DRAFT Oversight Agreement 2018

between

the Mental Health (Criminal Law) Review Board

and

the Department of Justice and Equality

Part 1 – Oversight Agreement

1. Introduction

1.1 The Mental Health (Criminal Law) Review Board (the "Review Board") is an independent, statutory body under the aegis of the Minister for Justice and Equality (the "Minister"). It was established by order of the then Minister for Justice, Equality and Law Reform under Section 11 of the Criminal Law (Insanity) Act 2006 on 27 September 2006. The Criminal Law (Insanity) Act 2006 has been amended by the Criminal Law (Insanity) Act 2010 which was brought into operation by order of the then Minister for Justice and Law Reform on 08 February 2011.

1.2 The Review Board consists of four members and generally sits in a panel of three to review cases. Schedule 1 of the Criminal Law (Insanity) Act 2006 (as amended) sets out the procedure and eligibility criteria for selecting the Chairperson and members of the Review Board. The Minister, following consultation with the Minister for Health, appoints members of the Review Board in accordance with Schedule 1 of that Act.

1.3 The current members of the Review Board are:

- Mr Justice Iarfhlaith O'Neill (Chairperson);
- Dr Katherine Brown, Consultant Psychiatrist;
- Ms Nora McGarry, Counsellor Psychotherapist; and
- Dr Elizabeth Walsh, Consultant Psychiatrist.

1.4 The Review Board is located (for administrative purposes) at Floor 2, Montague Court, 7-11 Montague Street, Dublin 2, Eircode D02 FT96. Hearings of the Review Board generally take place, however, in the Central Mental Hospital, Dublin.

2. Role of the Mental Health (Criminal Law) Review Board within the Justice and Equality Sector

2.1 Mission

The mission of the Review Board is to review the detention of patients, in accordance with its statutory obligations as set out by the Criminal Law (Insanity) Act 2006 (as amended), within the statutory timeframe.

2.2 Function

The Review Board is an independent, statutory body responsible for reviewing the detention of patients in the Central Mental Hospital[1] who have been referred there arising from a decision by the courts that they are unfit to be tried or having been found not guilty of an offence by reason of insanity. The Review Board conducts its reviews under the Criminal Law (Insanity) Act 2006, as amended by the Criminal Law (Insanity) Act 2010.

2.3 When reviewing the detention of patients, the Review Board can order their continued detention in the Central Mental Hospital or their conditional or unconditional discharge. When reviewing the detention of a person who has been transferred from prison to the Central Mental Hospital, the Review Board can order their continued detention in the hospital or their return to prison.

2.4 The Review Board is also responsible for reviewing the detention in the Central Mental Hospital of prisoners, including military prisoners, suffering from mental disorders who have been transferred there from prison and military personnel referred by tribunals operating under the relevant Defence Acts.

2.5 The Review Board is required to ensure that the detention of each patient is reviewed at intervals of not greater than six months.

[1] currently the only designated centre defined by the Criminal Law (Insanity) Act 2006 (as amended)

2.6 Reviews of the detention of patients, outside of those regularly scheduled, can be triggered in a number of ways and in certain circumstances laid down by the Act, at the behest of the Review Board, at the request of the Minister, at the request of a patient or at the request of the Clinical Director.

2.7 The Act provides that the Review Board shall ensure that the detention of a patient is reviewed at least every six months. Decisions of the Review Board are given where reasonably possible within fourteen working days.

3. Corporate Governance

3.1 Roles and Responsibilities

Accounting Officer

The Review Board falls under the Department of Justice and Equality's Vote (Vote 24) and it is funded from Subhead B10 of that Vote; as such, the Department's Secretary General is the Accounting Officer. The Accounting Officer is responsible for safeguarding of public funds and property under his control, for the efficiency and economy of administration by his Department and for the regularity and propriety of all transactions in the Appropriation Account. Further external scrutiny and governance is provided through the submission and analysis of the Appropriation Accounts to the Comptroller and Auditor General and ultimately to the Oireachtas through the Public Accounts Committee.

Chairperson of Board

In accordance with the provisions of Schedule 1 to the Criminal Law (Insanity) Act 2006 (as amended), the Chairperson of the Review Board shall have had not less than 10 years' experience as a practising barrister or practising solicitor ending immediately before his or her appointment or shall be a judge of or former judge of the Circuit Court, High Court, Court of Appeal or Supreme Court.

The Chairperson is responsible for chairing Review Board hearings and giving guidance in managing legal cases to which the Board is a party.

Members of the Review Board

In accordance with the provisions of Schedule 1 to the Criminal Law (Insanity) Act 2006 (as amended), the Review Board shall consist of a Chairperson and such number of members as the Minister, after consultation with the Minister for Health, may from time to time as the occasion requires appoint. The term of office of members of the Review Board shall be five years. The Review Board shall have as an ordinary member, at least one approved medical officer.

