



**AN BORD ATHBHREITHNITHE MEABHAIR-SHLÁINTE
(AN DLÍ COIRIÚIL)**

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

ANNUAL REPORT 2017

**Mental Health (Criminal Law) Review Board
Montague Court
Montague Street
Dublin 2
D02 FT96
Telephone: (01) 4768602
E-mail: info@mhclrb.ie
Website: www.mhclrb.ie**

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1. **CHAIRPERSON'S FOREWORD**

I am pleased as Chairperson of the Mental Health (Criminal Law) Review Board to present the Board's 2017 Annual Report. This is the 11th Annual Report of the Board. Before providing an overview of the Board's activities during 2017, I would first like to welcome Dr. Katherine Brown who was appointed a member of the Board in April 2017, by the then Minister for Justice and Equality, following the retirement of Dr. Michael Mulcahy. As noted in last year's Report, Dr. Mulcahy had indicated his intention to retire from the Board early in 2017. I would once again like to acknowledge the huge contribution made by Dr. Mulcahy to the work of the Board since it was established in 2006.

In 2017, the number of review hearings held by the Board increased slightly by comparison with the previous year. The Board held 187 reviews compared with 175 in 2016, reviewing the detention of 83 patients. Of the 83 patients whose detention was reviewed, four were granted a conditional discharge. By comparison in 2016, out of a total of 81 patients, five patients were conditionally discharged by the Board. Of the four patients conditionally discharged, the Board was informed that the Clinical Director of the Central Mental Hospital had recalled one to the hospital on the grounds that the Director had a reasonable belief the patient was in material breach of his Conditional Discharge Order.

The Board progressed to holding 26th and 27th reviews into the detention of some patients in 2017.

Six applications for unconditional discharge were received by the Board in 2017 from patients who had been conditionally discharged for 12 months or more. There was also one outstanding application from 2016. Of the six applications received, two unconditional discharges were approved by the Board. Two applications were refused, one hearing was adjourned at the request of the patient's legal representative and one was awaiting a hearing at the end of the year. The Board also granted an unconditional discharge to the patient whose application had been brought forward from 2016.

On behalf of my colleagues, I thank the Clinical Director of the Central Mental Hospital Professor Harry Kennedy for his assistance during the year. I also thank the multi-disciplinary teams in the hospital for their work in preparing detailed psychiatric reports on each patient prior to their review hearing. The Board is mindful that this work is time-consuming for all those involved. The Board is also aware that, on the day of review hearings, the normal routine of patients and staff at the hospital is disrupted. In that regard, the Board is appreciative of the assistance and co-operation of the consultant psychiatrists, nursing, social services and administrative staff of the hospital. I would like also to compliment the work of members of the Board's Legal Representatives Panel who continue to ably and conscientiously represent patients coming before the Board for review of their detention.

Finally, I thank Mr. Greg Heylin, Chief Executive Officer, Ms. Catherine Hayes and Ms. Ann Casey for their work throughout the year.

Iarfhlaith O'Neill
Chairperson
April 2018

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

The Mental Health (Criminal Law) Review Board (An Bord Athbheithnithe Meabhair-Shláinte (An Dlí Coiriúil) was established on 27 September 2006 under Section 11 of the Criminal Law (Insanity) Act 2006.

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 by the Criminal Law (Insanity) Act 2010, the Board has the power to order the continued detention of patients or to order either their conditional, or unconditional discharge. When coming to its decision, the Board must have regard to the welfare of the patient and to the public interest. The Board is statutorily independent in the exercise of its functions.

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

As provided in the 2006 Act, the Board must review the detention of each patient at intervals of not greater than six months. Long-term patients usually have two review hearings per year but some may have more because, outside of the regularly scheduled hearings, a review can be held on the initiative of the Board or at the request

of a patient. The Clinical Director of the hospital can also request a review and 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.

