



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

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

Annual Report 2011

Mental Health (Criminal Law) Review Board
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1. CHAIRPERSON'S FOREWORD

The year 2011 marked two significant milestones for the Mental Health (Criminal Law) Review Board. First, the five year term of office of the Board which was appointed on 27 September 2006 expired on 26 September 2011 and a new Board was appointed by the Minister for Justice and Equality Mr. Alan Shatter T.D. with effect from 27 September 2011. The members of the new Board are Dr. Michael Mulcahy, Consultant Psychiatrist, Ms. Nora McGarry, Counsellor Psychotherapist and myself. I would like to take this opportunity to welcome Ms. McGarry to the Board. I would also like to pay tribute to Mr. Tim Dalton for his hard work and dedication during his term of office with the Board. Mr. Dalton's knowledge and experience was invaluable over his five year term with the Board, particularly in its formative years.

Second, following the commencement of the Criminal Law (Insanity) Act, 2010 on 8 February 2011, the Board was, for the first time, able to consider a small number of suitable patients for conditional discharge from the Central Mental Hospital. Previously the Board had expressed concerns in relation to the detention of some patients whom the Board considered suitable for discharge subject to safeguards being in place for both the patient and the public. The new Act enables the Board to make discharge orders which are subject to enforceable conditions. The first of seven conditional discharge orders was made by the Board in March 2011.

Regarding the number of reviews of detention held by the Board in 2011, this decreased slightly to 182 from 205 in 2010, a decrease of 11%. The decrease was due to a reduction in the number of patients who came before the Board

for review from 94 in 2010 to 84 in 2011. The Board is legally obliged to review the detention of each patient at intervals of not greater than six months and for the first time in 2011 the Board held 12th and 13th reviews into the detention of some patients.

I would like on behalf of the Board to thank the Clinical Director of the Central Mental Hospital Professor Harry Kennedy, the team of Consultant Forensic Psychiatrists and the nursing, social services and administrative staff of the Hospital for their co-operation and assistance throughout the year.

I would also like to acknowledge the work of the legal representatives who represent patients coming before the Board for review. Because of their illness, patients are sometimes unable to speak for themselves and many legal representatives assist their clients in a way which far exceeds their remit. This is much appreciated by the Board.

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

Mr. Justice Brian McCracken

March 2012

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

The Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shláinte (An Dlí Coiriúil)) was established on 27 September 2006 under Section 11 of the Criminal Law (Insanity Act) 2006, as amended. The Board is responsible for reviewing the detention of patients in a designated centre who have been referred there by a court, having been found either unfit to stand trial or not guilty of an offence by reason of insanity. The Board also reviews the detention of prisoners, including military prisoners, who are transferred to a designated centre suffering from a mental disorder. The Board is independent in the exercise of its function. Currently the only designated centre is the Central Mental Hospital.

3. REVIEWS BY THE BOARD

At any one time there are approximately 80 patients detained in the Central Mental Hospital under the Criminal Law (Insanity) Acts. This number varies as patients are transferred from prison for care and treatment and are then returned to prison. Also since the commencement of the 2010 Act, patients conditionally discharged no longer come under the remit of the Board for review as they are not detained in the Central Mental Hospital.

The Board is required to ensure that the detention of each patient is reviewed at intervals of not greater than six months. Outside those regularly scheduled reviews 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 and, in certain circumstances, a review can be triggered by the Clinical Director of the Central Mental Hospital. The Minister for Justice and Equality can also direct a

review of the detention of a prisoner transferred from prison to the Central Mental Hospital.

In 2011 the Board reviewed the detention of 84 patients, holding a total of 182 reviews. This represents an 11% decrease in the number of reviews held in 2010 which was 205. A total of 72% of the patients reviewed in 2011 had been diagnosed as suffering from schizophrenia, 14% were suffering from schizoaffective disorder and 14% were diagnosed with other disorders. This compares with 2010, when the detention of 94 patients was reviewed with 69% having been diagnosed as suffering from schizophrenia, 16% from schizoaffective disorder and 15% from other disorders. It should be noted that it is primarily the same core group of patients that is reviewed by the Board each year. (Appendices A and B refer).

The Board for the first time in 2011 conducted 12th and 13th reviews into the detention of some patients. 27 hearings were 12th reviews and two were 13th, representing 15% and 1% respectively of the overall total number of reviews. In 2011 8% of hearings were 1st reviews, compared with 11% in 2010. (Appendix C refers).

The majority of reviews of detentions were of patients detained in the Central Mental Hospital under Section 5(2) of the 2006 Act, as amended, having been found not guilty by reason of insanity. This group accounted for 121 hearings in 2011 compared with 120 in 2010 representing 66% and 59% respectively of the overall number of hearings. Again in 2011 the second largest number of reviews of detention was of patients detained under Section 15(2) of the Act,

being prisoners transferred involuntarily from prison to the Hospital for care and treatment which could not be provided in prison. 17% of the overall total number of reviews was of this category of patient as compared with 26% in 2010. (Appendix D refers).

