



**AN BORD ATHBHREITHNITHE MEABHAIR-SHLÁINTE
(AN DLÍ COIRIÚIL)**

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

Annual Report 2023

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

I am pleased as Chairperson of the Mental Health (Criminal Law) Review Board to present the Review Board's 2023 Annual Report, which provides an overview of the Board's activities during 2023. This is the 17th Annual Report of the Review Board.

The Central Mental Hospital moved to Portrane on the 13th of November 2022, the move to Portrane went smoothly and patients have settled in to the new facilities.

In 2023 there was an increase in the number of review hearings held, by comparison with the previous year. The Board held 187 reviews compared with 180 in 2022, reviewing the detention of 88 patients. Of the 88 patients whose detention was reviewed, five were granted a conditional discharge. Four patients were granted a conditional discharge in 2022, out of a total of 82 who had their detention reviewed that year.

There were two applications for amendment to conditional discharges, one was granted.

The interim Executive Clinical Director of the Central Mental Hospital informed the Board she had recalled two conditionally-discharged patients to the hospital on the grounds that she had a reasonable belief the patients were in material breach of their Conditional Discharge Order.

Also in 2023, the Board progressed to holding 41st and 42nd reviews into the detention of some patients.

Seven applications for unconditional discharge were received in 2023. Of the total applications received, four unconditional discharges were granted by the Board. Three were scheduled for hearings in January and February 2024. One was postponed for rescheduling in 2024.

On behalf of my colleagues, I thank the current interim Executive Clinical Director, Dr Brenda Wright, for her assistance during the year. I also thank the multidisciplinary teams in the hospital for their work in the preparation of psychiatric reports for patients prior to their review hearings. The Board is mindful that this work can be time consuming for all involved. The Board is appreciative of the assistance and co-operation of the consultant psychiatrists, nursing, therapists, social services and administrative staff of the hospital.

Once again, I would like to compliment the work of 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 and for their co-operation with the arrangements for the return to in-person hearings in the hospital.

Finally, I would also like to extend gratitude to the CEO of the Board Ms. Aisling Brennan, the Secretary to the Board, Ms. Anita Kelleher and Ms. Ann Casey for their excellent and efficient service to the Board during the year.

Iarfhlaith O'Neill
Chairperson

19th March 2024

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. The Board is statutorily independent in the exercise of its functions.

The 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. When coming to its decision, the Board must have regard to the welfare and safety 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.

3. REVIEWS BY THE BOARD

As provided by the 2006 Act, the Board must review the detention of each patient at intervals of not greater than six months. Long-term patients usually have two review hearings per year but some may have more because, outside of the regularly scheduled hearings, a review can be held on the initiative of the Board or at the request of a patient or the Clinical Director of the Central Mental Hospital. The Minister for Justice can direct the Board to hold a review into the detention of a prisoner who is involuntarily admitted to the hospital.

At any one time, there are usually between 80 to 90 patients detained in the Central Mental Hospital under the 2006 Act. 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, some of these patients may not come before the Board for review of their detention in the hospital as the Clinical Director, having consulted with the Minister for Justice, may transfer prisoners back to prison at any time.

The detention of 88 patients was reviewed by the Board in 2023, representing an increase in the number of patients whose detention was reviewed compared with 2022 when the detention of 82 patients was reviewed.

Of the 88 patients, 11 or 12.5% were female and 77 or 87.5% were male. The Board held a total of 187 review hearings compared with 180 the previous year, representing a slight increase of 3.9% in the number of review hearings. Of the 88 patients, 65% had been diagnosed as suffering from schizophrenia, 19% were suffering from schizoaffective disorder and 16% were diagnosed with other disorders. This compares with 2022 when 63% of patients were diagnosed as suffering from schizophrenia, 17% were suffering from schizoaffective disorder and 20% from other disorders. 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).

The Board, for the first time in 2023 conducted 40th, 41st and 42nd reviews into the detention of some patients. Of the 187 review hearings, seven were a 40th review, five were 41st review and one was 42nd review. A total of 7% of the hearings were at 40th to 42nd review stage. 20% of hearings were at 1st to 5th review stage, compared with 16% in 2022. Of these, eleven reviews or 6% were a 1st review, compared to 2022 when there were seven such reviews, which is 4% of the total that year. (Appendix C refers).