At any one time, there are approximately 80 patients detained in the Central Mental Hospital under the 2006 Act. This number fluctuates 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, some of these patients may not come before the Board for review of their detention in the hospital as the Clinical Director, having consulted with the Minister for Justice and Equality, may transfer prisoners back to prison at any time. All review hearings take place in the Central Mental Hospital.

The detention of 83 patients was reviewed the Board in 2017, 10 of whom or 12% were female and 73 or 88% were male. The Board held a total of 187 review hearings. This represents an increase of 7% in the number of reviews compared with 2016 when 175 review hearings were held. Of the 83 patients whose detention was reviewed, 67% had been diagnosed as suffering from schizophrenia, 17% were suffering from schizoaffective disorder and 16% were diagnosed with other disorders. This compares with 2016 when the detention of 81 patients was reviewed, with 68% having been diagnosed as suffering from schizophrenia, 14% were suffering from schizoaffective disorder and 18% 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 2017, conducted 26th and 27th reviews into the detention of some patients. Of the 187 review hearings, 11 were a 26th review and three were a 27th review. A total of 7% of the hearings were at 26th to 27th review stage. 29% of hearings were at 1st to 5th review stage, compared with 34% in 2016. Of these, 15 reviews or 8% were a 1st review, compared with 2016 when there were 14 such reviews, which was also 8% of the total. (Appendix C refers).

As in previous years, the majority of review hearings were of patients who had been committed to the Central Mental Hospital under Section 5(2) of the 2006 Act, having been found not guilty of an offence by reason of insanity. That group accounted for 135 review hearings compared with 115 in 2016, representing 72% and 66% respectively of the overall total number of hearings. Again in 2017 the second largest number of review hearings was of patients detained 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 17% of review hearings in 2017 compared with 20% in 2016. (Appendix D refers).

4. MOST SERIOUS OFFENCE OR ALLEGED OFFENCE

The type of offences, or alleged offences, which patients detained in the Central Mental Hospital in 2017 were charged with, or convicted of, included murder, attempted murder, manslaughter and assault causing serious bodily harm. Of the 83 patients whose detention was reviewed by the Board, 38 had been charged with, or convicted of, murder. The majority of the victims of this offence, or alleged offence, were a family member of the patient. A total of 8 patients were charged with, or convicted of, attempted murder/manslaughter/death by dangerous driving. 23 patients

were charged with, or convicted of, assault causing harm/serious bodily harm and 4 with arson. Other offences included sexual assault, threat to kill, harassment, false imprisonment, attempted abduction of a child, burglary, possession of knives and intimidation and threat to set a Garda station alight. (Appendix G refers).

5. ORDERS FOR DISCHARGE

The Board approved the conditional discharge of four patients from the Central Mental Hospital in 2017, compared with five in 2016. The average duration of detention in the hospital for the conditionally discharged patients was 11 years. The two shortest durations averaged just over 5 years and the two longest averaged 17 years. It should be noted that 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).

One conditionally-discharged patient was recalled to the Central Mental Hospital in 2017. The Board was informed that the Clinical Director had revoked the conditional discharge as he had reasonable grounds for believing that the patient was in material breach of his Conditional Discharge Order.

The Board received six applications for unconditional discharge in 2017 from patients who had been conditionally discharged for 12 months or more. The Board granted two unconditional discharges and refused two. One application was adjourned, at the request of the applicant's legal representative and the other applicant was awaiting a hearing at the end of the year. The Board also granted one further unconditional

discharge to a patient who had applied for a hearing in late 2016 and whose application was brought forward for decision in January 2017.

6. MENTAL HEALTH (CRIMINAL LAW) LEGAL AID SCHEME

The Review Board is required by Section 12(1)(c) of the 2006 Act 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. Having regard to this, 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 a non-Panel solicitor at their own expense. The Board endeavours, for continuity for patients, having regard to the fact that they are suffering from a mental disorder, to assign the same solicitor to represent them at subsequent review hearings.

