



Annual Report

2008

**An Bord Athbhreithnithe Meabhair-Shláinte
(An Dlí Coiriúil)**

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

Available from the Board's Website at www.mhclrb.ie or on request from

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CHAIRPERSON'S FOREWORD

The Mental Health (Criminal Law) Review Board was established on 27th September, 2006, under the Criminal Law (Insanity) Act 2006 (the Act). The Act transferred the full responsibility for discharge from the State to the Board.

The Board's primary function under the Act is to review the detention of patients detained in a designated centre. 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, or in the case of a patient who has been referred from prison, the return of the patient to prison.

A total of 150 individual reviews of detention of patients took place, consistent with the Board's legal responsibility to review each patient at intervals of not greater than 6 months.

During the year, the Board made one order for unconditional discharge. However, it made no orders for conditional discharges by reason of the fact that, while the Board is empowered to make a conditional order, it believed on legal advice that any conditions which it might impose would not be enforceable.

The Board has been in continuous contact with the Department of Justice, Equality and Law Reform with view to obtaining an appropriate amendment to s.13 of the Act which would provide for the enforceability of conditions of discharge, enabling the Board to consider the discharge of suitable patients from the Central Mental Hospital to the community with safeguards in place for the patient and the public.

The Board is concerned that the prolonging of deprivation of liberty by reason of the lack of enforceability could become an issue in the absence of powers to discharge with enforceable conditions. While the majority of patients detained at the Hospital are not suitable for consideration for discharge, there are and have been a number of patients who the Board would discharge if it could do so subject to enforceable conditions. The Board is of the view that the continuing detention of these patients is contrary to the original intention of the 2006 Act and hopes that legislation can be enacted in the near future to remedy the unfortunate situation which has arisen.

In anticipation of enactment of the necessary amendment, the Board along with the Clinical Director of the Hospital, have continued to research discharge procedures in other jurisdictions and had a useful meeting regarding the approach of the New South Wales Mental Health Services with Judge Greg James, President of the Mental Health Tribunal, NSW, on his visit to Dublin during the year.

I take this opportunity to acknowledge the accommodation and facilities provided by the Central Mental Hospital under its Clinical Director Professor Harry Kennedy and the co-operation of the Consultant Forensic Psychiatrists, together with the nursing staff, social services and the Hospital's administrators.

I compliment the work of the Legal Aid Scheme Solicitors who ably represent patients, many of whom because of illness are not able to speak for themselves.

I acknowledge the input of Mr. Pat Wylie, Chief Executive Officer from the Board's inception to May 2008 and that of Mr. Liam Fitzgerald, Chief Executive Officer, together with Mr. Paul Laycock, Executive Officer and Ms. Ann Casey, Clerical Officer Higher.

Mr Justice Brian McCracken

November 2009

ESTABLISHMENT OF THE REVIEW 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

Members of the independent Statutory Board are appointed by the Minister for Justice, Equality and Law Reform. The Chairperson of the Statutory Board is the Hon. Mr. Justice Brian McCracken, a retired Judge of the Supreme Court. The Members are Dr Michael Mulcahy, Consultant Psychiatrist and Mr. Tim Dalton, former Secretary General of the Department of Justice, Equality & Law Reform.

ADMINISTRATION

Chief Executive Officer: Mr Pat Wylie (to May 2008)

Mr Liam Fitzgerald (from May 2008)

Executive Officer: Mr Paul Laycock

Clerical Officer Higher: Ms Ann Casey

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 2.

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. The terms and conditions of the Scheme can be found on the Board's website at www.mhclrb.ie or can be obtained on request from the Board's Office (see details on the cover of this Annual Report). In 2008, a total of 28 solicitors were attached to 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. The Procedure of the Mental Health (Criminal Law) Review Board as approved by the Minister is at Appendix 2 of this Report.

REVIEWS BY THE BOARD

At any one time, there are some 80 patients detained at the Central Mental Hospital under the Criminal Law (Insanity) Act 2006. The number will fluctuate, for example, because new patients are transferred from prison for treatment and patients are returned to prison following care and treatment.

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.

In course of the year, 150 individual reviews were conducted, including second and subsequent reviews. Tables showing the number of hearings in each month together with breakdown by 1st, 2nd 3rd and 4th hearings are shown at Appendix 3 (Statistics).

Reviews take place in the Boardroom of the Central Mental Hospital.

Consideration of a requirement for Review of a patient, outside that regularly scheduled, can be initiated

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

ORDERS FOR DISCHARGE

Under the Act, the Board has sole responsibility from the Oireachtas to determine suitability for discharge of persons ordered by court under section 4 of the Act (unfit to be tried) or section 5 (not guilty by reason of insanity) to be detained at the Central Mental Hospital for care and treatment.

The Board has power to discharge a person unconditionally or conditionally. The latter is problematic as the Board considered that there is no power to enforce conditions. During the year, the Department of Justice, Equality and Law Reform had commenced drafting an appropriate amendment to the Act to confer enforceable conditions.

The Board made one order for unconditional discharge of a patient to sheltered accommodation.

While the majority of persons detained at the Hospital during 2008 were not presently suitable for consideration for conditional discharge, the Board saw a number of patients who the Board would discharge if it could do so subject to enforceable conditions.

MEETINGS/EVENTS

During the year, the Board met with Professor Harry Kennedy, Clinical Director of the Central Mental Hospital, and a number of his colleagues. The Chief Executive Officer met quarterly with the Director of Mental Health Tribunals at the Mental Health Commission. The Chief Executive Officer also met with representatives of the Central Mental Hospital Carers' Group.

The Board met with Hon. Justice Greg James, President of the New South Wales Mental Health Review Tribunal, Sydney, Australia on the occasion of his visit to Dublin as participant at the International Society for the Reform of Criminal Law Conference on 'Codification of the Criminal Law: Modern Initiatives' on 11-15 July. The Board's Chairperson Mr Justice Brian McCracken chaired the Conference Workshop Session on 'Mental Disorder'.

BOARD EXPENDITURE (2008)

Expenditure amounted to €692,000 of which the non-pay element was €324,000.

PROVISION OF LEGAL SERVICES TO THE BOARD

The Mental Health (Criminal Law) Review Board is statutorily independent and so cannot avail of the services of the Chief State Solicitor's Office. During 2008, WhitneyMoore Solicitors provided legal services as required.

WEBSITE

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

APPENDIX 1

Function of the Mental Health (Criminal Law) Review Board

The Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shláinte (An Dlí Coiriúil)) 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/her own expense.

APPENDIX 2

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 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, 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

Eligibility for payment of expenses is governed by the Act and the Procedure of the Mental Health (Criminal Law) Review Board.

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

This is governed by the Act and the Terms and Conditions of the Mental Health (Criminal Law) Legal Aid Scheme.

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

This is governed by the Act and the Procedure of the Mental Health (Criminal Law) 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 Chairperson 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 3

Statistics

TABLE (1) TOTAL NUMBER OF HEARINGS 2008 (INCLUDING SECOND & SUBSEQUENT HEARINGS)	
Month	Hearings
January 2008	13
February 2008	13
March 2008	11
May 2008	19
June 2008	25
July 2008	13
August 2008	1
September 2008	9
October 2008	8
November 2008	20
December 2008	18
Total	150

Table (ii) No. of Hearings by Sequence 2008

Number of 1st Review Hearings: 19
Number of 2nd Review Hearings: 18
Number of 3rd Review Hearings: 37
Number of 4th Review Hearings: 48
Number of 5th Review Hearings: 28
Number of 6th Review Hearings: 0

Total number of Review Hearings: 150