



ANNUAL REPORT 2014

**AN BORD ATHBHREITHNITHE MEABHAIR-SHLÁINTE
(AN DLÍ COIRIÚIL)
MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD**

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1. CHAIRPERSON'S FOREWORD

I had the honour of being appointed Chairperson of the Mental Health (Criminal Law) Review Board in September 2014 by the Minister for Justice and Equality Ms. Frances Fitzgerald T.D., following the retirement of Judge Brian McCracken. I would first like to pay tribute to Judge McCracken who was Chairperson of the Board since its establishment in 2006. I know that he made a huge contribution in establishing the Board on a sound footing and that his knowledge and experience were invaluable in providing leadership and guidance throughout his term as Chairperson. On behalf of his colleagues, Ms. Nora McGarry, Dr. Elizabeth Walsh and Dr. Michael Mulcahy and, on my own behalf, I wish Judge McCracken a long and happy retirement.

I am happy to be presenting the eighth Annual Report of the Review Board, which sets out the activities of the Board during 2014.

During the reporting period, there was a slight increase in the number of review hearings, by comparison with the previous year. In 2014, the Board reviewed the detention of 80 patients, holding a total of 166 review hearings. By comparison in 2013, the detention of 73 patients was reviewed, with 159 hearings being held by the Board.

The Board approved the conditional discharge of four patients from the Central Mental Hospital in 2014, compared with five in 2013.

As well as hearings to review the detention of patients, the Board held a number of hearings to consider applications for unconditional discharge from patients who had been on conditional discharge for 12 months or more. The Board received six such applications in 2014, of which the Board approved two, refused three and adjourned one application for further consideration in 2015.

The Board received one application from a conditionally-discharged patient to have the conditions of their Conditional Discharge Order varied or removed, which the Board refused. Also, the Board continued its deliberations regarding an application for the variation of conditions which the Board had agreed to grant at the end of 2013. However the Clinical Director of the Central Mental Hospital informed the Board that he was unable to make the necessary arrangements to facilitate the patient's compliance with the amended conditions. Subsequently this matter became the subject of judicial review proceedings.

In 2014 the Board progressed to holding 19th and 20th reviews into the detention of some patients. Also in 2014 for the first time, the Board made an order for the return of a patient to Court, having formed the view that the patient had, on balance, gained a sufficient knowledge and basic understanding of legal proceedings to make him fit to stand trial.

On behalf of the Board I thank the Clinical Director of the Central Mental Hospital Professor Harry Kennedy and the team of Consultant Forensic Psychiatrists, the nursing, social services and administrative staff of the hospital for their assistance

and co-operation throughout the year and for the provision of facilities at the hospital for the holding of review hearings.

I would also like to compliment the work of the members of the Board's Legal Representative Panel who represent patients coming before the Board. As has been remarked on a number of occasions by my predecessor, many legal representatives assist their clients in ways which far exceed their remit. This is much appreciated by the Board.

Finally I would like to thank the staff of the Board Mr. Greg Heylin, Chief Executive Officer, Ms. Catherine Hayes, Secretary, and Ms. Ann Casey for their assistance to me in my settling-in period as Chairperson and for their work throughout the year. I also thank my fellow Board members for making me feel so welcome. I look forward to my term as Chairperson of the Review Board and to the challenges it will undoubtedly bring.

Judge Iarfhlaith O'Neill
Chairperson

March 2015

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 27 September 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, the Board has the power to order the continued detention of patients or to order their conditional or unconditional discharge, having regard to the welfare 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.

The Central Mental Hospital is currently the only designated centre under the 2006 Act.

3. REVIEWS BY THE BOARD

The number of patients detained at any one time in the Central Mental Hospital under the Criminal Law (Insanity) Act 2006, as amended, is approximately 80. This number varies 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 the detention of some of these patients in the Central Mental Hospital may not be reviewed by the Board as they may transfer back to prison prior to having a review hearing, which is usually scheduled four or five months after a patient is admitted to the hospital. All review hearings take place 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 month. Therefore, long-term patients usually have two review hearings per year. Some patients may have more reviews because, outside the regularly scheduled hearings, a review can be held:

- at the behest of the Board,
- at the request of a patient,
- at the request of the Clinical Director, or
- the Minister for Justice and Equality can direct the Board to hold a review into the detention of a prisoner who is involuntarily in the hospital.