Section 3.6 of the Terms and Conditions of the Review Board's Legal Aid Scheme stipulates that the Legal Representatives Panel will be formally reviewed by the Board every three years. Having regard to this, a review of the Panel was begun in July 2017, the previous review having been completed in 2014. The review was commenced by enquiring of all Panel members if they wished to remain on the Panel. With the exception of one, all members indicated their wish to remain a member of the Panel. Since the previous review, the number of members fluctuated from 25 in 2014, 24 in 2015 and 26 in 2016. In March 2017 there were 27 Panel members. The number of patients requiring legal representation during that period increased slightly from 80 in 2014, 81 in 2015 and 2016 and 83 in 2017. Based on an analysis of the number

of patients, which has remained almost static, and the workload of each legal representative, the Board decided that additional members of the Panel would not be required for the foreseeable future. The Board is keeping this matter under ongoing review.

As of March 2017 there were 27 Panel members, when an additional solicitor was added to facilitate a request from a patient who wished to be represented at their review hearing by the solicitor who represented them in criminal proceedings. The Board agreed to the patient's request, subject to the solicitor being assigned to represent that patient only. As mentioned previously, during the review of the Panel, one member indicated that they did not wish to remain on the Panel and another member informed the Board in September that they were leaving private practice to take up a new position and consequently had to resign from the Panel. Both of these Panel members have been included in figures for 2017 as they represented clients during the year.

The average number of cases assigned to solicitors on the Panel in 2017 was 7. The top quartile of solicitors was assigned an average of 11 cases each. The second and third quartiles combined were assigned an average of 8 cases and the bottom quartile was assigned an average of 2 cases each. These are the same as the average number of cases assigned to each quartile in 2016. (Appendix E refers).

7. LEGAL PROCEEDINGS

As reported last year, an appeal has been lodged to the Court of Appeal by the applicant 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 Court of Appeal has fixed a date for hearing the appeal in November 2018.

8. **FINANCE INFORMATION**

The Review Board is funded from Subhead B.10 of the Vote of the Office of the Minister for Justice and Equality. In 2017, the Review Board received a budget allocation of €397,000. The Board's total expenditure in 2017 was €362,789. The Review Board adheres to the Public Spending Code. The main expenditure items are as follows:

Free Legal Aid	€102,801
Pay	€94,652
Board members' fees	*€86,500
Chairperson's fee	€70,875
Legal costs	€6,328

*Includes fees for December 2016 which were paid in January 2017. Does not include fees for December 2017 which were paid in January 2018. Fees for Dr. Brown are not included, due to a delay in her being set up on the payroll system.

9. **PROCUREMENT**

Appointment of Legal Advisers

Following consultation with the Procurement Strategy Group of the Department of Justice and Equality and the Office of Government Procurement (OGP), the OGP issued a Supplementary Request for Tender in May 2017, on behalf of the Review Board, for the provision of legal services to the Board. Following that tender request, McDowell Purcell Solicitors were appointed legal advisers to the Board under the terms of the *Multi Supplier Framework Agreement for the Provision of Legal Services to Public Sector Bodies (excluding Central Government Departments)* which was put in place by the OGP.

Tenders for Interpretation Services at Review Hearings

The Review Board issued five once-off e-mail tenders during 2017 for the provision of interpretation services at review hearings.

10. PROTECTED DISCLOSURE

The Review Board has adopted the Protected Disclosure Policy of the Department of Justice and Equality as its policy on protected disclosures in the workplace. In line with reporting requirements, it is confirmed that there were no protected disclosure reports received in 2017.