4. ORDERS FOR DISCHARGE

A major development in relation to the work of the Board in 2011 was the coming into operation of the Criminal Law (Insanity) Act, 2010, which amended the 2006 Act. The new Act gave the Board the power to make orders for the discharge of patients subject to such conditions as the Board considers appropriate, including conditions relating to out-patient treatment or supervision or both. The Board, however, cannot make an order until it is satisfied that any arrangements which are considered necessary by the Clinical Director have been made in respect of a patient including arrangements (i) to facilitate the patient in complying with the conditions of the order; (ii) to supervise the patient and (iii) to provide for the return of the patient to the designated centre in the event that he or she is in material breach of their conditional discharge order.

Once a patient is conditionally discharged they are no longer subject to review by the Board as they are not detained in a designated centre. The Board may however, on application from a person who is the subject of an order or the Clinical Director, vary or remove a condition, or impose further conditions at any time after the making of a conditional discharge order.

After the expiry of 12 months from the date of their conditional discharge, a person who is the subject of a conditional discharge order may make an

application to the Board for an unconditional discharge. If the application is unsuccessful they may make subsequent applications for an unconditional discharge as long as a period of not less than 12 months has elapsed between one application and the next. Before making a decision on such an application the Board must hear evidence about the person's mental condition and their compliance with the conditions of their conditional discharge order, and any evidence the person may wish to present.

Prior to the coming into operation of the 2010 Act, the Board had been aware that a number of applications for conditional discharge would be made immediately upon the commencement of the Act from patients who had been preparing with the Hospital for such an eventuality for some time. In 2011 the Board approved the conditional discharge of seven patients from the Central Mental Hospital; two in March, three in May, one in June and one in July. Of the patients conditionally discharged, one had been detained in the Central Mental Hospital for 30 years, one for 22 years, one for 21 years, two for 13 years and two for 11 years. It should be noted that length of time in the Hospital is neither a necessary nor a sufficient ground in itself for granting a conditional discharge. (Appendix F refers).

The Board made no order for unconditional discharge in 2011.

5. MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME

The Board is required under Section 12(1)(c) of the 2006 Act to assign a legal representative to each patient whose detention is the subject of review, unless they propose engaging 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 decline the services of an assigned panel solicitor and request another solicitor from the panel or they can engage their own non-panel solicitor. For continuity, and having regard to the fact that patients are suffering from a mental disorder, the Board endeavours to assign the same solicitor to a patient for subsequent reviews.

The Board commenced a review of the Legal Aid Panel at the end of 2010 pursuant to Section 3.6 of the Terms and Conditions of the Legal Aid Scheme, which states that the Panel will be formally reviewed by the Board every three years or as considered necessary by the Board. In November 2010 the Board wrote to the 31 solicitors on the Panel requesting them to indicate whether or not they wished to remain on the Panel. 26 solicitors responded indicating their wish to remain a member of the Panel, the remaining five were removed from the Panel for various reasons, with their agreement.

Following the reduction in the number of solicitors on the Panel, the Board considered whether or not it would be necessary to replace those who had been removed. Based on an analysis of the number of patients who have required legal representation and the workload of different solicitors since the Panel was established, the Board decided that replacement solicitors for those removed from the Panel would not be required for the foreseeable future. The Board is keeping the matter under ongoing review.

Of the 26 solicitors on the Panel, the average number of cases assigned to each in 2011 was seven, the same as in 2010. The top quartile of solicitors on the Panel and the second and third quartiles combined were also assigned the same average number of cases as in 2010, 14 and 12 cases each respectively. The bottom quartile was assigned an average of three cases in 2011 compared with zero in 2010. This reflects the fact that four solicitors removed with their agreement from the Panel were in the bottom quartile with respect to the number of cases assigned and one was in the third quartile in 2010. (Appendix E refers).

6. LEGAL PROCEEDINGS

The up-dated position regarding proceedings which were reported on in the Board's 2010 Annual Report is as follows:

(i) ***JB v. The Mental Health (Criminal Law) Review Board, The Minister for Justice, Equality and Law Reform, Ireland and the Attorney General***

The Supreme Court affirmed the Order of the High Court and struck out the Appeal on 17 February 2011, by consent. The plaintiff was granted a conditional discharge by the Board in July 2011.

(ii) ***DG v. The Mental Health (Criminal Law) Review Board, The Minister for Justice, Equality and Law Reform, Ireland and the Attorney General***

The proceedings were struck out in the High Court on 1 April 2011, by consent. The plaintiff was granted a conditional discharge by the Board in May 2011.

