The panel shall be known as the Mental Health (Criminal Law) Legal Representatives Panel and is referred to hereinafter as “the Panel”. The Board shall assign a legal representative from the Panel to act on behalf of each patient the subject of a review unless he proposes to engage one without availing of the Scheme at his own expense.
- 2.2 The Panel will be maintained on a national basis and will comprise the names of law firms / legal representatives, with the necessary experience and knowledge, whose applications for placement on the Panel have been approved.

3. Conditions

3.1 Any legal representative who wishes to have his name placed on the Panel shall:-

- hold a current practising certificate from the Law Society of Ireland
- have professional indemnity insurance to cover an individual claim of up to €2.2m; and
- be a practising solicitor who has had not less than three year's experience as a practising solicitor ending immediately before application.

At the time of application and at all times throughout his tenure, the legal representative must be practising. Any law firm which wishes to participate in the Scheme must provide the above details for each legal representative who proposes to provide legal services on behalf of the firm under the Scheme.

3.2 Any law firm / legal representative who meets the conditions of the Scheme and who wishes to have his name placed on the Panel must:

- apply in writing to the Board on the approved application form which is attached to this document at Schedule 2;
- give an undertaking in the form appended hereto, that he will comply with these terms and conditions and the provisions of the Act when providing legal services.

In the case of a law firm, the above conditions apply to each legal representative who may provide legal services under the Scheme on behalf of the firm.

3.3 Legal representatives will be expected to act in a fiduciary manner in relation to all patients and to provide a service in keeping with the code of practice of their profession, (e.g. in the case of solicitors the Guide to Professional Conduct as issued from time to time by the Law Society of Ireland) and any specific practice directions issued by either the Board or their professional body in relation to the provision of a service in this area of law.

3.4 Legal representatives on the Panel must comply with the tax clearance procedures specified in the Department of Finance Circular 22/95 entitled "Tax Clearance Procedures – Public Sector Contracts" or any such circular amending or replacing that circular. A copy of this circular is attached at Schedule 3.

3.5 Legal representatives / law firms on the Panel must have access to email facilities and must have IT software that is compatible with Microsoft Office software in order to ensure the effective and efficient administration of the Scheme.

- 3.6 The Panel will be reviewed formally by the Board every three years or as considered necessary by the Board. In order to remain on the Panel it will be necessary for the Board to be satisfied that law firms / legal representatives are providing a professional service. Membership is initially for a 12 month probationary period after which time confirmation will be issued, subject to satisfactory performance.
- 3.7 Every legal representative who has been accepted for membership of the Panel will be allocated a number to be known as a Legal Representative Number which must be quoted on all correspondence with the Board.
- 3.8 Nothing in these terms and conditions shall give rise to, or be construed as giving rise to, a relationship of employer and employee between the Review Board and any legal representative on the Panel.

4 Withdrawal of Legal Representatives from the Panel

- 4.1 Legal representatives who wish to withdraw from the Panel must inform the Board in writing of their intention to withdraw so that the Panel may be amended accordingly. Legal representatives are required to give a minimum of one month's notice of their intention to withdraw from the Panel subject to their obligation to either complete their involvement in existing cases, or in the alternative, satisfactorily enter into an arrangement with the Board to hand over the conduct of such matters in a manner that is entirely satisfactory to the Board. Any such hand over would be, if legal aid is to continue, to another Panel member nominated by the Board.

5 Nature and Extent of Legal Services to be Provided

- 5.1 The legal services provided will generally involve the following activities:

- taking instructions from the patient on one or more occasions. In some instances, patients may have communication difficulties due to their mental disorder. The legal representative will be expected to take time in such cases to ensure to the best of his ability that the patient is well informed and adequately represented;
- carrying out any necessary research including;
 - finding out the facts of the case and obtaining corroborating evidence of these facts either from his medical records or by interviewing witnesses if necessary;
 - carrying out a detailed review of the medical reports by consultant psychiatrists and any other expert reports which have been produced in relation to the case in order to identify the patient's current medical diagnosis and the past medical history;
 - researching relevant case law, if necessary; and
 - considering any other issues relevant to the particular situation;
- representing the patient before the Review Board; and
- communicating and explaining the Review Board's decision to the patient.