11. GOVERNANCE AND INTERNAL CONTROLS

Structure and Membership of the Review Board

The Mental Health (Criminal Law) Review Board is a semi-judicial body, rather than a governance board, which reviews the detention of patients detained in the Central Mental Hospital. The Board consists of a Chairperson and any number of ordinary members as the Minister for Justice and Equality, having consulted with the Minister for Health, may require. The current Chairperson is a retired High Court Judge and there are three ordinary members, two of whom are consultant psychiatrists and one is a counsellor psychotherapist. All Board members are appointed by the Minister for a period of five years, as provided by the Criminal Law (Insanity) Act 2006. Membership of the Board in 2017 is set out below:

Member	Date Appointed
Mr. Justice Iarfhlaith O'Neill	September 2014
Dr. Katherine Brown, Consultant Psychiatrist	April 2017
Ms. Nora McGarry, Counsellor Psychotherapist	September 2016
Dr. Michael Mulcahy*, Consultant Psychiatrist	September 2016
Dr. Elizabeth Walsh, Consultant Psychiatrist	January 2013

*Dr. Mulcahy resigned in April 2017

Attendance at Hearings and Fees

The Review Board does not convene, other than for hearings in the Central Mental Hospital. When reviewing the detention of patients, the Board sits in a panel of three, with the Chairperson and at least one consultant psychiatrist always on the panel.

Ordinary members are paid a fee of €250 per review hearing attended. The same fee is paid for attendance at hearings in connection with applications received by the Board for unconditional discharge. In 2017 all Board members attended those hearings which they were scheduled to attend. Dr. Brown, who was appointed in April, attended 50 hearings, Ms. McGarry attended 175 hearings and Dr. Walsh attended 161 hearings. Dr. Mulcahy did not attend hearings in 2017.

The Chairperson is paid an annual fee of €70,875. The Chairperson chairs all review hearings and hearings to consider applications for unconditional discharge. The Chairperson also advises and guides the CEO, in particular in managing any legal cases to which the Board is a party.

Employees

The Review Board is supported by a Chief Executive Officer, Mr. Greg Heylin, who is a Principal Officer in the Department of Justice and Equality and who devotes a portion of his time to the duties of CEO of the Board. The CEO is responsible for the day-to-day management and administration of the business and resources of the Board. The CEO is not paid a separate salary for his work with the Review Board.

The Board has two full-time staff, a Higher Executive Officer and a Clerical Officer, seconded from the Department of Justice and Equality. The staff of the Review Board are civil servants and are paid the appropriate civil service pay rates for their grade.

Payroll processing and the payment of Board members' fees is provided by the Payroll Shared Services Centre of the Department of Public Expenditure and Reform. The processing of other payments is provided by the Financial Shared Services Centre of the Department of Justice and Equality.

Oversight and Internal Controls

An Oversight Agreement for 2017 was reached with the Department of Justice and Equality and signed on behalf of the Review Board by the CEO. In the Oversight Agreement, it was agreed that, because of the narrow legislative functions of the Chairperson of the Board, the statutory independence of the Board and its very small size, the CEO, not the Chairperson, would furnish the Compliance Statement to the Minister in accordance with the *2016 Code of Practice for the Governance of State Bodies*.

Regarding compliance with the *Code of Practice*, the 'Comply or Explain' provision of the *Code* has been applied by the Department to the Review Board. In regard to internal controls and risk management, because of the Review Board's size, it is not deemed feasible for the Board to establish its own Audit Unit or Audit and Risk Committee. Instead, alternative arrangements have been put in place for the Board to have access to the Department's Internal Audit Unit and Audit and Risk Committee in relation to financial governance. An assessment of the principal risks of the Review

Board is carried out on an annual basis by the CEO of the Board and any risks identified are included in the Board's Risk Register.

The Review Board's founding legislation does not require the production of Financial Statements. The Board, through the CEO, liaises with the Financial Shared Services Centre of the Department of Justice and Equality which reports on the Board's income and expenditure in the Department's monthly management reports. The monthly reports are kept under review by the CEO and procedures are in place to ensure that expenditure is authorised in accordance with the Department's guidelines.

