

PROCEDURES OF MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

1. Introduction

On 25th September, 2006 the then Minister for Justice, Equality and Law Reform made an Order under Section 11 of the Criminal Law (Insanity) Act, 2006, (hereinafter called “the Act”), appointing 27th September, 2006 as the establishment day for the Mental Health (Criminal Law) Review Board (An Bord Athbhreithnithe Meabhair-Shláinte (An Dlí Coiriúil). The Review Board is independent in the exercise of its functions under the Act and is required to have regard to the welfare and safety of the person whose detention it reviews and to the public interest. The provisions of Schedule 1 of the Act have effect in relation to the Review Board.

The Criminal Law (Insanity) Act, 2006 has been amended by the Criminal Law (Insanity) Act, 2010 which commenced on 8th February 2011. Under the amended Act the Review Board has the power to order the discharge of patients, subject to such conditions as it considers appropriate.

2. Powers of the Review Board

- 2.1. As required by Section 12(1) of the Act, the Review Board shall –
 - (a) hold sittings for the purpose of a review by it under this Act and at the sittings may receive submissions and such evidence as it thinks fit,
 - (b) take account of the court record (if any) of the proceedings of the court to whose decision the request for review relates and, where such a record exists, the court shall make it available to the Board,
 - (c) assign a legal representative to a patient the subject of the review unless he or she proposes to engage one.
- 2.2. The Review Board is empowered under Section 12(2) of the Act for the purposes of its functions –
 - (a) to direct in writing the consultant psychiatrist responsible for the care or treatment of a patient the subject of the review to arrange for the patient to attend before the Review Board on a date and at a time and place specified in the direction and to provide that a patient shall not be required to attend before the Review Board if, in the opinion of the Review Board, such attendance might be prejudicial to his or her mental health, well-being or emotional condition.
 - (b) to direct in writing any person whose evidence is required by the Review Board to attend before the Review Board on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or power specified in the direction,

- (c) to direct any person in attendance before the Review Board to produce to the Review Board any document or thing in his or her possession or power specified in the direction,
- (d) to direct in writing any person to send to the Review Board any document or thing in his or her possession or power specified in the direction, and
- (e) to give any other directions for the purpose of the proceedings concerned that appear to the Review Board to be reasonable and just.

3. Payment of expenses

The expenses of witnesses directed under section 12(2)(b) of the Act to attend before the Review Board shall be paid by the Board out of moneys at its disposal. The expenses payable will be equivalent to the expenses payable to witnesses summoned to attend before the High Court.

4. Legal representation

The Review Board shall assign a legal representative to represent the patient unless he or she proposes to engage one. The Review Board shall operate a scheme that provides for the provision of legal aid in accordance with Section 12(6)(a) of the Act. The Scheme shall be referred to as the "Mental Health (Criminal Law) Legal Aid Scheme" and the panel of legal representatives who are selected to carry out this work shall be referred to as the "Mental Health (Criminal Law) Legal Representatives Panel".

5. Notifications to interested parties and procedures for sittings of the Review Board

- 5.1. The Review Board shall notify the consultant psychiatrist responsible for the care or treatment of the patient the subject of the review and the patient and his or her legal representative of the date, time and place of the relevant sitting of the Review Board at least 14 days before the date scheduled.
- 5.2. The Review Board shall give the patient the subject of the review and his or her legal representative a copy of any document furnished to the Board and an indication in writing of the nature and source of any information relating to the matter which has come to the notice of the Board in the course of the review.
- 5.3. A patient the subject of the review (unless in the opinion of the Review Board, such attendance might be prejudicial to his or her mental health, well-being or emotional condition) and his or her legal representative shall be entitled to be present at the relevant sitting of the Review Board and the patient may present his or her case to the Board in person or through a legal representative.
- 5.4. The Minister for Justice, Home Affairs and Migration, the Director of Public Prosecutions and, where appropriate, the Minister for Defence shall be entitled to be heard or represented at all sittings of the Review Board. For this purpose, a

notification of the date, time and place of the relevant sitting of the Review Board shall issue at least 14 days before the date scheduled for the Review.