During 2014, the Board reviewed the detention of 80 patients, holding a total of 166 reviews hearings. This represents an increase of just over 4% in the number of review hearings held in 2013 which was 159. A total of 71% of patients reviewed in 2014 had been diagnosed as suffering from schizophrenia, 16% were suffering from schizoaffective disorder and 13% were diagnosed with other disorders. This compares with 2013 when the detention of 73 patients was reviewed, with 74% having been diagnosed as suffering from schizophrenia, 15% were suffering from schizoaffective disorder and 11% with 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 2014, conducted 19th and 20th reviews into the detention of some patients. Of the 166 hearings, 17 were a 19th review and two were a 20th review. A total of 40% of hearings were at 16th to 20th review stage. 33% of hearings were at 1st to 5th review stage, compared with 26% in 2013. Of these, 20 reviews or 12% were a 1st review, compared with 2013 when there were 12 such reviews or 8% of the total. (Appendix C refers).

The majority of reviews of detention were of patients who had been committed to the Central Mental Hospital under Section 5(2) of the 2006 Act, as amended, having been found not guilty of an offence by reason of insanity. In 2014, 106 hearings, which is 64% of the total number of hearings, were into the detention of patients committed under Section 5(2). The number in this category in 2013 was also 106, which was 67% of the total. 23% 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 or treatment which could not be provided in prison. This group accounted for 20% of hearings in 2013. (Appendix D refers).

4. ORDERS FOR DISCHARGE

During the reporting period, the Board approved the conditional discharge of four patients from the Central Mental Hospital, as compared with five in 2013. The average duration of detention for the conditionally discharged patients was 17 years.

The two shortest durations averaged 3 years and the two longest averaged 31.5 years. It will be noted from the range of years these patients were detained, 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).

The Board received one application from a conditionally-discharged patient to have the conditions of their Conditional Discharge Order varied or removed. The Board refused the requested variation of conditions.

The Board continued its deliberations regarding an application for the variation of conditions which had been granted by the Board in December 2013. The Clinical Director of the Central Mental Hospital informed the Board that he was not able to make the necessary arrangements for the enforcement of the varied conditions. This subsequently became the subject of judicial review proceedings against the Clinical Director, to which the Board is a notice party. Proceedings in this matter were still on-going at the end of 2014.

One conditionally discharged patient was formally recalled to the Central Mental Hospital by the Clinical Director in 2014, the Director having formed the view that the patient was in material breach of some of the conditions of his conditional discharge. The patient had presented himself voluntarily for re-admission to the hospital in late 2013.

The Board received six written applications in 2014 for unconditional discharge from patients who had been on conditional discharge for 12 months or more. Of the six

applications received, the Board granted two unconditional discharges, refused three and adjourned one application for further consideration in 2015.

5. ORDER FOR RETURN TO COURT

In 2014, the Board for the first time, made one order under Section 13(7)(a) of the 2006 Act that a patient should be returned to the Court that had committed him to the Central Mental Hospital on the grounds that he was unfit to stand trial. The Board formed the view that the patient had, on balance, during his time in the hospital, gained a sufficient knowledge and basic understanding of legal proceedings to make him fit to stand trial.

6. MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME

Section 12(1)(c) of the 2006 Act, as amended, requires the Board 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. 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 if they wish decline the services of an assigned Panel solicitor and request another solicitor from the Panel or they can engage, at their own expense, a non-Panel solicitor to represent them at their review hearing. For continuity, having regard to the fact that patients are suffering from a mental disorder, the Board endeavours to assign the same solicitor to represent a patient for subsequent review hearings.

The Board began a review of membership of the Panel in April 2014 pursuant to Section 3.6 of the Terms and Conditions of the Board's 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”*. The previous review of the Panel was completed in April 2011. The Board commenced its review by enquiring of all Panel members if they wished to remain on the Panel. With the exception of one, all indicated their wish to continue as members of the Panel. Since the previous review, membership of the Panel had reduced from 26 to 25. The number of patients requiring legal representation in that period decreased from 84 in 2011, 76 in 2012 and 73 in 2013. Having regard to the reduction in the number of patients requiring legal representation, the Board considered whether or not it would be necessary to appoint additional solicitors to the Panel to meet future requirements. Based on an analysis of the number of patients and the workload of solicitors, the Board decided that additional solicitors would not be required for the foreseeable future. The Board is keeping this matter under ongoing review. One member’s name was removed from the Panel, pending their return from a career break.