Having regard to the size of the Review Board and the statutory basis for its remit which does not change unless legislation is amended, it is not deemed necessary for the Board to prepare a strategic plan. However, the Review Board publishes relevant statistics with regard to its output in its Annual Report which is published on its website.

The Review Board adheres to public service procurement policies and guidelines. Procurement competitions conducted by the Review Board are done in consultation with the Procurement Strategy Group of the Department of Justice and Equality.

Note:

The Board launched a new website (www.mhclrb.ie) in January 2017.

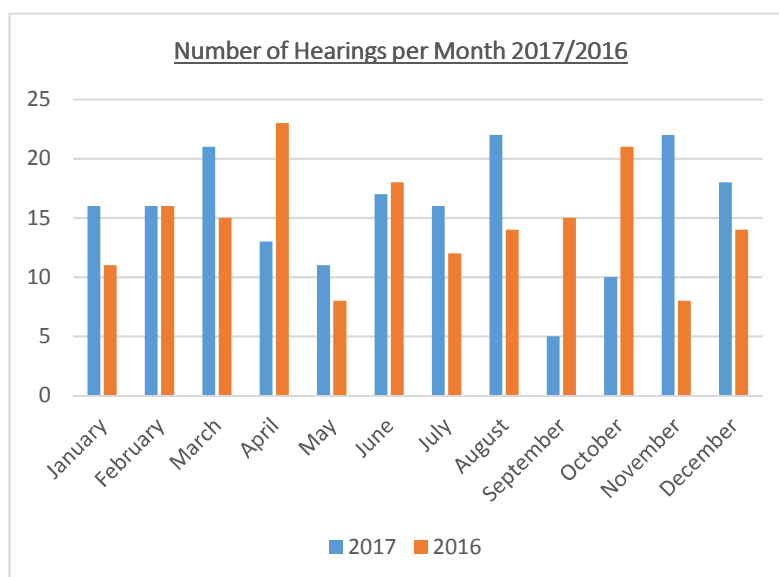
An administrative consolidation of the Criminal Law (Insanity) Act 2006 prepared by the Law Reform Commission

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 website.

Number of Hearings per Month 2017/2016

Month	No. of Hearings 2017	% of 2017 Total	No. of Hearings 2016	% of 2016 Total
January	16	8%	11	6%
February	16	8%	16	9%
March	21	11%	15	9%
April	13	7%	23	13%
May	11	6%	8	5%
June	17	9%	18	10%
July	16	8%	12	6%
August	22	12%	14	8%
September	5	4%	15	9%
October	10	5%	21	12%
November	22	12%	8	5%
December	18	10%	14	8%
Total	187	100%	175	100%

