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## Mental Health (Criminal Law) Review Board Annual Report 2009

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# **Annual Report 2009**

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

**MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD**

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## 1. **CHAIRPERSON'S FOREWORD**

The Mental Health (Criminal Law) Review Board was established on 27<sup>th</sup> September 2006, under the Criminal Law (Insanity) Act 2006. The primary function of the Board is to review the detention of patients detained under the Act in a designated centre. Currently the only designated centre is the Central Mental Hospital. In carrying out its function, 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 the patient's discharge either 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.

During 2009, the Board now in its third year moved from its establishment phase, to a period of consolidation. It continued to refine and strengthen its practices and procedures. The Board has been busier this year than previously holding a total of 167 individual reviews of the detention of patients. This is an increase of 26% in the number of reviews held by the Board compared to its first full year and an increase of 11% over 2008. In some cases, the Board has been holding 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> reviews of the detention of some patients held under the Act.

The Board continues to have serious concerns that the legislation to provide for the enforceability of conditions of discharge has not yet been enacted.

This means that the Board's considerations in relation to the discharge of some patients to the community with safeguards in place for the patient and the public has been, of necessity, severely curtailed. As previously stated, the majority of patients detained under the 2006 Act are not suitable at present for discharge but there are some whom the Board would discharge if it could do so subject to enforceable conditions. The Board remains of the view that the continuing detention of these patients is contrary to the original intention of the Act. The Board understands from the Department of Justice, Equality and Law Reform that legislation to remedy the situation will be enacted shortly.

I would like to express the gratitude of the Board to Professor Harry Kennedy, his colleagues, the nursing, social services and administrative staff of the Central Mental Hospital for their assistance and co-operation during the year. I also acknowledge the work of the legal representatives who represent patients coming before the Board. Because of their illness many of these patients are unable to speak for themselves. Many of the legal representatives assist their patient clients in ways which far exceed their remit, which is much appreciated by the Board.

I thank the staff of the Board Mr. Liam Fitzgerald, Chief Executive Officer, Mr. Paul Laycock (to July 2009), Mr. John Egan (to December 2009) and Ms. Ann Casey.

**Mr. Justice Brian McCracken**

October 2010

## **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 27th September, 2006 by order of the Minister for Justice, Equality and Law Reform under Section 11 of the Criminal Law (Insanity) Act 2006. The Review Board is statutorily independent in the exercise of its functions. It is responsible for reviewing the detention of patients in a designated centre (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.

## **3. REVIEWS BY THE BOARD**

There are approximately 80 patients detained at the Central Mental Hospital under the Criminal Law (Insanity) Act 2006. This number fluctuates from time to time because prisoners are transferred from prison to the Hospital for care and treatment and are then returned to prison. 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. Reviews, outside those regularly scheduled, can be initiated (i) at the behest of the Board; (ii) at the request of a patient; (iii) at the request of the Minister for Justice, Equality and Law Reform; (iv) at the request of the Clinical Director. Reviews take place in the Central Mental Hospital.

During 2009, 167 reviews of detention involving 84 patients were heard by the Board. The number of reviews has risen over the three year period with a total of 133 in 2007 and 150 in 2008. (Appendix A refers).

While in its first full year, the Board conducted only 1st, 2nd and 3rd review hearings, now in its third year, the Board has moved onto conducting 6th, 7th and 8th reviews of the detention of patients. In 2007 51% of the hearings were 1st reviews, in 2008 this number was 13% and in 2009 16% of hearings were at 1st review stage. In 2009 1% of hearings were at 8th review stage and 20% were 7th reviews. (Appendix B refers).

The majority of reviews of detention 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 2008 and 2009 53% of hearings were of patients committed under Section 5(2) while this group accounted for 60% of hearings in 2007. There was also a sizeable number of reviews 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, 38% in 2008 and 34% in 2007. (Appendix C refers).

