

**Mental Health (Criminal Law) Legal Aid Scheme
2006**

Terms and Conditions

(INCLUDES APPLICATION FORM)

Revised April 2024

1. Introduction

- 1.1 The Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shlainte (An Dli Coiriuil)) was established by order of the Minister for Justice, Equality and Law Reform on 27th September, 2006 in accordance with Section 11(1) of the Criminal Law (Insanity) Act 2006, as amended (hereinafter referred to as “the Act”). The Review Board is independent in the exercise of its functions under the Act and it is responsible for reviewing the detention of patients in a designated centre (currently the Central Mental Hospital is the only designated centre) who have been referred there arising from a decision by the courts that they are unfit to stand trial or found to be not guilty of an offence by reason of insanity. The Board will also review the detention of prisoners, including military prisoners suffering from mental disorders, who have been transferred to a designated centre from prison and military personnel who have been referred to a designated centre by tribunals under the relevant Defence Acts. Section 12(1)(c) of the Act requires the Board to assign a legal representative to a patient the subject of a review unless he/she proposes to engage one at their own expense.
- 1.2 Section 12(6)(a) of the Act requires that the Board make, with the consent of the Minister for Justice, Equality and Law Reform and the Minister for Finance, a scheme or schemes for the granting of legal aid to patients.
- 1.3 The arrangement through which the Board provides legal services is referred to as the Mental Health (Criminal Law) Legal Aid Scheme 2006 and is referred to hereinafter as “the Scheme”. The Scheme operates in relation to the provision of representation before the Mental Health (Criminal Law) Review Board. This document details the terms and conditions of the Scheme.
- 1.4 The Review Board shall provide legal services through legal representatives in private practice or through individual solicitors within firms.

2. Panel of Legal Representatives

- 2.1 The Review Board shall establish and maintain a panel of legal representatives or law firms who satisfy the criteria outlined in these terms and conditions and are willing to provide legal services in accordance with the provisions of the Criminal Law (Insanity) Act 2006, as amended, and the Scheme. The panel shall be known as the Mental Health (Criminal Law) Legal Representatives Panel and is referred to hereinafter as “the Panel”. The Board shall assign a legal representative from the Panel to act on behalf of each patient the subject of a review unless he/she proposes to engage one without availing of the Scheme at their own expense.
- 2.2 The Panel will be maintained on a national basis and will comprise the names of law firms/legal representatives, with the necessary experience and knowledge, whose applications for placement on the Panel have been approved.

3. Conditions

- 3.1 Any legal representative who wishes to have his/her name placed on the Panel shall:-
 - hold a current practising certificate from the Law Society of Ireland
 - have professional indemnity insurance to cover an individual claim of up to €1.5m; and

- be a practising solicitor who has had not less than three years' experience as a practising solicitor ending immediately before application.

At the time of application and at all times throughout his/her tenure, the legal representative must be practising. Any law firm which wishes to participate in the Scheme must provide the above details for each legal representative who proposes to provide legal services on behalf of the firm under the Scheme.

3.2 Any law firm/legal representative who meets the conditions of the Scheme and who wishes to have his/her name placed on the Panel must:

- apply in writing to the Board on the approved application form which is attached to this document at Schedule 2;
- give an undertaking in the form appended hereto, that he/she will comply with these terms and conditions and the provisions of the Act, as amended, when providing legal services.

In the case of a law firm, the above conditions apply to each legal representative who may provide legal services under the Scheme on behalf of the firm.

3.3 Legal representatives will be expected to act in a fiduciary manner in relation to all patients and to provide a service in-keeping with the code of practice of their profession, (e.g. in the case of solicitors the Guide to Professional Conduct as issued from time to time by the Law Society of Ireland) and any specific practice directions issued by either the Board or their professional body in relation to the provision of a service in this area of law.

3.4 Legal representatives on the Panel must comply with the tax clearance procedures specified in the Department of Finance Circular 43/2006¹ entitled "Tax Clearance Procedures - Public Sector Contracts" or any such circular amending or replacing that circular.

3.5 Legal representatives/law firms on the Panel must have access to email facilities and must have IT software that is compatible with Microsoft Office software in order to ensure the effective and efficient administration of the Scheme.

3.6 The Panel will be reviewed formally by the Board every three years or as considered necessary by the Board. In order to remain on the Panel it will be necessary for the Board to be satisfied that law firms/legal representatives are providing a professional service. Membership is initially for a 12 month probationary period after which time confirmation will be issued, subject to satisfactory performance.