- 5.5. Written statements shall be admissible as evidence by the Review Board with the consent of the patient the subject of the review or his or her legal representative.
- 5.6. If a patient the subject of the review or his or her legal representatives intend to submit evidence from a medical practitioner at a hearing, a report in writing from such medical practitioner shall be furnished to the Review Board at least 5 working days prior to the date of the hearing.
- 5.7. Any signature appearing on a document produced before the Review Board shall be taken, in the absence of evidence to the contrary, to be that of the person whose signature it purports to be.
- 5.8. The Review Board shall determine in each case whether evidence, called by the Review Board or the patient the subject of the review, shall be given on oath or affirmation or otherwise. If it is determined that evidence shall be given on oath or affirmation, the oath or affirmation shall be administered by the Chairman in a form compatible with the practice in the courts.
- 5.9. Witnesses called by the Review Board to appear before it may be examined by or on behalf of the Review Board, and cross-examined, by or on behalf of the patient the subject of the review and the Central Mental Hospital.
- 5.10. Witnesses before the Review Board called by the patient the subject of the review may be examined by or on behalf of the patient, and cross-examined, by or on behalf of the Review Board and the Central Mental Hospital.
- 5.11. The Review Board shall ensure that a proper and sufficient record shall be kept of all proceedings before it.
- 5.12. Sittings of the Review Board for the purposes of an investigation by it under the Act shall be held in private.
- 5.13. Sittings of the Review Board, for the purposes of discharging its obligations in accordance with the provisions of the Act, may be conducted via Tele-Conferencing at the discretion of the Chairperson having regard to the welfare and safety of the patient(s), Board members, hospital staff and other attendees.
- 5.14. Decisions of the Review Board and the reasons therefor shall be given where reasonably possible within 14 working days. Such decisions shall be conveyed to the patient the subject of the review, his or her legal representative, the Clinical Director of the Central Mental Hospital, the Director of Public Prosecutions and the Minister for Justice, Home Affairs and Migration or the Minister for Defence as appropriate.
- 5.15. Where emergency situations arise during the course of a review hearing, such as a patient becoming physically ill or emotionally distressed, the Review Board shall ensure that appropriate measures are put in place to deal with such situations.

6. Procedure for ordering the conditional discharge of a patient

Should the Decision of the Review Board be that a patient is to be discharged subject to conditions, including conditions relating to out-patient treatment or supervision or both, the Review Board shall not make a conditional discharge order until it is satisfied that such arrangements as appear necessary to the Clinical Director of the Central Mental Hospital have been made in respect of the patient. In that regard the Review Board shall seek confirmation by the Clinical Director that arrangements are in place -

- (a) to facilitate compliance by the patient who is the subject of the proposed order with the conditions of the order,
- (b) to supervise the patient, and
- (c) to provide for the return of the patient to the Central Mental Hospital in the event that the patient is in material breach of his or her conditional discharge order.

Where the Review Board makes a conditional discharge order, the Board shall order that the conditions imposed in the order are to be communicated by notice in writing to the patient at the time of his or her discharge.

Prior to finalising the conditional discharge order the Review Board shall arrange for the patient's legal representative to explain to the patient -

- (i) the effect of the conditional discharge order and the effect of the conditions imposed in the order,
- (ii) the fact that the patient may, under Section 13B of the Act, be returned to the designated centre (i.e. the Central Mental Hospital) if he or she is in material breach of their conditional discharge order,
- (iii) that the Board may vary or remove any one or more of the conditions or may impose further conditions on the application of either the patient or the Clinical Director of the Central Mental Hospital, and
- (iv) that the patient may make an application in writing to the Review Board for an unconditional discharge at any time after the expiration of 12 months from the date of the patient's conditional discharge so long as a period of not less than 12 months has elapsed between an unsuccessful application and the next subsequent application.

“Detailed Procedure in Relation to Conditional Discharge” is set out in the Appendix.

7. Procedure for ordering the unconditional discharge of a patient

Should the Review Board receive a written application for an unconditional discharge from a person who has been conditionally discharged for at least 12 months or a period of not less than 12 months has elapsed since a previous unsuccessful application, it shall request the applicant to attend before the Review Board so that the Board may determine whether or not to discharge the applicant unconditionally.

The Review Board, having heard evidence (including evidence as to the applicant's mental condition and his or her compliance with the conditions of his or her conditional discharge order) given by the Clinical Director and/or the consultant psychiatrist responsible for the applicant's treatment and supervision, and any evidence given by or on behalf of the applicant, shall, if it thinks proper, make an order for the unconditional discharge of the applicant.

8. Procedure where a patient on conditional discharge is re-committed to the Central Mental Hospital

Should the Review Board be notified by the Clinical Director of the Central Mental Hospital that a patient who is the subject of a conditional discharge order, has returned, or has been returned, to the Central Mental Hospital because of a material breach of a condition or conditions of their conditional discharge order, the Review Board shall as soon as may be order that the patient be brought before the Board for the purpose of reviewing the patient's detention and the Board shall exercise all of the powers available to it in relation to the patient.