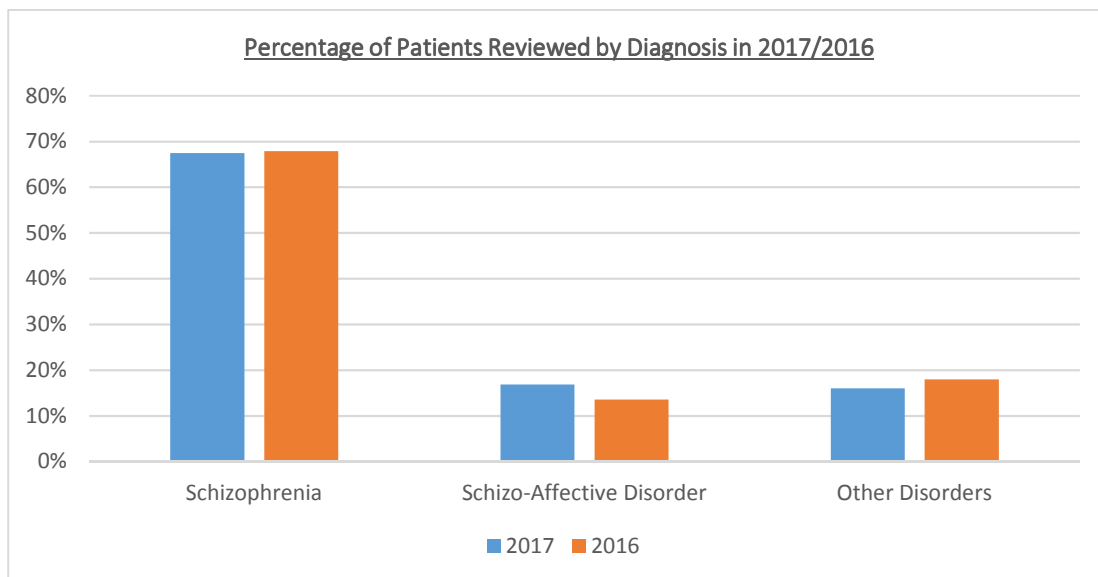


Number of Patients Reviewed per Diagnosis in 2017/2016

Diagnosis	No. of patients reviewed 2017	% of 2017 Total	No. of patients reviewed 2016	% of 2016 Total
Schizophrenia	56	67%	55	68%
Schizo-Affective Disorder	14	17%	11	14%
Other Disorders	13	16%	15	18%
Total	83	100%	81	100%

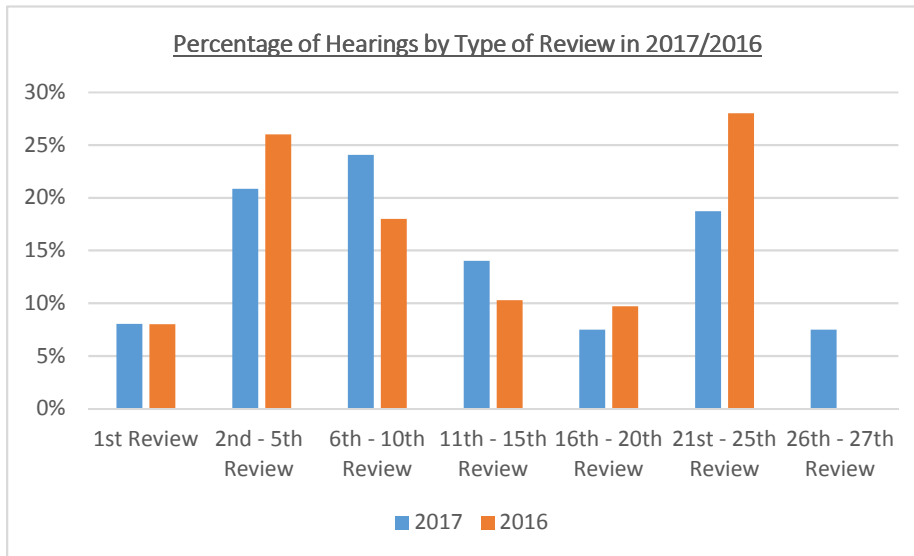
Other Disorders include:

- Bi-Polar Affective Disorder
- Psychotic Disorder
- Psychotic Depression
- Autistic Spectrum Disorder
- Asperger's Syndrome
- Mood Disorder
- Adjustment Disorder with Depressive Episode
- Organic Personality Disorder