3.7 Every legal representative who has been accepted for membership of the Panel will be allocated a number to be known as a Legal Representative Number which must be quoted on all correspondence with the Board.

¹ [Link to Department of Finance Circular 43/2006](#)

3.8 Nothing in these terms and conditions shall give rise to, or be construed as giving rise to, a relationship of employer and employee between the Review Board and any legal representative on the Panel.

4. Withdrawal of Legal Representatives from the Panel

4.1 Legal representatives who wish to withdraw from the Panel must inform the Board in writing of their intention to withdraw so that the Panel may be amended accordingly. Legal representatives are required to give a minimum of one month's notice of their intention to withdraw from the Panel subject to their obligation to either complete their involvement in existing cases, or in the alternative, satisfactorily enter into an arrangement with the Board to handover the conduct of such matters in a manner that is entirely satisfactory to the Board. Any such handover would be, if legal aid is to continue, to another Panel member nominated by the Board.

5. Nature and Extent of Legal Services to be provided

5.1 The legal services provided will generally involve the following activities:

- explaining the function of the Review Board to the patient;
- taking instructions from the patient on one or more occasions. In some instances, patients may have communication difficulties due to their mental disorder. The legal representative will be expected to take time in such cases to ensure to the best of his/her ability that the patient is well informed and adequately represented;
- carrying out any necessary research including:
 - finding out the facts of the case and obtaining corroborating evidence of these facts either from the patient's medical records or by interviewing witnesses if necessary;
 - carrying out a detailed review of the medical reports by consultant psychiatrists and any other expert reports which have been produced in relation to the case in order to identify the patient's current medical diagnosis and the past medical history;
 - researching relevant case law, if necessary; and
 - considering any other issues relevant to the particular situation;
- representing the patient before the Review Board;
- if necessary, explaining the Review Board's decision to the patient;
- on request by the Review Board, explaining matters in relation to Section 13A(3)(b) of the Act, as amended, on behalf of the Board.

5.2 Given that the patient will be residing at a designated centre (currently the Central Mental Hospital), it will be necessary for the legal representative to visit the patient there in order to take instructions.

5.3 Depending on the nature and extent of the mental health disorder from which a patient may suffer, it may be necessary to visit the patient on more than one occasion in order for the legal representative to be reasonably satisfied that proper instructions have been obtained. Legal representatives will be expected to take time in such cases to ensure to the best of their ability that the patient is well informed and adequately represented.

- 5.4 Where a patient wishes to be provided with the services of a legal representative other than the one which the Board has assigned or proposes to assign, he or she may request the Board to assign a particular legal representative from the Panel and may apply to the Board to have the services of a legal representative who has already been assigned dispensed with. A request for a change of legal representatives will be considered by the Board.
- 5.5 Save as otherwise specifically provided for by this Scheme, the relationship between a legal representative and a patient who is in receipt of legal representation under this Scheme, and the rights and privileges arising out of such relationship, shall be the same as the relationship between and the rights and privileges arising out of a relationship between a legal representative and his/her client not being a patient who is in receipt of legal representation under this Scheme.

6. Operation of the Scheme

- 6.1 The Review Board shall assign a legal representative from the Panel to represent each patient under the Scheme before the Review Board unless he/she proposes to engage one without availing of the Scheme at their own expense. The assignment of legal representatives will generally be effected using a rota system. The Board will, however, endeavour to assign the same legal representative to a patient on subsequent occasions unless he/she requests a different legal representative to be assigned or the legal representative is unavailable. Initially the Board will contact the legal representative by phone or email to confirm whether he/she is in a position to take the case before forwarding papers. Once the legal representative confirms that he/she will take the case, the Board will assign the legal representative to the case and the necessary papers will be forwarded with a letter of authority outlining the patient's details and the matter authorised. In accordance with the Board's policy to assign the same legal representative to a patient on subsequent occasions, the Board will automatically assign the same legal representative to represent the patient without prior contact with the legal representative.
- 6.2 The letter of authority shall be the legal representative's authority to provide legal services on behalf of the Board under the Scheme.
- 6.3 Legal services may not be provided under the Scheme without a prior letter of authority from the Board.