9. Delegation of administrative functions

The Review Board may delegate to the Chief Executive Officer such administrative functions as it considers appropriate.

APPENDIX

DETAILED PROCEDURE IN RELATION TO CONDITIONAL DISCHARGE

Note: This procedure will commence once one of the events in paragraph 1 occurs. The Board, within the constraints of the legislation may, in the interests of justice in an exceptional case, vary this procedure.

References in brackets are to sections of the Criminal Law (Insanity) Act, 2006, inserted by the Criminal Law (Insanity) Act, 2010.

1. (a) The patient or the patient's solicitor applies to the Review Board for conditional discharge, or
 - (b) the Central Mental Hospital identifies patient(s) it considers suitable for conditional discharge, or
 - (c) the Board requests the Central Mental Hospital to consider the conditional discharge of named patient(s), or
 - (d) the patient or the patient's solicitor applies to the Review Board for unconditional discharge, or the Central Mental Hospital identifies patient(s) it considers suitable for unconditional discharge and the Review Board wishes instead to explore the possibility of conditional discharge.
2. The responsible consultant psychiatrist draws up a psychiatric report including proposed conditions. (This does not preclude the Board, of its own accord and *ab initio*, from drawing up proposed conditions for the patient). The patient will usually be aware of the conditions that are being proposed.
3. The Clinical Director's office or the responsible consultant psychiatrist forwards the report to the Board's office. The Board forwards the report to the patient and the solicitor. The patient and/or the patient's solicitor may wish to discuss the proposed conditions with the responsible consultant psychiatrist. On foot of any discussion the responsible consultant psychiatrist and/or the Clinical Director of the Central Mental Hospital may wish to adjust the report.
4. Should there be adjustments to the report following the procedure at 3 above, a revised report is forwarded by the Clinical Director's office or the responsible consultant psychiatrist to the Board's office. The Board forwards this report to the patient and the solicitor.
5. The Board informs the parties of the date for a hearing and that they may, if they wish, make written submissions to the Board prior to the hearing. It is understood, however, that the patient or the solicitor is free to reserve any comments they may wish to make until the hearing itself takes place.
6. All parties are free to discuss the proposed conditions at the hearing.

7. The key worker, who will have regular, ongoing contact with the patient on behalf of the Central Mental Hospital if the patient is conditionally discharged, attends the hearing, primarily as an observer.
8. If the Board decides on a conditional discharge, the Board will draft a Conditional Discharge Order with conditions and a date for release.
9. The Board sends a draft Conditional Discharge Order to the Clinical Director (Section 13A(2)). At the same time the Board sends a copy of the draft Conditional Discharge Order to the patient and the solicitor for information only.
10. The Clinical Director gives written confirmation to the Board that arrangements are in place for the patient to comply with the conditions.
11. The Board issues the Conditional Discharge Order (unsigned) to the patient and the solicitor with a form for signature by the solicitor confirming that the solicitor has complied with 12 below. This form is to be countersigned by the patient.
12. The solicitor explains to the patient (Section 13A(3)(b)):
 - the effect of the conditional discharge order and the effect of the conditions imposed in the order,
 - that the patient may be returned to the Central Mental Hospital if he or she is in material breach of his or her conditional discharge order,
 - that the patient may apply to the Review Board to have conditions varied or removed or new conditions added,
 - that the Clinical Director may also apply to the Review Board to have conditions varied or removed or new conditions added (Section 13A(6)), and
 - that the patient may apply for unconditional discharge 12 months after the patient is discharged or 12 months after an earlier unsuccessful application for unconditional discharge. (Section 13A(8)).
13. The solicitor returns the signed form confirming that he or she has provided an explanation to the patient under paragraph 12. The patient will have countersigned the form confirming that he or she has received an explanation from the solicitor under paragraph 12.
14. The Board issues a copy of the signed Conditional Discharge Order to the Clinical Director (Section 13A(5)) and orders that the conditions imposed in the Order be communicated to the patient in writing at the time of his or her discharge (Section 13A(3)).

The Board issues a copy of the signed Conditional Discharge Order to the Minister for Justice, Home Affairs and Migration, and if relevant to the Director of Public Prosecutions.

15. The Board informs the patient and the solicitor that the signed Conditional Discharge Order has issued to the Clinical Director.

Vary or remove conditions

16. At any time the patient or Clinical Director can apply to the Review Board to have one or more conditions varied or removed (Section 13A(6)).