At the beginning of 2014 there were 25 solicitors on the Panel. As already mentioned, the name of one solicitor was removed following a review of the Panel and another member resigned in November, having informed the Board that he had been nominated for appointment as a Circuit Court Judge. This means at the end of 2014 there were 23 solicitors on the Panel. The average number of cases assigned to solicitors on the Panel in 2014 was 7. The top quartile of solicitors was assigned an average of 11 cases each in 2014, the same number as in 2013. The second and third quartiles combined were assigned an average of 7 cases in 2014, as compared with 6 in 2013. The bottom quartile was assigned an average of 2 cases each in 2014. This number was one 2013. (Appendix E refers).

7. LEGAL PROCEEDINGS

The Board was named as a notice party in judicial review proceedings against the Clinical Director of the Central Mental Hospital (***MC v. Clinical Director, Central Mental Hospital and Mental Health (Criminal Law) Review Board (Notice Party)***). The Applicant, a conditionally-discharged patient, is seeking a judicial review of the Clinical Director's refusal to make arrangements to facilitate their compliance with a variation of the conditions of their Conditional Discharge Order. The proceedings were on-going at the end of 2014.

8. MEETINGS

The Board met with the Clinical Director of the Central Mental Hospital following the appointment of its new Chairman. The Clinical Director very kindly took time out of his busy schedule to brief the Chairman and to conduct a tour of the hospital for the Chairman and other Board members. The Chairman was interested in familiarising himself with the different Units in the hospital, as the transfer of patients between Units, as their treatment progresses, can form part of the discussion at review hearings. During the tour the Chairman met with staff members who gave an overview of each Unit, the number of patients on the Unit and the activities engaged in by them while they are on the Unit and the Chairman also spoke with a number of patients.

9. TENDERS FOR INTERPRETATION SERVICES AT REVIEW HEARINGS

Having consulted with the Procurement Strategy Group of the Department of Justice and Equality regarding the provision of interpretation services at review hearings,

the Board issued five supplementary tenders during the year for once-off interpretation services, to pre-qualified companies under an Interpretation Services Framework Agreement in place in the Department of Justice and Equality.

10. EXPENDITURE

The Board's total expenditure in 2014 was €355,043. Of this, €97,965 was expended on pay, €103,011 on the provision of free legal aid and €154,067 on other expenses.

Note:

The Criminal Law (Insanity) Act 2006

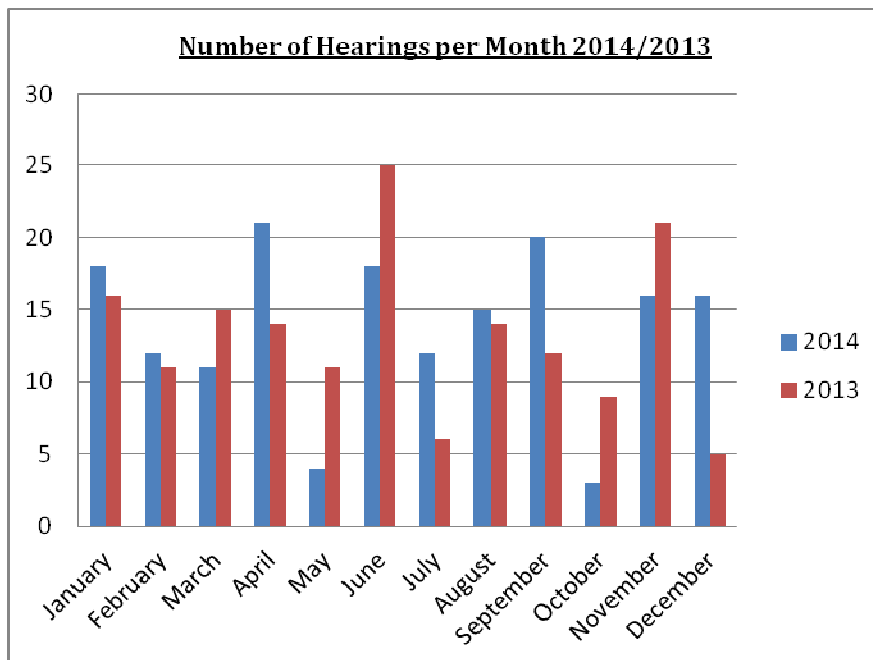
The Criminal Law (Insanity) Act 2010

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)