7. Payment

- 7.1 Once a case has been determined, the legal representative may apply to the Board for payment of the fee using the claim form as approved by the Board from time to time. Care should be taken in completing claim forms as incomplete or improperly completed claim forms will be returned without payment.
- 7.2 A case shall be deemed to be determined when the Review Board has delivered its determination or, in the event of a case not going before the Review Board, when the Review Board has confirmed that the case will not be proceeding.
- 7.3 The completed claim form with an invoice should be sent to the Board's office at 7 Ely Place, Dublin 2, when the services specified in the letter of authority have been provided and the case has been either determined or is not proceeding.

7.4 Patients in receipt of legal services under the Scheme must not be charged any fees and must not be asked to discharge any expenses, costs or outlays by any legal representative on the Panel in relation to a case before the Review Board.

8. Fees Payable

8.1 Fees payable to legal representatives for legal representation under this Scheme will be as determined by the Board from time to time with the consent of the Minister for Justice and the Minister for Finance.

8.2 There shall be a standard scale of fees (set out in Schedule 1 attached) payable per case to legal representatives on the Panel for the provision of services in each Review Board case.

8.3 In the event that the case does not proceed, the Board may pay a proportion of the total fee depending on the work that has been done and such fees are outlined in Schedule 1.

8.4 Travel and subsistence expenses are not payable to legal representatives in Review Board cases.

8.5 The Board will only be liable for outlays or professional services which have been approved. The patient or his/her legal representative may seek approval by written application on the approved form not less than 5 working days in advance of the hearing. In cases where the Board approves the appointment of a barrister, it shall agree a fee in advance depending on the circumstances of the case. Such fees shall be subject to the approval of the Minister for Finance.

9. Removal from the Panel

9.1 The Chief Executive Officer may remove a legal representative from the Panel if he/she considers that:-

- a) his/her conduct when providing legal services or his/her professional conduct generally render him/her unsuitable, in the opinion of the Chief Executive Officer, to provide such services; or
- b) he/she has failed to comply with these terms and conditions; or
- c) he/she has not participated in the Scheme to a satisfactory level, including but not confined to, his/her refusal on a regular basis to accept a patient as a client or to give him/her appropriate legal representation.

9.2 The Chief Executive Officer shall be entitled to remove a legal representative from the Panel where he/she is of the opinion that his/her services are no longer required for the efficient administration of the Panel, provided that, when removing a legal representative from the Panel under this section, at least one month's notice in writing is provided to him/her.

- 9.3 If the Chief Executive Officer decides to exercise the right to remove a legal representative from the Panel, he/she will be notified in writing of the grounds for the decision. He/she may, within a period of one month from the date of such notification, appeal in writing to the Review Board querying the decision setting out the grounds of appeal in full. The Review Board will take a decision on the appeal and advise him/her of that decision. Depending on the particular circumstances, the Review Board reserves the right to remove cases already assigned to him/her and/or not to refer other cases to him/her whilst the appeal is under consideration.
- 9.4 The Review Board reserves the right, where an allegation comes to light that professional misconduct has taken place, to suspend the legal representative from the Panel. In such instances the Review Board shall report the allegation to the appropriate body or bodies responsible for professional regulation and to the Gardaí if there are reasonable grounds to suspect that a criminal act has been committed.

10. Quality Service

- 10.1 The Review Board is committed to the provision of a quality legal service to patients. Legal representatives should not take on a case unless they can provide a quality service within the specified time limits. If the work of an individual legal representative is considered not to meet the required standard, the legal representative will be notified of the issues of concern and, if these are not resolved, consideration will be given to removing him/her from the Panel.
- 10.2 Legal representatives shall keep a proper note and report of consultations, instructions, advice and of what transpires at Review Board hearings.

11. Taxation

- 11.1 It is each Panel member's responsibility to declare any payments to the Revenue Commissioners for the purposes of Income Tax. All successful applicants will be requested to furnish, throughout their membership of the Panel, a current Tax Clearance Certificate issued by the Revenue Commissioners. The Review Board operates the professional service withholding tax system for fees.

12. Confidentiality

- 12.1 Subject to the provisions of paragraph 12.2 below, no information furnished to the Board, to its staff or to any person whose services have been engaged by the Board for the purpose of providing legal services to any patient shall be disclosed otherwise than for the purpose of facilitating the proper performance by any person of functions under this scheme or by Court Order.
- 12.2 Paragraph 12.1 shall not prevent the disclosure of information for any purpose with the consent of the patient.

Exception to Confidentiality

- 12.3 As provided by the Law Society's Guide to Professional Conduct of Solicitors in Ireland, "Where the solicitor believes on reasonable grounds that there is a real risk of death or serious injury to the client himself or to a third party, confidentiality may be waived to the extent necessary."