As in previous years, 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 2023, 135 hearings, which is 72% of the total, were into the detention of patients committed under Section 5(2). The number in this category in 2022 was 129 which was also 72% of the total number of hearings that year. Again in 2023 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 16% of review hearings in 2023 compared with 13% in 2022. Patients detained under Section 4(5) accounted for 10% of review hearings in 2023 compared with 13% the previous year. (Appendix D refers).

4. MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME

The Review Board is required by Section 12(1) (c) of the 2006 Act 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. Having regard to this, the Board put in place the Mental Health (Criminal Law) Legal Aid Scheme 2006, under which

a panel of legal representatives was established and the legal fees for representation before the Review Board is provided for. 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. The Board endeavours, for continuity for patients, having regard to the fact that they are suffering from a mental disorder, to assign the same solicitor to represent a patient at subsequent review hearings.

At the end of 2023 there were 21 legal panel members. During the year two members resigned from the panel.

The average number of cases assigned to solicitors on the Panel in 2023 was 8. (Appendix E refers).

5. ORDERS FOR DISCHARGE

The Board approved the conditional discharge of five patients from the Central Mental Hospital in 2023. The average duration of detention in the hospital for the conditionally discharged patients was 9 years. The two shortest durations averaged eight years and the two longest averaged 12 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).

Two patients were recalled from conditional discharge during 2023, the Clinical Director of the Central Mental Hospital having formed the opinion that the patients were in material breach of their conditional discharge order.

The Board received seven applications for unconditional discharge in 2023 from patients who had been conditionally discharged for 12 months or more. Four unconditional discharges were granted by the Board in 2023.

Two applications were received for an amendment to a conditional discharge order in 2023, of which one was approved by the Board.

6. OFFENCES OR ALLEGED OFFENCES

The type of offences, or alleged offences, which patients detained in the Central Mental Hospital in 2023 were charged with, or convicted of, included murder, attempted murder, manslaughter, assault, and assault causing serious bodily harm. Of the 88 patients whose detention was reviewed by the Board, 41 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 8 patients were charged with, or convicted of, attempted murder/manslaughter/death by dangerous driving. 25 patients were charged with, or convicted of assault, assault causing harm/serious bodily harm and 5 with arson. Other offences include sexual assault, physical assault, threat to kill, harassment and possession of knives and intimidation. (Appendix G refers).

7. FINANCIAL INFORMATION

The Review Board is funded from Subhead A.13 of the Vote of the Office of the Minister for Justice. The Review Board adheres to the Public Spending Code. In 2023, the Review Board received a budget allocation of €439,000. The Central Mental Hospital's move took place in November 2022. The Board's expenditure did not increase, as anticipated. Total

expenditure from Subhead A.13 in 2023 was €286,540.38. The main expenditure items are set out beneath:

Free Legal Aid	€109,309.02
Board members' fees	*€95.000
Chairperson's fee	€70,875
Legal advice	€9,464.25

*Includes fees for December 2022 which were paid in January 2023. Does not include fees for December 2023 which are paid in January 2024.

8. PROTECTED DISCLOSURE

The Review Board has adopted the Protected Disclosure Policy of the Department of Justice 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 2023.

9. DATA PROTECTION

The Review Board has adopted the data protection policy of the Department of Justice. Because of its size it is not deemed feasible for the Board to appoint its own Data Protection Officer (DPO). The Department's DPO has been appointed as DPO for the Board.

10. PUBLIC SECTOR EQUALITY AND HUMAN RIGHTS DUTY

The Review Board is committed to ensuring it fulfils its responsibilities under Section 42 of the Irish Human Rights and Equality Commission Act 2014 which places a positive obligation on public bodies to have regard, in the performance of their functions, to the need to eliminate discrimination, promote equality of opportunity and protect the human

rights of staff and persons to whom services are provided. The Review Board was mindful of this duty in the performance of its functions in 2023.

11. GOVERNANCE AND INTERNAL CONTROLS

Structure and Membership of the Review Board

The Mental Health (Criminal Law) Review Board is a quasi-judicial body, rather than a governance board, which reviews the detention of patients detained in designated centres under the Criminal Law (Insanity) Act 2006. The Board consists of a Chairperson and any number of ordinary members as the Minister for Justice, 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. All Board members are appointed by the Minister for a period of five years, as provided by the 2006 Act. Membership of the Board in 2023 and the date of appointment of members is set out beneath:

Member	Appointed
Mr. Justice Iarfhlaith O'Neill	September 2014 Re-appointed September 2019
Dr. Katherine Brown Consultant Psychiatrist	May 2017 Re-appointed May 2022
Ms. Nora McGarry Counsellor Psychotherapist	September 2011 Re-appointed September 2016 Re-appointed September 2021
Dr. Elizabeth Walsh Consultant Psychiatrist	January 2013 Re-appointed January 2018 Re-appointed January 2023

Gender Balance

The appointment of members of the Review Board is a matter for the Minister of Justice and the Board has no input into appointments. As of 31 December 2023, the Review Board had one male (25%) and three (75%) female members.