Number of Hearings by Type of Review in 2017/2016

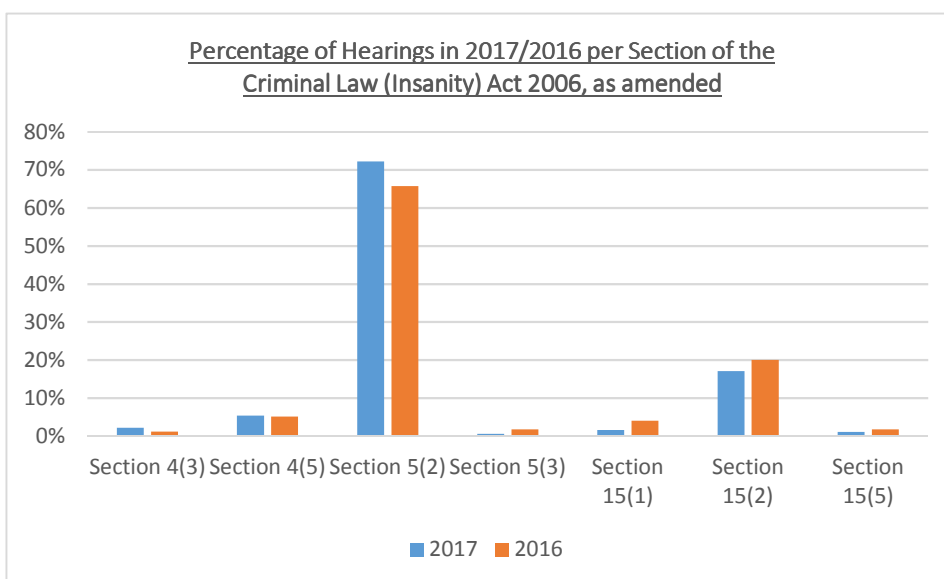
Type of Review	No. of Reviews 2017	% of 2017 Total	No. of Reviews 2016	% of 2016 Total
1st Review	15	8%	14	8%
2nd - 5th Review	39	21%	46	26%
6th - 10th Review	45	24%	32	18%
11th - 15th Review	25	14%	18	10%
16th - 20th Review	14	7%	17	10%
21st - 25th Review	35	19%	48	28%
26th - 27th Review	14	7%		
Total	187	100%	175	100%



Number of Hearings in 2017/2016 per Section of the Criminal Law (Insanity) Act 2006, as amended

Section of 2006 Act	No. of Hearings 2017	% of 2017 Total	No. of Hearings 2016	% of 2016 Total
Section 4(3)	4	2%	2	1%
Section 4(5)	10	5%	9	5%
Section 5(2)	135	72%	115	66%
Section 5(3)	1	1%	3	2%
Section 15(1)	3	2%	7	4%
Section 15(2)	32	17%	36	20%
Section 15(5)	2	1%	3	2%
Total	187	100%	175	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 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
- Section 15(5)** Continuation of voluntary transfer from Prison (after refusal of care or treatment)



**Average Number of Cases Assigned to Legal
Representatives on Legal Aid Panel in 2017/2016**

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
2017	27*	7	11	8	2
2016	26**	7	11	8	2

* An additional member was appointed in March. Two members resigned, one in August and one in September. These are included in the figures because they were assigned cases during the year. At the end of 2017 the number of members is 25.

** At end of year (two additional members were appointed during the year)

**Number of Patients Conditionally
Discharged in 2017/2016**

Month of Conditional Discharge Order	No. of Patients 2017	No. of Patients 2016
January	1	
March	2	
April		
May	1	2
June		1
July		1
November		1
December		
Total	4	5

Most Serious offence or Alleged Offence of patients whose detention was reviewed in 2017

Type of Offence or Alleged offence	No. of patients charged with, or convicted of, offence	
Murder of which victim was family member of which victim was known to patient of which victim was stranger	38	23 10 5
Attempted Murder/Manslaughter/Death caused by dangerous driving of which victim was family member/known to patient of which victim was stranger	8	6 2
Assault causing harm/serious bodily harm of which victim was family member of which victim was known to patient of which victim was stranger	23	7 3 13
Arson	4	
Other	10	
Total	83	

Note

- 1) Patients convicted of, or charged with, more than one offence/alleged offence, have been categorised according to the most serious offence/alleged offence.
- 2) In a minority of instances there was more than one victim of the offences with which a patient was charged, or convicted.
- 3) The category “**Other**” includes sexual assault, threat to kill, harassment, false imprisonment, attempted abduction of a child, burglary, possession of knives and intimidation and threat to set a Garda station alight.