Chief Executive Officer

The Chief Executive Officer (CEO) of the Review Board is responsible for the day-to-day management and administration of the business and resources (financial and non-financial) of the Review Board. He is responsible for the establishment and maintenance of high standards in implementing the functions of the Review Board and ensuring a reputation for impartiality, management of conflicting interests and upholding the public interest at all times. The CEO is also responsible, in conjunction with the Chairperson of the Review Board, for setting strategic direction and being the public face of the Review Board.

Mr Greg Heylin, CEO, manages the day-to-day business of the Review Board; he is a Principal Officer in the Department of Justice and Equality (the "Department") who devotes part of his time to the duties of CEO of the Review Board.

The CEO will furnish a Comprehensive Report to the Minister, in conjunction with the Review Board's Annual Report, outlining any significant developments in the preceding year and affirming the Review Board's compliance with relevant codes and regulations, in accordance with the 2016 *Code of Practice for the Governance of State Bodies* (the "*Code of Practice*"), in particular addressing the relevant requirements of paragraph 1.9 of the "Business and Financial Reporting Requirements" Annex to the 2016 *Code of Practice for the Governance of State Bodies*.

3.2 Strategic Plan

The Review Board's objectives are set out in statute and do not change unless legislation is amended. Furthermore, the Criminal Law (Insanity) Act, 2006 does not provide for the creation of a Strategic Plan by the Review Board. Accordingly, it has been agreed that the Review Board will not be required to adopt a formal Strategic Plan.

The specific objectives of the Board are those set out in legislation (The Criminal Law (Insanity) Act, 2006). The specific objectives of the Board are set out hereunder.

The Mental Health (Criminal Law) Review Board, established by the Criminal Law (Insanity) Act 2006, reviews the detention of patients detained in the Central Mental Hospital who:

a) are awaiting trial on criminal charges, but are currently unfit to stand trial because of their mental illness, or
b) have been tried by a Court and, by reason of insanity, have been found not guilty of having committed a criminal offence, or
c) were in prison on remand or having been convicted of committing an offence, and were transferred from prison, including military prison, for treatment.

In 2010, the Act was amended to give the Board power to order the discharge of patients, subject to enforceable conditions.

The offences, or alleged offences, committed by these patients come within the most serious category of crimes. When reviewing the detention of these patients, the Board has to balance the risk of future violence on the part of the patient both to themselves and others, with their right to liberty, taking account of their illness, insight into their illness and their compliance with treatment.

Patients reviewed by the Board suffer from a wide variety of mental disorders such as paranoid schizophrenia, schizo-affective disorder, bi-polar affective disorder, paranoid personality disorder, intellectual disability, delusional disorder and psychotic disorders. Patients are legally represented before the Board.

Having regard to the mental and criminal history of patients, the Board has to decide whether or not it is in their best interest and in the public interest, that a patient should be unconditionally discharged, discharged subject to enforceable conditions, returned to prison or whether they should continue to be detained in the Central Mental Hospital for further treatment.

3.3 Business Plan

Annual business plans of the Review Board are drafted by the CEO, in conjunction with the members of the Review Board, and are included as part of the Department's overall Business Plan for each year.

3.4 Annual Report and Accounts

In accordance with Section 6 of the 2016 *Code of Practice*, the CEO on behalf of the Review Board should prepare a comprehensive report on its activities during the preceding year. This Annual Report should be published not later than four months after the end of the relevant year. The Review Board publishes its Annual Report (in Irish and in English) on its website http://www.mhcirb.ie/en/MHB/Pages/Annual_Reports.

3.5 Reporting Requirements – Annual Report

In accordance with Appendix A of the "Business and Financial Reporting" Annex to the 2016 *Code of Practice*, the Annual Report should, inter alia, include:

i. a statement noting that this Oversight Agreement has been reached with the Department and, in particular, indicating the Review Board's level of compliance with the requirements of the 2016 *Code of Practice*;

ii. a statement of how the Review Board operates;

iii. a statement of how the performance evaluation of the Review Board has been conducted;

iv. the number of Review Board meetings and attendance level of each Review Board member;

v. names of the Chairperson, the Deputy Chairperson (if any), the CEO and members of the Review Board;

vi. confirmation that an appropriate assessment of the Review Board's principal risks has been carried out, including a description of these risks, where appropriate and associated mitigation measures or strategies;

vii. confirmation that the Review Board is adhering to the relevant aspects of the Public Spending Code.

3.6 Internal Audit

The Department's Internal Audit Unit provides support to the Review Board in monitoring and reviewing the effectiveness of the Review Board's arrangements for governance, governance risk management and internal control. Any audit work will be agreed between the CEO and

the Head of Internal Audit in the Department. The Internal Audit Unit, subject to available resources, will carry out the audits within an agreed timeframe.