Attendance at Hearings and Fees

The Review Board rarely convene, other than for hearings in the Central Mental Hospital, Portrane. 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 2023 all Board members attended those hearings which they were scheduled to attend. Dr. Brown attended 101 hearings, Ms. McGarry attended 192 hearings and Dr. Walsh attended 91 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 Review Board, Ms. Aisling Brennan, is an Assistant Principal Officer in the Department of Justice who devotes a portion of her 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 her work with the Review Board.

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

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

Oversight and Internal Controls

An Oversight Agreement for 2023-2025 was reached with the Department of Justice and signed on behalf of the Review Board by the CEO. The Agreement remains in place until the end of 2025 with a provision for a review approximately every 12 months and update, if necessary. In the Oversight Agreement it was agreed that, because of the narrow legislative functions of the Chairperson, the statutory independence of the Board and its very small size, the CEO, rather than the Chairperson, will furnish the required Comprehensive Report to the Minister in accordance with the *2016 Code of Practice for*

the Governance of State Bodies. Regarding compliance with the *Code of Practice*, the 'Comply or Explain' provision of the *Code* has been applied by the Department to the Review Board.

In regard to internal controls and risk management, because of the Review Board's size, it is not deemed feasible for the Board to establish its own Audit Unit or Audit and Risk Committee. Instead, alternative arrangements are in place to allow the Board have access to the Department's Internal Audit Unit and Audit and Risk Committee in relation to financial governance. An assessment of the principal risks of the Review Board is carried out by the CEO and risks identified are notified and incorporated into the risk register maintained by the Department. The principal risk identified is that review hearings are not completed within the statutory time. Mitigating measures taken are ensuring that reviews are completed in accordance with the law.

The Review Board's founding legislation does not require the production of Financial Statements. The Board, through the CEO, liaises with the Financial Shared Services Centre of the Department of Justice 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.

Having regard to the size of the Review Board and the statutory basis for its remit which does not change unless legislation is amended, it is not deemed necessary for the Board to prepare a strategic plan. However, 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.

The Review Board adheres to public service procurement policies and guidelines. Where necessary, any procurement competition conducted by the Review Board is done in consultation with the Procurement Unit of the Department of Justice and the Office of Government Procurement.

Note:

The following are available on the Board's website www.mhclrb.ie

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

(www.lawreform.ie/fileupload/revisedacts/withannotations/en_act_2006_0011.pdf)

Procedures of the Mental Health (Criminal Law) Review Board

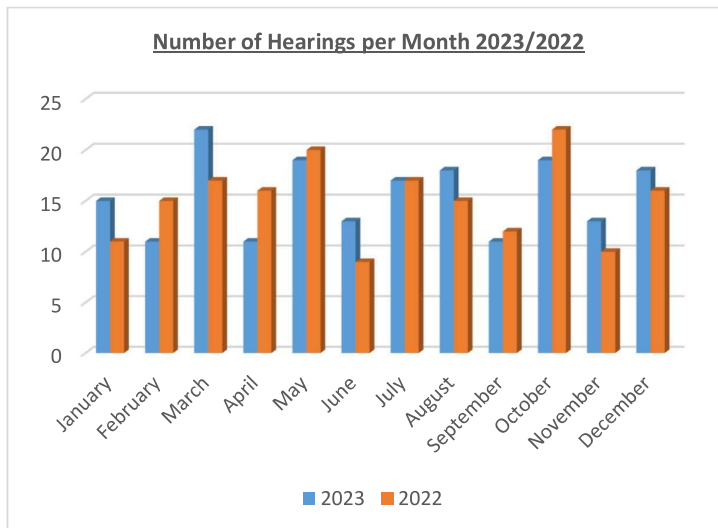
<https://www.mhclrb.ie/wp-content/uploads/2020/06/Procedures-MHRB.pdf>