- 5.2 Given that the patient will be residing at a designated centre (currently the Central Mental Hospital), it will generally be necessary for the legal representative to visit him there in order to take instructions.
- 5.3 Depending on the nature and extent of the mental health disorder from which a patient may suffer, it may be necessary to visit him on more than one occasion in order for the legal representative to be reasonably satisfied that proper instructions have been obtained. Legal representatives will be expected to take time in such cases to ensure to the best of their ability that the patient is well informed and adequately represented.
- 5.4 Where a patient wishes to be provided with the services of a legal representative other than the one which the Board has assigned or proposes to assign, he may request the Board to assign a particular legal representative from the Panel and may apply to the Board to have the services of a legal representative who has already been assigned dispensed with. A request for a change of legal representatives will be considered by the Board.
- 5.5. Save as otherwise specifically provided for by this Scheme, the relationship between a legal representative and a patient who is in receipt of legal representation under this Scheme, and the rights and privileges arising out of such relationship, shall be the same as the relationship between and the rights and privileges arising out of a relationship between a legal representative and his client not being a patient who is in receipt of legal representation under this Scheme.

6 Operation of the Scheme

- 6.1 The Review Board shall assign a legal representative from the Panel to represent each patient under the Scheme before the Review Board unless he proposes to engage one without availing of the Scheme at his own expense. The assignment of legal representatives will generally be effected using a rota system. The Board will, however, endeavour to assign the same legal representative to a patient on subsequent occasions unless he requests a different legal representative to be assigned or the legal representative is unavailable. The Board will contact the legal representative by phone or email to confirm whether he is in a position to take the case before forwarding papers. Once the legal representative confirms that he will take the case, the Board will assign the legal representative to the case and the necessary papers will be forwarded with a letter of authority outlining the patient's details and the matter authorised.
- 6.2 The letter of authority shall be the legal representative's authority to provide legal services on behalf of the Board under the Scheme.
- 6.3 Legal services may not be provided under the Scheme without a prior letter of authority from the Board.

7 Payment

- 7.1 Once a case has been determined, the legal representative may apply to the Board for payment of the fee using the claim form as approved by the Board from time to time. Care should be taken in completing claim forms as incomplete or improperly completed claim forms will be returned without payment.
- 7.2 A case shall be deemed to be determined when the Review Board has delivered its determination or, in the event of a case not going before the Review Board, when the Review Board has confirmed that the case will not be proceeding.
- 7.3 The completed claim form, together with the letter of authority provided to the legal representative by the Review Board should be returned to the Board's head office, at 1 A Lower Grand Canal Street, Dublin 2, when the services specified in the letter of authority have been provided and the case has been either determined or is not proceeding.
- 7.4 Patients in receipt of legal services under the Scheme must not be charged any fees and must not be asked to discharge any expenses, costs or outlays by any legal representative on the Panel in relation to a case before the Review Board.

8 Fees Payable

- 8.1. Fees payable to legal representatives for legal representation under this Scheme will be as determined by the Board from time to time with the consent of the Minister for Justice, Equality and Law Reform and the Minister for Finance.
- 8.2 There shall be a standard scale of fees (set out in Schedule 1 below) payable per case to legal representatives on the Panel for the provision of services in each Review Board case.
- 8.3 In the event that the case does not proceed, the Board may pay a proportion of the total fee depending on the work that has been done and such fees are outlined in Schedule 1.
- 8.3 Travel and subsistence expenses are not payable to legal representatives in Review Board cases.
- 8.4 The Board will only be liable for outlays or professional services which have been approved. The patient or his legal representative may seek approval by written application on the approved form not less than 5 working days in advance of the hearing. In cases where the Board approves the appointment of a barrister, it shall agree a fee in advance depending on the circumstances of the case. Such fees shall be subject to the approval of the Minister for Finance.

9 Removal from the Panel

- 9.1 The Chief Executive Officer may remove a legal representative from the Panel if he considers that:-
- a) his conduct when providing legal services or his professional conduct generally render him unsuitable, in the opinion of the Chief Executive Officer, to provide such services; or
 - b) he has failed to comply with these terms and conditions; or
 - c) he has not participated in the Scheme to a satisfactory level, including but not confined to, his refusal on a regular basis to accept a patient as a client or to give him appropriate legal representation.
- 9.2 The Chief Executive Officer shall be entitled to remove a legal representative from the Panel where he is of the opinion that his services are no longer required for the efficient administration of the Panel, provided that, when removing a legal representative from the Panel under this section, at least one month's notice in writing is provided to him.
- 9.3 If the Chief Executive Officer decides to exercise the right to remove a legal representative from the Panel, he will be notified in writing of the grounds for the decision. He may, within a period of one month from the date of such notification, appeal in writing to the Review Board querying the decision setting out the grounds of appeal in full. The Review Board will take a decision on the appeal and advise him of that decision. Depending on the particular circumstances, the Review Board reserves the right to remove cases already assigned to him and / or not to refer other cases to him whilst the appeal is under consideration.
- 9.4 The Review Board reserves the right, where an allegation comes to light that professional misconduct has taken place, to suspend the legal representative from the Panel. In such instances the Review Board shall report the allegation to the appropriate body or bodies responsible for professional regulation and to the Gardaí if there are reasonable grounds to suspect that a criminal act has been committed.

