



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

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

Annual Report 2010

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

The Criminal Law (Insanity) Act 2006 established the Mental Health (Criminal Law) Review Board in September 2006. The Board's function is primarily to review the detention of patients detained under the Act in a designated centre. At the moment the Central Mental Hospital is the only centre so designated. When reviewing the detention of a patient, the Board is required to have regard to, *inter alia*, the safety and welfare of the person whose detention it is reviewing and the public interest. Having reviewed the detention of a patient, the Board must make such order as it thinks proper, whether for further detention, care or treatment of a patient in a designated centre or for the patient's discharge, either unconditionally or subject to conditions for out-patient treatment or supervision or both, or if the patient is a person having been transferred from prison to the Central Mental Hospital, for the return of the patient to prison.

In 2010, there was an increase of 22% in the number of reviews of detention heard by the Board. A total of 205 reviews took place, consistent with the Board's legal obligation to review each patient at intervals of not greater than 6 months and, for the first time, the Board held 9th, 10th and 11th reviews of the detention of some patients.

The Board is glad to note the passing of the Criminal Law (Insanity) Act, 2010 by the Oireachtas in December 2010. The Board previously expressed concerns that legislation to provide for the enforceability of conditions of discharge had not been enacted, which meant that the Board's considerations in relation to the discharge of some patients to the community with safeguards in place for both the patient and the

public had been curtailed. The new Act, which amends the 2006 Act, enables the Board to make discharge orders which will be subject to enforceable conditions. The Board was pleased to be informed in December that the Minister for Justice and Law Reform intended to bring the law into force at the earliest practical opportunity.* The Act requires that, before an order can be made to discharge a patient, arrangements are in place to facilitate the patient in complying with the conditions, to supervise the patient and that provision is made for the return of the patient to the designated centre in the event that the patient is in material breach of the conditional discharge order. The majority of patients detained under the 2006 Act are not yet suitable for discharge, however, there are a number of patients whom the Board will now actively consider for discharge subject to enforceable conditions.

I would like to express the Board's gratitude to Professor Harry Kennedy and his team in the Central Mental Hospital, including the Consultant Forensic Psychiatrists, the nursing, social services and administrative staff for their assistance during the year, and for the provision of facilities in the Hospital for the holding of reviews.

I compliment the work of the legal representatives who so ably and conscientiously represent patients coming before the Board, many of whom, because of their illness, are unable to speak for themselves.

* The Commencement Order bringing the Criminal Law (Insanity) Act 2010 into operation was signed by the Minister for Justice and Law Reform on 8 February 2011.

I thank the staff of the Board, Mr. Liam Fitzgerald (former Chief Executive Officer who retired in June 2010), Mr. Greg Heylin, Chief Executive Officer, Mr. Dominic Kelly, Ms. Catherine Hayes and Ms. Ann Casey for their continuing cheerful and efficient assistance to the Board.

Mr. Justice Brian McCracken

March 2011

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

Section 11 of the Criminal Law (Insanity) Act 2006 established the Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shláinte (An Dlí Coiriúil)), which came into being on 27th September, 2006. The Board is responsible for reviewing the detention of patients in designated centres (currently the only designated centre is the Central Mental Hospital) who have been referred there arising from a decision by the courts that they are unfit to stand trial or have been found not guilty of an offence by reason of insanity. 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 Review Board is statutorily independent in the exercise of its functions.

3. REVIEWS BY THE BOARD

At any one time, the number of patients detained in the Central Mental Hospital under the Criminal Law (Insanity) Act 2006 is approximately 80, but that number varies as patients are transferred from prison for care and treatment and are then returned to prison. The Board must review the detention of patients at intervals not greater than 6 months. Reviews, outside those regularly scheduled, can be triggered (i) at the behest of the Board; (ii) at the request of a patient; (iii) at the request of the Minister for Justice and Law Reform or (iv) at the request of the Clinical Director. Reviews take place in the Central Mental Hospital.

During 2010, 205 reviews of the detention of 94 patients were heard by the Board. This represents a 22% increase over the number of reviews held in 2009, which was 167. Of the 94 patients reviewed, 69% had been diagnosed as suffering from

schizophrenia, 16% were suffering from schizoaffective disorder and 15% were diagnosed with other disorders, among which were bi-polar affective disorder, drug induced psychosis and intellectual disability. This compares with 2009, when the detention of 82* patients was reviewed by the Board, 71% of whom had been diagnosed as suffering from schizophrenia, 17% from schizoaffective disorder and 12% from other disorders. It should be noted that it is the same core group of patients that is reviewed by the Board each year. (Appendices I and II refers).

For the first time in 2010, the Board conducted hearings which were at 9th, 10th and 11th review stage. Of the 205 hearings, 37 were 9th reviews and 17 were 10th reviews, being 18% and 8% respectively of the overall total, and 1 hearing was at 11th review stage. 11% of hearings in 2010 were at 1st review stage, compared with 16% in 2009. (Appendix III refers).

Similar to 2009, the majority of reviews of such detentions were of patients committed to the Central Mental Hospital under Section 5(2) of the 2006 Act, having been found not guilty by reason of insanity. In 2010, 120 hearings, which is 59% of the total number of hearings, were into the detention of patients committed under Section 5(2). In 2009, 89 hearings, or 53% of the total, were in this category. 26% of hearings were reviews of the detention of patients committed under Section 15(2) of the Act, being prisoners transferred involuntarily to the Central Mental Hospital for care and treatment which could not be provided in prison. This group accounted for 32% of hearings in 2009. (Appendix IV refers).