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

<https://www.mhclrb.ie/wp-content/uploads/2020/06/Terms-Conditions-of-MHCLRB.pdf>

Number of Hearings per Month 2023/2022

Month	No. of Hearings 2023	% of 2023 Total	No. of Hearings 2022	% of 2022 Total
January	15	8%	11	6%
February	11	6%	15	8%
March	22	12%	17	9%
April	11	6%	16	9%
May	19	10%	20	11%
June	13	7%	9	5%
July	17	9%	17	9%
August	18	10%	15	8%
September	11	6%	12	7%
October	19	10%	22	12%
November	13	7%	10	6%
December	18	10%	16	9%
Total	187		180	

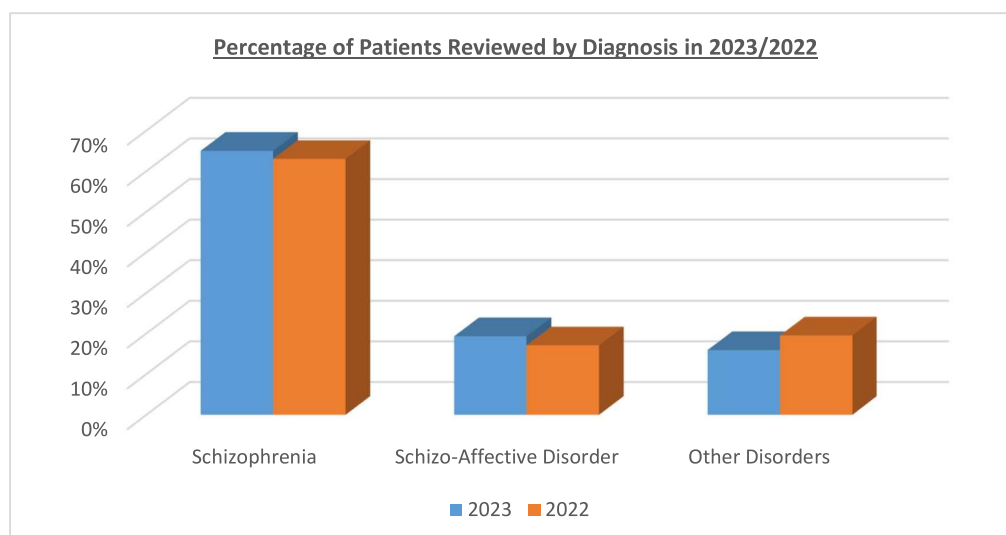


Number of Patients Reviewed per Diagnosis in 2023/2022

Diagnosis	No. of patients reviewed 2023	% of 2023 Total	No. of patients reviewed 2022	% of 2022 Total
Schizophrenia	57	65%	52	63%
Schizo-Affective Disorder	17	19%	14	17%
Other Disorders	14	16%	16	20%
Total	88		82	

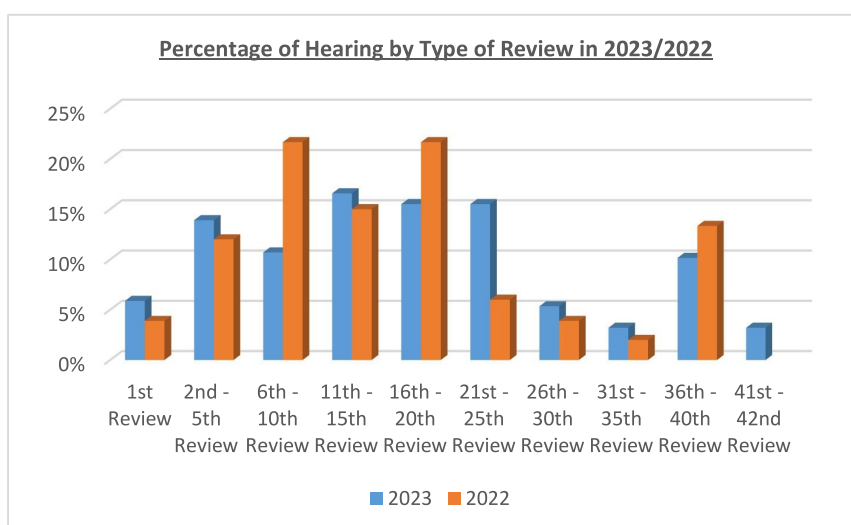
Other Disorders include:

Bi-Polar Affective Disorder
 Autistic Spectrum Disorder
 Asperger's Syndrome
 Affective Psychosis
 Organic Psychosis
 Recurrent Severe Depressive Disorder with Psychotic Features
 Depressive Disorder
 Emotionally Unstable Personality Disorder
 Organic Personality Disorder
 Intellectual Disability
 Neurodevelopmental Disorder



Number of Hearings by Type of Review in 2023/2022

Type of Review	No. of Reviews 2023	% of 2023 Total	No. of Reviews 2022	% of 2022 Total
1st Review	11	6%	7	4%
2nd - 5th Review	26	14%	21	12%
6th - 10th Review	20	11%	39	22%
11th - 15th Review	31	17%	27	15%
16th - 20th Review	29	16%	39	22%
21st - 25th Review	29	16%	12	6%
26th - 30th Review	10	5%	7	4%
31st - 35th Review	6	3%	4	2%
36th - 40th Review	19	10%	24	13%
41st - 42nd Review	6	3%		
Total	187		180	

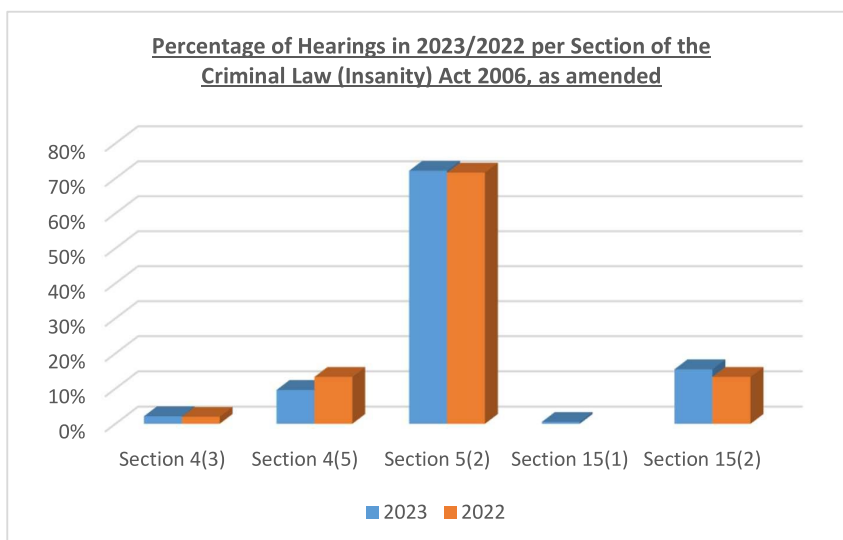


Number of Hearings in 2023/2022 per Section of the Criminal Law (Insanity) Act 2006, as amended

Section of 2006 Act	No. of Hearings 2023	% of 2023 Total	No. of Hearings 2022	% of 2022 Total
Section 4(3)	4	2%	3	2%
Section 4(5)	18	10%	24	13%
Section 5(2)	135	72%	129	72%
Section 15(1)	1	1%		
Section 15(2)	29	16%	24	13%
Total	187		180	

Note: One patient is detained under Section 5(2) and Section 15(1). That patient's detention is counted under Section 5(2) only.

- 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(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 2023/2022**

Year	No. of Legal Representatives on Panel	Average no. of cases assigned
2023	23*	8
2022	27**	7

* At the end of 2023 there were 21 Panel members. During the year two resigned from the panel.

** At the end of 2022 there were 23 Panel members. During the year two additional members were appointed (one of them was re-appointed) and four resigned.

**Number of Patients Conditionally
Discharged in 2023/2022**

Month of Conditional Discharge Order	No. of Patients 2023	No. of Patients 2022
February	2	1
April	2	
May		1
August		1
October		1
December	1	
Total	5	4

**Offences or Alleged Offence of patients whose
detention was reviewed in 2023**

Type of Offence or Alleged offence	No. of patients charged with, or convicted of, offence	
Murder	41	
of which victim was family member		23
of which victim was known to patient		10
of which victim was stranger		8
Attempted Murder / Manslaughter/Death caused by dangerous driving	8	
of which victim was family member/known to patient		5
of which victim was stranger		3
Assault causing harm/serious bodily harm	25	
of which victim was family member		4
of which victim was known to patient		6
of which victim was stranger		15
Arson	5	
Other	9	
Total	88	

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 offence with which a patient was charged, or convicted.
- 3) The category "**Other**" includes sexual assault, physical assault, threat to kill, harassment and possession of knives and intimidation.