10 Quality Service

- 10.1 The Review Board is committed to the provision of a quality legal service to patients. Legal representatives should not take on a case unless they can provide a quality service within the specified time limits. If the work of an individual legal representative is considered not to meet the required standard, the legal representative will be notified of the issues of concern and, if these are not resolved, consideration will be given to removing him from the Panel.
- 10.2 Legal representatives shall keep a proper note and report of consultations, instructions, advice and of what transpires at Review Board hearings.

11 Taxation

11.1 It is each Panel member's responsibility to declare any payments to the Revenue Commissioners for the purposes of Income Tax. All successful applicants will be requested to furnish either a statement from their accountant/tax adviser that their tax affairs are up to date and in order or produce a Tax Clearance Certificate issued by the Revenue Commissioners. The Review Board operates the professional service withholding tax system for fees.

12 Confidentiality

12.1. Subject to the provisions of paragraph 12.2 below, no information furnished to the Board, to its staff or to any person whose services have been engaged by the Board for the purpose of providing legal services to any patient shall be disclosed otherwise than for the purpose of facilitating the proper performance by any person of functions under this scheme or by Court Order.

12.2. Paragraph 12.1 shall not prevent the disclosure of information for any purpose with the consent of the patient.

13 Other relevant Legislation

13.1. Without prejudice to the Act, the Scheme shall conform with the provisions of the Freedom of Information Act, 1997, The Freedom of Information (Amendment) Act, 2003, the Data Protection Acts 1988 and 2003 and other appropriate statutes.

Schedule 1

Fees for representation before the Review Board (exclusive of VAT)	Fee
Representation before the Review Board for first review	€1,385
Representation before the Review Board for second and subsequent reviews	€88
Preparatory Work for first Review Board hearing	
In the event that the Review Board hearing is cancelled prior to hearing, and not reconvened, and all of the necessary preparatory work has been carried out by the legal representative on the case	€776
In the event that the Review Board hearing is cancelled and not reconvened, and some but not all of the preparatory work has been carried out by the legal representative, partial payment, which may not exceed the full case fee payable, will apply as follows:	
- A consultation with the patient has taken place	€22
- A second or more consultations with the patient have taken place	€66
- The papers in relation to the detention have been reviewed	€94
- The required research has been carried out, including interviewing of all appropriate witnesses	€94
In the event that the Review Board hearing is cancelled on the day of the hearing and not reconvened, and all of the necessary preparatory work has been carried out by the legal representative on the case.	€1,108
In the event that the Review Board hearing is cancelled before any preparatory work has been carried out by the legal representative	Nil payment

APPENDIX 3

PROCEDURE OF MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

1. Introduction

On 25th September, 2006 the Minister for Justice, Equality and Law Reform made an Order under Section 11 of the Criminal Law (Insanity) Act, 2006, hereinafter called the Act, appointing 27th September, 2006 as the establishment day for the Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shláinte (An Dlí Coiriúil). The Review Board is independent in the exercise of its functions under the Act and is required to have regard to the welfare and safety of the person whose detention it reviews and to the public interest. The provisions of Schedule 1 of the Act have effect in relation to the Review Board.

2. Powers of the Review Board

2.1. As required by Section 12 (1) of the Act, the Review Board shall –

- (a) 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,
- (b) take account of the court record (if any) of the proceedings of the court to whose decision the request for review relates and, where such a record exists, the court shall make it available to the Board,
- (c) assign a legal representative to a patient the subject of the review unless he or she proposes to engage one.

2.2. The Review Board is empowered under Section 12 (2) of the Act for the purposes of its functions –

- (a) to direct in writing the consultant psychiatrist responsible for the care or treatment of a patient the subject of the review to arrange for the patient to attend before the Review Board on a date and at a time and place specified in the direction, provided that a patient shall not be required to attend before the Review Board if, in the opinion of the Review Board, such attendance might be prejudicial to his or her mental health, well-being or emotional condition.
- (b) to direct in writing any person whose evidence is required by the Review Board to attend before the Review Board on a date and at a time and place specified in the direction and there to give evidence and to produce any

document or thing in his or her possession or power specified in the direction,

- (c) to direct any person in attendance before the Review Board to produce to the Review Board any document or thing in his or her possession or power specified in the direction,
- (d) to direct in writing any person to send to the Review Board any document or thing in his or her possession or power specified in the direction, and
- (e) to give any other directions for the purpose of the proceedings concerned that appear to the Review Board to be reasonable and just.