Number of Hearings per Month in 2014/2013

Month	No. of Hearings 2014	% of 2014 Total	No. of Hearings 2013	% of 2013 Total
January	18	11%	16	10%
February	12	7%	11	7%
March	11	6%	15	9%
April	21	13%	14	9%
May	4	2%	11	7%
June	18	11%	25	16%
July	12	7%	6	4%
August	15	9%	14	9%
September	20	12%	12	7%
October	3	2%	9	6%
November	16	10%	21	13%
December	16	10%	5	3%
Total	166	100%	159	100%

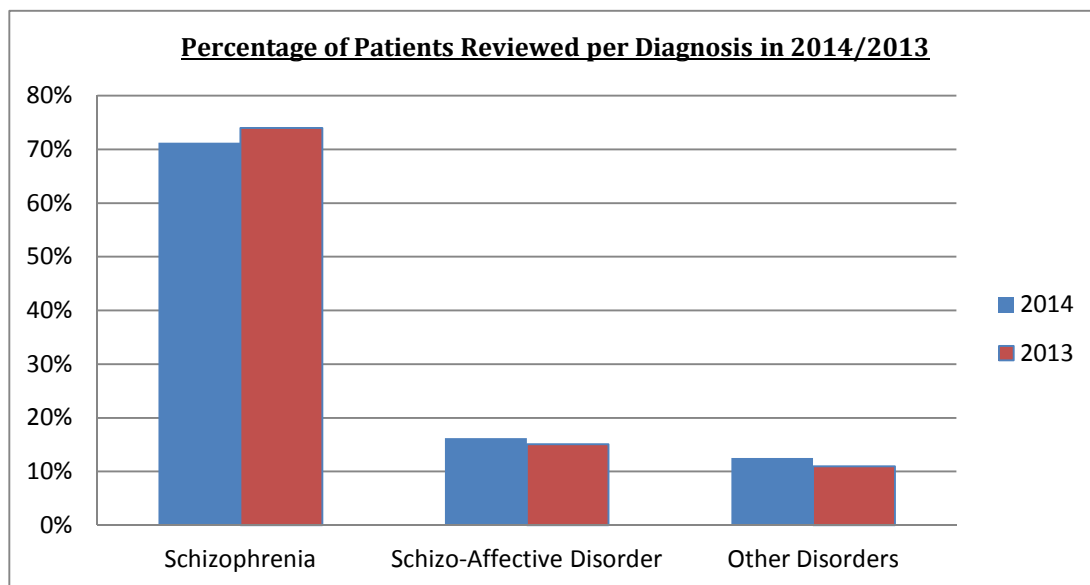


Number of Patients Reviewed per Diagnosis in 2014/2013

Diagnosis	No. of patients reviewed 2014	% of 2014 Total	No. of patients reviewed 2013	% of 2013 Total
Schizophrenia	57	71%	54	74%
Schizo-Affective Disorder	13	16%	11	15%
Other Disorders	10	13%	8	11%
Total	80	100%	73	100%

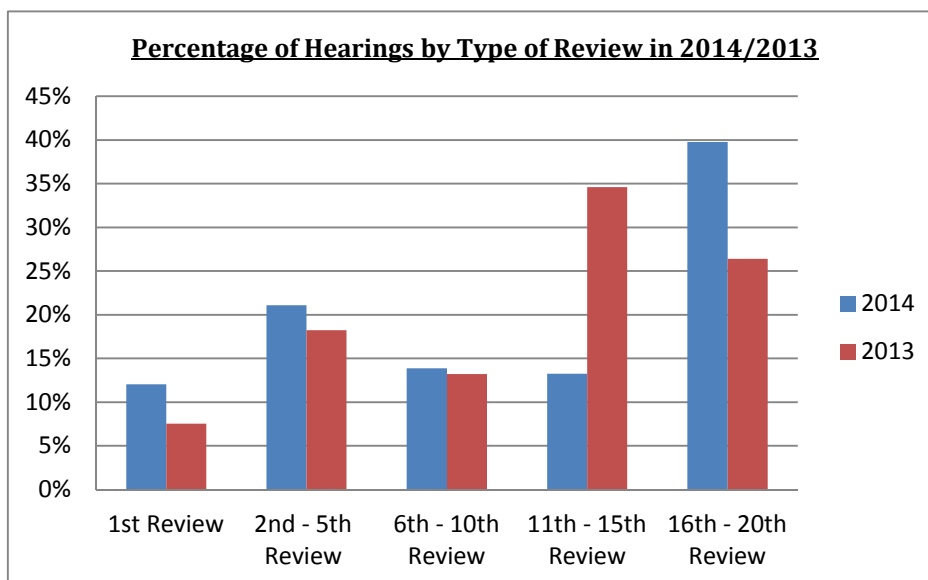
Other Disorders include:

Bi-Polar Affective Disorder
 Intellectual Disability
 Psychotic Disorder
 Recurrent Depressive Disorder
 Psychotic Depression
 Depression with Psychotic Symptoms
 Organic Brain Disorder Secondary to Substance Abuse
 Autistic Spectrum Disorder
 Severe Depression with Psychotic Features
 Abnormal Grief Reaction/Prolonged Depressive Reaction
 Acute Psychotic Episode



Number of Hearings by Type of Review in 2014/2013

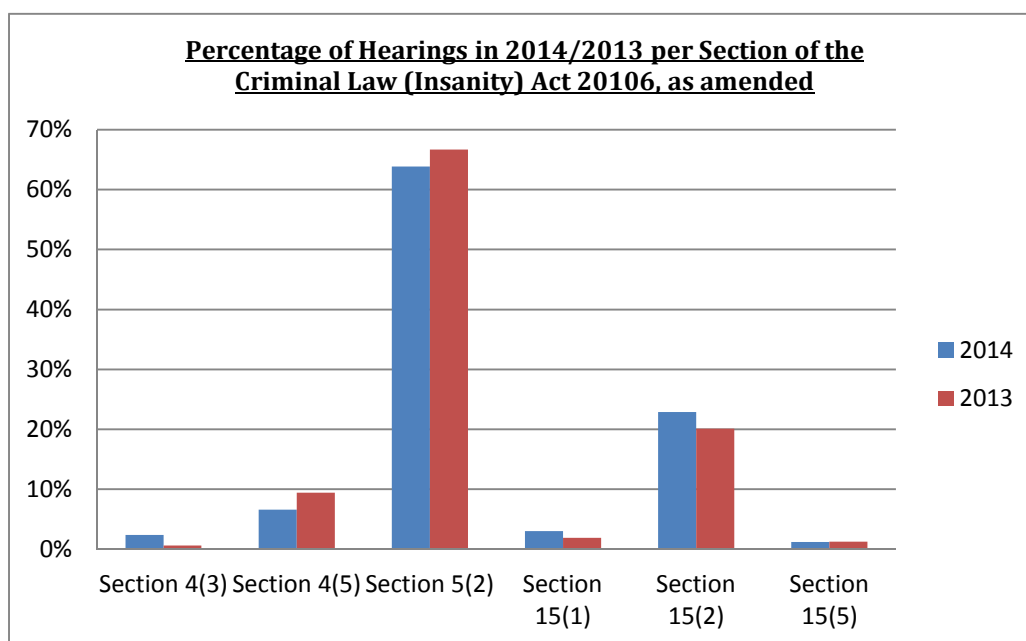
Type of Review	No. of Reviews 2014	% of 2014 Total	No. of Reviews 2013	% of 2013 Total
1st Review	20	12%	12	8%
2nd - 5th Review	35	21%	29	18%
6th - 10th Review	23	14%	21	13%
11th - 15th Review	22	13%	55	35%
16th - 20th Review	66	40%	42	26%
Total	166	100%	159	100%



**Number of Hearings in 2014/2013 per Section of the
Criminal Law (Insanity) Act 2006, as amended**

Section of 2006 Act	No. of Hearings 2014	% of 2014 Total	No. of Hearings 2013	% of 2013 Total
Section 4(3)	4	2%	1	1%
Section 4(5)	11	7%	15	9%
Section 5(2)	106	64%	106	67%
Section 15(1)	5	3%	3	2%
Section 15(2)	38	23%	32	20%
Section 15(5)	2	1%	2	1%
Total	166	100%	159	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 5(3)	Examination & report in relation to 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)



Appendix E

Average Number of Cases Assigned to Legal Representatives on Legal Aid Panel in 2014/2013

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
2014	25**	7	11	7	2
2013	26*	6	11	6	1

** for part of the year (one member was removed in July and one member resigned in November)

* for part of the year (one member resigned in November)

Number of Patients Conditionally Discharged
in 2014/2013

Month of Conditional Discharge Order	No. of Patients 2014	No. of Patients 2013
January	1	
March	1	1
June		1
July	1	3
December	1	
Total	4	5