* The Board's 2009 Annual Report erroneously stated that the Board reviewed the detention of 84 patients in 2009. There was no error in the number of hearings reported.

4. MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME

Section 12(1)(c) of the 2006 Act requires the Board to assign a legal representative to a patient who is the subject of a 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 legal representatives panel 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, the same solicitor is assigned to a patient for subsequent reviews.

In 2010, 31 solicitors were attached to the panel compared with 30 in 2009. The average number of cases assigned to solicitors in 2010 was 7, this number was 6 in 2009. The top quartile of solicitors on the panel was assigned an average of 14 cases each in 2010 and 12 in 2009. The second and third quartiles combined were assigned an average of 12 cases, as compared with 10 in 2009, while the bottom quartile was assigned no cases. (Appendix V refers).

Section 3.6 of the Terms and Conditions of the Legal Aid Scheme indicates that the Board will review the panel formally every three years, or as required. Having regard to this, the Board commenced a review of the panel in 2010, which is ongoing.

5. ORDERS FOR DISCHARGE

Pursuant to Section 13 of the Criminal Law (Insanity) Act 2006, the Board ordered the unconditional discharge of a patient in his sixties from the Central Mental

Hospital in July 2010, having determined that the patient was no longer in need of treatment in that Hospital and it was no longer necessary for the patient to be detained there.

In view of the Board's concerns regarding the enforceability of conditions, the Board made no conditional discharge orders in 2010.

6. **LEGAL PROCEEDINGS**

The ongoing legal proceedings with which the Board was involved in 2010 are:

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

Judgment was delivered in the High Court on 25th July 2008 by Mr. Justice Hanna (Judgment Title: *B -v- Mental Health (Criminal Law) Review Board & Ors*). Notice of Appeal to the Supreme Court was lodged in December 2008. The case was mentioned in the Supreme Court but a date had not been assigned for a hearing by the end of 2010.

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

These proceedings were initiated in June 2008 and were adjourned on consent on a number of occasions in 2010. It is understood that the applicant is awaiting the outcome of the JB Appeal.

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

Judgment was delivered on 5th May 2010 by Mr. Justice Peart in this *Habeas Corpus* application under Article 40.4.2 of the Constitution, where the applicant was challenging the legality of his detention. Mr. Justice Peart found his detention to be lawful and refused to release the applicant.

7. MEETINGS

The Board met with the Mental Health Commission in September 2010 to discuss a number of matters of mutual interest, including the conduct of hearings, judicial review proceedings and legal aid for patients. The Board and Commission agreed to meet again for further discussions in the coming year.

8. EXPENDITURE

The total expenditure of the Board in 2010 amounted to €85,785. €286,266 was expended on pay, €11,049 on the provision of free legal aid and €188,470 on other expenses. In line with Department of Finance instructions, fees payable to members of the Board were reduced with effect from 1 January 2010 in accordance with the Financial Emergency Measures in the Public Interest (No. 2) Act, 2009.

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 I

Number of Hearings per Month - 2010/2009

Month	No. of Hearings 2010	% of 2010 Total	No. of Hearings 2009	% of 2009 Total
January	18	9%	8	5%
February	19	9%	8	5%
March	28	14%	6	4%
April	18	9%	20	12%
May			24	14%
June	21	10%	3	2%
July	25	12%	20	12%
August	17	8%	20	12%
September	18	9%	12	7%
October	16	8%	28	16%
November	13	6%	18	11%
December	12	6%		
Total	205	100%	167	100%

Appendix II

Number of Patients Reviewed per Diagnosis 2010/2009

Diagnosis	No. of patients reviewed 2010	% of 2010 Total	No. of patients reviewed 2009	% of 2009 Total
Schizophrenia	65	69%	58	71%
Schizoaffective Disorder	15	16%	14	17%
Other Disorders	14	15%	10	12%
Total	94	100%	82	100%

Note: It is the same core group of patients that is reviewed by the Board each year.

Other Disorders include:

Bi-Polar Affective Disorder

Drug Induced Psychosis

Intellectual Disability

Delusional Disorder

Depressive Disorder

Recurrent Severe Depressive Disorder with Psychotic Features

Persistent Delusional Disorder

Emotionally Unstable Personality Disorder

Anti Social Personality Disorder

Psychotic Episode

Appendix III

Number of Hearings by Type of Review - 2010/2009

Type of Review	No. of Reviews 2010	% of 2010 Total	No. of Reviews 2009	% of 2009 Total
1st Review	22	11%	26	16%
2nd Review	13	6%	14	8%
3rd Review	11	5%	13	8%
4th Review	12	6%	12	7%
5th Review	11	5%	23	14%
6th Review	14	7%	44	26%
7th Review	21	11%	34	20%
8th Review	46	23%	1	1%
9th Review	37	18%		
10th Review	17	8%		
11th Review	1			
Total	205	100%	167	100%

**Number of Hearings per Section of the
Criminal Law (Insanity) Act 2006
2010/2009**

Section of 2006 Act	No. of Hearings 2010	% of 2010 Total	No. of Hearings 2009	% of 2009 Total
Section 4(3)	7	3%	6	4%
Section 4(5)	14	7%	12	7%
Section 5(2)	120	59%	89	53%
Section 15(1)	10	5%	6	4%
Section 15(2)	54	26%	54	32%
Total	205	100%	167	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

Appendix V

Average Number of Cases Assigned to Legal Representatives on Legal Aid Panel - 2010/2009

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
2010	31	7	14	12	0
2009	30	6	12	10	0