#### **4. MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME**

Section 12(1)(c) of the 2006 Act requires the Board to assign legal representatives to patients who are the subject of a review unless they propose to engage legal representation at their own expense. To this end, the

Board has put in place the Mental Health (Criminal Law) Legal Aid Scheme 2006.

In 2009, 30 solicitors were attached to the legal panel which operates under the Scheme. In 2008 and 2007 the number of solicitors on the panel was 28 and 25 respectively. The average number of cases assigned to solicitors in 2009 was 6 while in the previous two years it was 5. The top quartile of solicitors on the panel were assigned an average of 12 cases in 2009, 13 in 2008 and 14 in 2007 while the bottom quartile were assigned no cases. For continuity, the same solicitor is assigned to a patient for subsequent reviews. Patients may decline the services of an assigned solicitor and request another solicitor from the panel or they can engage a non-panel solicitor at their own expense. (Appendix D refers).

## **5. ORDERS FOR DISCHARGE**

Under the Act the Board has the power to discharge a person either conditionally or unconditionally. However the Board considers that there is no power to enforce conditions, should it discharge a person conditionally. During 2009 the Board reviewed a number of patients whom it considers suitable for conditional discharge subject to enforceability. The Board understands that the Department of Justice, Equality and Law Reform has drafted an appropriate amendment to the Act to confer enforceable conditions.

The Board made no order for unconditional discharge during 2009.

## 6. LEGAL PROCEEDINGS

The Board has been involved in three High Court Judicial Review proceedings and has been named as a Notice Party in *Habeas Corpus* proceedings against the Clinical Director of the Central Mental Hospital.

- (1) High Court Judicial Review (Record No. 1517/2007JR)

**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 on 25 July 2008 by Mr. Justice Hanna (Judgment Title: *B -v- Mental Health (Criminal Law) Review Board & Ors*).

JB was seeking, amongst other things, an order compelling the Mental Health (Criminal Law) Review Board to make an order authorising his conditional discharge from the Central Mental Hospital but he was unsuccessful before the High Court.

Notice of Appeal to the Supreme Court was lodged in December 2008. (Appeal No. 411/2008).

A Notice of Motion for enlarging the time for the service of a Notice of Cross Appeal in respect of the Order of Costs made by Mr. Justice Hanna in the High Court was lodged on behalf of the Minister for Justice, Ireland and the Attorney General in March 2009.

- (2) High Court Judicial Review (Record No. 1015/2007JR)

***MC, a person of unsound mind not so found, suing by his sister  
and next friend, BM***

**v.**

***The Mental Health (Criminal Law) Review Board, The Clinical  
Director of the Central Mental Hospital, the Health Service  
Executive, Minister for Justice, Equality and Law Reform, Ireland  
and the Attorney General***

These proceedings were initiated in July 2007. The Applicant was seeking, amongst other things, an order quashing a decision of the Mental Health (Criminal Law) Review Board dated 31 May 2007 that

he was in need of in-patient treatment in the Central Mental Hospital and should not be discharged.

Pursuant to Section 13 of the Criminal Law (Insanity) Act 2006, the Board made an order of unconditional discharge on 27 June 2008 which came into effect on 1 September 2008. The Judicial Review proceedings against the Board were concluded in June 2009 when Judge O'Neill made an Order striking out the proceedings against the Board with no Order as to costs. The Board agreed to bear its own costs in the proceedings.

- (3) High Court Judicial Review (Record No. 2008/745 JR)

**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 seeking, amongst other things, an order compelling the Mental Health (Criminal Law) Review Board to make an order authorising the Applicant's conditional discharge from the Central Mental Hospital. Proceedings were adjourned on consent in December 2009 until February 2010.

- (4) Application under Article 40.4.2. of the Constitution (High Court Record No. 2009/2081SS)

**AL**

**v.**

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

This *Habeas Corpus* application came before Mr. Justice Peart on 14th December, 2009. Judgment was awaited at the end of 2009.

## **7. MEETINGS**

The Board visited Usher's Island facility on 21 May, 2009. This facility forms part of the occupational therapy services provided by the Central Mental

Hospital. The Board met with Dr. Brenda Wright, Consultant Psychiatrist and a number of patients engaged in therapeutic activities.