3. Payment of expenses

The expenses of witnesses directed under section 12 (2) (b) of the Act to attend before the Review Board shall be paid by the Board out of moneys at its disposal. The expenses payable will be equivalent to the expenses payable to witnesses summoned to attend before the High Court.

4. Legal representation

The Review Board shall assign a legal representative to represent the patient unless he or she proposes to engage one. The Review Board shall operate a scheme that provides for the provision of legal aid in accordance with Section 12 (6) (a) of the Act. The Scheme shall be referred to as the "Mental Health (Criminal Law) Legal Aid Scheme" and the panel of legal representatives who are selected to carry out this work shall be referred to as the "Mental Health (Criminal Law) Legal Representatives Panel". A copy of the Scheme and Legal Representatives Panel will be made available to the patient the subject of the review as soon as possible but no later than 14 days before the date scheduled for the review.

5. Notifications to interested parties and procedures for sittings of the Review Board

- 5.1. The Review Board shall notify the consultant psychiatrist responsible for the care or treatment of the patient the subject of the review and the patient and his or her legal representative of the date, time and place of the relevant sitting of the Review Board at least 14 days before the date scheduled.
- 5.2. The Review Board shall give the patient the subject of the review and his or her legal representative a copy of any document furnished to the Board and an indication in writing of the nature and source of any information relating to the matter which shall have come to notice in the course of the review.
- 5.3. A patient the subject of the review (unless in the opinion of the Review Board, such attendance might be prejudicial to his or her mental health, well-being or emotional condition) and his or her legal representative shall be entitled to be

present at the relevant sitting of the Review Board and the patient may present his or her case to the Board in person or through a legal representative.

- 5.4. The Minister for Justice, Equality and Law Reform, the Director of Public Prosecutions and, where appropriate, the Minister for Defence shall be entitled to be heard or represented at all sittings of the Review Board. For this purpose, a notification of the date, time and place of the relevant sitting of the Review Board shall issue at least 14 days before the date scheduled for the Review.
- 5.5. Written statements shall be admissible as evidence by the Review Board with the consent of the patient the subject of the review or his or her legal representative.
- 5.6. If a patient the subject of the review or his or her legal representatives intend to submit evidence from a medical practitioner at a hearing, a report in writing from such medical practitioner shall be furnished to the Review Board at least 5 working days prior to the date of the hearing.
- 5.7. Any signature appearing on a document produced before the review Board shall be taken, in the absence of evidence to the contrary, to be that of the person whose signature it purports to be.
- 5.8. The Review Board shall determine in each case whether evidence, called by the Review Board or the patient the subject of the review, shall be given on oath or affirmation or otherwise. If it is determined that evidence shall be given on oath or affirmation, the oath or affirmation shall be administered by the Chairman in a form compatible with the practice in the courts.
- 5.9. Witnesses called by the Review Board to appear before it may be examined by or on behalf of the Review Board and cross-examined by or on behalf of the patient the subject of the review.
- 5.10. Witnesses before the Review Board called by the patient the subject of the review may be examined by or on behalf of the patient and cross-examined by or on behalf of the Review Board.
- 5.11. The Review Board shall ensure that a proper and sufficient record shall be kept of all proceedings before it. In addition, the Review Board may, and shall if requested in writing by the patient the subject of the review or his or her legal representatives at least 5 working days before the hearing, arrange that a full record of the entire proceedings shall be taken in such form as the Review Board shall determine and that a transcript of such proceedings shall be made available on request to the patient and his or her legal representatives.
- 5.12. Sittings of the Review Board for the purposes of an investigation by it under the Act shall be held in private.
- 5.13. Decisions of the Review Board and the reasons therefore shall, whenever reasonably possible, be given on the day of the review hearing or, if not possible, within 14 working days. Such decisions shall be conveyed to the patient the subject of the review, his or her legal representative, the Director of

the Central Mental Hospital, the Director of Public Prosecutions and the Minister for justice, Equality and Law Reform or the Minister for Defence as appropriate.

- 5.14. Where emergency situations arise during the course of a review hearing, such as a patient becoming physically ill or emotionally distressed, the Review Board shall ensure that appropriate measures are put in place to deal with such situations.

6. Delegation of administrative functions

The Review Board may delegate to the Chief Executive Officer such administrative functions as it considers appropriate.

APPENDIX 4

STATISTICS

TOTAL NUMBER OF HEARINGS 2006/07 (INCLUDING SECOND & SUBSEQUENT HEARINGS)	
Month	Hearings
December 2006	1
January 2007	30
February 2007	5
March 2007	3
April 2007	16
May 2007	18
June 2007	20
August 2007	7
September 2007	0
October 2007	9
November 2007	14
December 2007	11
Total	134