(iii) ***AL v. Harry Kennedy, Clinical Director of the Central Mental Hospital and Mental Health (Criminal Law) Review Board (Notice Party)***

The decision of the High Court finding the plaintiff's detention to be lawful was not appealed. The plaintiff was granted a conditional discharge by the Board in March 2011.

No further proceedings were brought against the Board in 2011, nor are there any proceedings outstanding at the end of 2011.

7. MEETINGS

The new Board had an introductory meeting with the Clinical Director of the Central Mental Hospital on 11 October 2011. After the meeting the Clinical Director gave the Board a tour of the hospital. The Board also met with three of the hospital's Consultant Forensic Psychiatrists, Dr. Helen O'Neill, Dr. Paul O'Connell and Dr. Damian Mohan who kindly took time out of their busy schedule in December to make a presentation to the Board on the assessment tools used by the team at the Hospital. These tools are used by the Hospital to assist in progressing the treatment of patients and as supportive evidence for advice offered to the Board.

8. EXPENDITURE

The total expenditure of the Board in 2011 amounted to €511,454. €234,503 was expended on pay, €101,032 on the provision of free legal aid and €175,919 on other expenses. Fees paid to the Chairman and members of the Board

were reduced with effect from 27 September 2011 upon appointment of the new Board.

REVIEW OF THE CRIMINAL LAW (INSANITY) ACT 2006, AS AMENDED

9. A review of the Criminal Law (Insanity) Act 2006, as amended by the Criminal Law (Insanity) Act 2010 is currently being conducted by the Department of Justice and Equality. The Board has been invited by the Department to submit views on the operation of the Acts. The Board proposes making a submission on matters of priority to the Board or on deficiencies in the Act which affect the functions of the Board.

Note:

The Criminal Law (Insanity) Act 2006

The Criminal Law (Insanity) Act 2010

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).

Appendix A

Number of Hearings per Month in 2011/2010

Month	No. of Hearings 2011	% of 2011 Total	No. of Hearings 2010	% of 2010 Total
January	17	9%	18	9%
February	14	8%	19	9%
March	26	14%	28	14%
April	16	9%	18	9%
May	13	7%		
June	14	8%	21	10%
July	14	8%	25	12%
August	11	6%	17	8%
September	15	8%	18	9%
October	16	9%	16	8%
November	14	8%	13	6%
December	12	6%	12	6%
Total	182	100%	205	100%

Appendix B

Number of Patients Reviewed per Diagnosis in 2011/2010

Diagnosis	No. of patients reviewed 2011	% of 2011 Total	No. of patients reviewed 2010	% of 2010 Total
Schizophrenia	60	72%	65	69%
Schizo-Affective Disorder	12	14%	15	16%
Other Disorders	12	14%	14	15%
Total	84	100%	94	100%

Other Disorders include:

Bi-Polar Affective Disorder

Drug Induced Psychosis

Antisocial Personality Disorder

Paranoid Personality Disorder

Intellectual Disability

Delusional Disorder

Depressive Disorder

Persistent Delusional Disorder

Recurrent Severe Depressive Disorder with Psychotic Features

Psychotic Episode

Appendix C

Number of Hearings by Type of Review in 2011/2010

Type of Review	No. of Reviews 2011	% of 2011 Total	No. of Reviews 2010	% of 2010 Total
1st Review	15	8%	22	11%
2nd Review	10	6%	13	6%
3rd Review	8	4%	11	5%
4th Review	5	3%	12	6%
5th Review	7	4%	11	5%
6th Review	9	5%	14	7%
7th Review	7	4%	21	11%
8th Review	10	6%	46	23%
9th Review	15	8%	37	18%
10th Review	28	15%	17	8%
11th Review	39	21%	1	
12th Review	27	15%		
13th Review	2	1%		
Total	182	100%	205	100%

Appendix D

Number of Hearings in 2011/2010 per Section of the Criminal Law (Insanity) Act 2006, as amended

Section of 2006 Act	No. of Hearings 2011	% of 2011 Total	No. of Hearings 2010	% of 2010 Total
Section 4(3)	2	1%	7	3%
Section 4(5)	15	8%	14	7%
Section 5(2)	121	66%	120	59%
Section 15(1)	10	5%	10	5%
Section 15(2)	31	17%	53*	26%
Section 15(5)	3	3%	1*	
Total	182	100%	205	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 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)

* The Board's 2010 Report erroneously stated that the number of hearings of patients detained under Section 15(2) was 54. This figure should have been 53, with 1 hearing of a patient detained under Section 15(5).

Appendix E

Average Number of Cases Assigned to Legal Representatives on Legal Aid Panel in 2011/2010

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
2011	26	7	14	12	3
2010	31	7	14	12	0

Appendix F

Number of Patients Conditionally Discharged in 2011

Month of Conditional Discharge Order	No. of Patients
March	2
May	3
June	1
July	1
TOTAL	7