## **8. EXPENDITURE**

The total expenditure of the Board in 2009 amounted to €661,264. €364,127 was expended on pay, €111,331 on the provision of free legal aid and €185,806 on other expenses. In line with Department of Finance instructions, an 8% reduction in fees payable to solicitors under the Legal Aid Scheme was applied with effect from 1 March, 2009.

**Note:**

The Criminal Law (Insanity) Act 2006, 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](http://www.mhclrb.ie)).

## Appendix A

### Number of Hearings per Month 2009/2008/2007

Month	No. of Hearings 2009	% of 2009 Total	No. of Hearings 2008	% of 2008 Total	No. of Hearings 2007	% of 2007 Total
January	8	5%	13	9%	30	22%
February	8	5%	13	9%	5	4%
March	6	4%	11	7%	3	2%
April	20	12%			16	12%
May	24	14%	19	13%	18	14%
June	3	2%	25	16%	20	15%
July	20	12%	13	9%		
August	20	12%	1	1%	7	5%
September	12	7%	9	6%		
October	28	16%	8	5%	9	7%
November	18	11%	20	13%	14	11%
December			18	12%	11	8%
<b>Total</b>	<b>167</b>	<b>100%</b>	<b>150</b>	<b>100%</b>	<b>133</b>	<b>100%</b>

**Note:** The Board held one hearing in December 2006

## Appendix B

### Number of Hearings by Review 2009/2008/2007

Type of Review	No. of Reviews 2009	% of 2009 Total	No. of Reviews 2008	% of 2008 Total	No. of Reviews 2007	% of 2007 Total
1st Review	26	16%	19	13%	68	51%
2nd Review	14	8%	18	12%	49	37%
3rd Review	13	8%	37	24%	16	12%
4th Review	12	7%	48	32%		
5th Review	23	14%	28	19%		
6th Review	44	26%				
7th Review	34	20%				
8th Review	1	1%				
<b>Total</b>	<b>167</b>	<b>100%</b>	<b>150</b>	<b>100%</b>	<b>133</b>	<b>100%</b>

Note: The Board held one hearing in December 2006

## Appendix C

**No. of Hearings per Section of the  
Criminal Law (Insanity) Act 2006  
2009/2008/2007**

<b>Section of 2006 Act</b>	<b>No. of Hearings 2009</b>	<b>% of 2009 Total</b>	<b>No. of Hearings 2008</b>	<b>% of 2008 Total</b>	<b>No. of Hearings 2007</b>	<b>% of 2007 Total</b>
<b>Section 4(3)</b>	6	4%	2	1%	1	1%
<b>Section 4(5)</b>	12	7%	7	4%	6	4%
<b>Section 4(6)</b>			4	3%	1	1%
<b>Section 5(2)</b>	89	53%	79	53%	80	60%
<b>Section 15(1)</b>	6	4%	1	1%		
<b>Section 15(2)</b>	54	32%	57	38%	45	34%
<b>Total</b>	<b>167</b>	<b>100%</b>	<b>150</b>	<b>100%</b>	<b>133</b>	<b>100%</b>

**Note: One hearing was held in December 2006 into the detention of a patient under Section 4(3).**

**Section 4(3)** Unfit to Plead, District Court  
**Section 4(5)** Unfit to Plead, Other Court  
**Section 4(6)** Examination and report in relation to fitness to plead  
**Section 5(2)** Not guilty by reason of insanity  
**Section 5(3)** Examination and report in relation to not guilty by reason of insanity  
**Section 15(1)** Voluntary transfer from Prison  
**Section 15(2)** Involuntary transfer from Prison

## Appendix D

### Average Number of Cases Assigned to Legal Representatives on Legal Aid Panel - 2009/2008/2007

Year	No of Legal Representative 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
2009	30	6	12	10	0
2008	28	5	13	7	0
2007	25	5	14	7	0