13. Other relevant Legislation

- 13.1 Without prejudice to the Act, as amended, the Scheme shall conform with the provisions of the Freedom of Information Act, 2014, as amended, the Data Protection Act 2018, as amended, and other appropriate statutes.

Schedule 1

Fees for representation before the Review Board (exclusive of VAT)	Fee with effect from 01/03/2009
Representation before the Review Board for first review	€1,274.20
Representation before the Review Board for second and subsequent reviews	€356.96
Preparatory Work for first Review Board hearing	
In the event that the Review Board hearing is cancelled prior to hearing, and not reconvened, and all of the necessary preparatory work has been carried out by the legal representative on the case	€713.92
In the event that the Review Board hearing is cancelled and not reconvened, and some but not all of the preparatory work has been carried out by the legal representative, partial payment, which may not exceed the full case fee payable, will apply as follows:	
- A consultation with the patient has taken place	€204.24
- A second or more consultations with the patient have taken place	€152.72
- The papers in relation to the detention have been reviewed	€178.48
- The required research has been carried out, including interviewing of all appropriate witnesses	€178.48
In the event that the Review Board hearing is cancelled on the day of the hearing and not reconvened, and all of the necessary preparatory work has been carried out by the legal representative on the case	€1,019.36
In the event that the Review Board hearing is cancelled before any preparatory work has been carried out by the legal representative	Nil payment
Conditional Discharge	
Work on behalf of the Review Board in relation to Section 13A(3)(b) of the Act (a range of explanations to the patient)	€356.96

Schedule 2
APPLICATION

MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME 2006

I hereby apply to have my name entered on the Panel of legal representatives (“the Mental Health (Criminal Law) Legal Representatives Panel”) maintained by the Mental Health (Criminal Law) Review Board and for which purpose I hereby apply to have the following information recorded on the Panel:

1. I can confirm that I am not currently and have never been the subject of any disciplinary proceedings relating to my professional conduct before any committee, tribunal, court or other similar body, other than proceedings in which the complaint has been found to be unwarranted.

Yes _____ No _____ if “No”, please provide further details on an additional page.
2. I confirm that I am willing to provide legal services in accordance with the Criminal Law (Insanity) Act 2006, as amended, and the terms and conditions of the Mental Health (Criminal Law) Legal Aid Scheme (2006).
3. I confirm that I hold a current practising certificate from the Law Society of Ireland and that I shall notify the Review Board immediately in the event of my ceasing to hold such a certificate at any time.
4. I confirm that I am covered by professional indemnity insurance for a claim of up to €1.5m and that I shall notify the Review Board in the event of this not being the case at any time.
5. I confirm that I have at least three years practising experience ending immediately before application and that I was admitted to the Roll of Solicitors in Ireland on ____/____/____
6. I confirm that I have access to email facilities and that the IT software used by me is compatible with Microsoft Office software.
7. I confirm that I will notify the Review Board of any potential conflict of interest that I may have in representing patients.

Signed: Date:

APPLICANTS MUST SIGN THIS FORM

PANEL OF LEGAL REPRESENTATIVES

APPLICATIONS MUST BE MADE USING THIS FORM
CV'S ARE NOT ACCEPTABLE

APPLICATION FORM

PLEASE USE BLOCK CAPITALS

SURNAME:

FIRST NAME:

Title: Mr Mrs Ms Other (Specify)

ADDRESS (for correspondence):

.....
.....
.....

Name of law firm, if appropriate:

TELEPHONE NO: MOBILE: FAX:

E-MAIL ADDRESS:

VAT Number:

Withholding Tax Number:

Bank account for payment:

Bank Name:

Branch name:

Account name:

Account number:

BIC number:

IBAN number:

Tax Reference Number: Access Number:

(Please supply a copy of any document from Revenue Commissioners containing Supplier name, Tax number and Tax Type (Income Tax/Corporation Tax) **or** you can login to ROS, click on "Revenue Record" tab on ROS, then click "Registration Details", and take a screenshot from there)

Personal Public Service (PPS) Number

EDUCATION

Schools/Colleges Attended	Dates From To	Details of Qualification	Date of Conferring

CAREER DETAILS

Dates From To	Employers Name And Address	Position Held	Details of Responsibilities

OTHER QUALIFICATIONS

Qualification	Awarding Institution	Date Awarded