3.7 Audit and Risk Committee

The Board is statutory and independent in the performance of its function. The Review Board, via its CEO, will highlight key risks to the Department within its Oversight Agreement and to its internal and external auditors as appropriate. Due to its size, a separate risk committee will not be formed by the Review Board. The Management Board of the Department will note the risk management framework of the Review Board in relation to governance and other relevant issues as set out in Section 8 of this document and raise any issues of concern with the CEO of the Board.

3.8 Protected Disclosures and Other Concerns

In accordance with Section 21(1) of the Protected Disclosures Act 2014, the Review Board has adopted the Protected Disclosures Policy of the Department as its policy on protected disclosures in the workplace. The procedure set out in that Policy outlines the process for the making of protected disclosures by workers who are (or were) employed by the Review Board and for dealing with such disclosures. If a worker wishes to report a wrongdoing, they may contact their line manager, the CEO of the Review Board or the Head of Internal Audit at the Department.

The Review Board will ensure that staff treat with confidentiality any correspondence submitted as a Protected Disclosure.

Procedures for dealing with concerns from a person who is external to the Review Board should also be established. Notwithstanding that such correspondence/concern may be found not to be a Protected Disclosure under the Act, the Review Board should ensure that the matter is addressed appropriately.

3.9 Governance Obligations

As a statutory, independent body operating under the aegis of the Minister, the Review Board is subject to a range of statutory and corporate governance obligations including the 2016

Code of Practice. The Review Board will ensure full compliance with all the necessary obligations, including those for risk management, internal audit and the Public Spending Code.

The Review Board adheres to public service procurement policies and guidelines. Procurement competitions conducted by the Review Board are carried out in consultation with, and are subject to scrutiny by, the Procurement Strategy Group of the Department.

3.10 Compliance Statement to the Minister

To confirm compliance (or otherwise) with key provisions of the 2016 *Code of Practice* and the Governance Standard for Justice and Equality Sector Bodies, the Chief Executive Officer will complete (on an annual basis) and submit to the Minister, in conjunction with the Annual Report, a Compliance Statement in order to provide assurance to the Department that the systems of internal control, risk management in relation to governance issues and other areas of compliance are operating effectively. That compliance statement will address all of the relevant requirements of paragraph 1.9 of the "Business and Financial Reporting Requirements" Annex to the 2016 *Code of Practice for the Governance of State Bodies.*

3.11 Provision of Information to Members of the Oireachtas

In accordance with Circular 25/2016 of the Department of Public Expenditure – Protocol for the Provision of Information to Members of the Oireachtas by State Bodies under the aegis of Government Departments/Offices, the Review Board is obliged to:

i. provide and maintain a dedicated email address (oireachtasmembers@mhclrb.ie) for Oireachtas members;
ii. put in place formal feedback processes to obtain feedback from Oireachtas members;
iii. comply with target deadlines and standards in terms of acknowledgements and responses to queries;
iv. designate a person at senior management level within the Review Board with responsibility for ensuring the timely provision of information to members of the Oireachtas;
v. report annually (to the Minister) on compliance with standards set out in Circular 25/2016;

vi. seek, where appropriate, to publish the response to queries from members of the Oireachtas on the Review Board's website http://www.mhcirb.ie/en/mhb/pages/home.

NB: the legally privileged, medically confidential and personal data nature of much of the documentation relating to the work of the Review Board is noted; the Review Board's obligations with regard to such legal privilege and other legal obligations should be strictly adhered to in terms of the provision of any information, including to members of the Oireachtas.

3.12 Governance obligations of the Review Board will be reviewed as part of the overall monitoring process of this Oversight Agreement itself.

3.13 Comply or Explain

i. In view of the specific narrow range of legislative functions for the Chairperson of the Review Board, the Review Board's statutory independence and its very small size, the CEO and not the Chairperson will furnish a Compliance Statement to the Minister, in conjunction with the Review Board's Annual Report, outlining any significant developments in the preceding year and affirming the Review Board's compliance with relevant codes and regulations, in accordance with the 2016 *Code of Practice for the Governance of State Bodies* (the "*Code of Practice*"), in particular addressing the relevant requirements of paragraph 1.9 of the "Business and Financial Reporting Requirements" Annex to the 2016 *Code of Practice for the Governance of State Bodies*.

ii. Having regard to the size of the Review Board, it is not deemed feasible for it to establish its own Internal Audit Unit or Audit and Risk Committee. Alternative arrangements have been put in place to provide the Review Board with access to the Department's Internal Audit Unit and Audit Committee.

iii. The Review Board's founding legislation does not require the production of Financial Statements. The Review Board through the CEO liaises with the Financial Shared Services Centre which reports on the Review Board's income and spending in the Department's monthly management reports.

iv. Having regard to the size of the Review Board and the statutory basis for its remit, it is deemed not necessary for it to prepare a strategic plan. However, the Review Board

will keep its website up to date and will publish relevant statistics with regard to its output on an annual basis.

Part 2 – Performance Delivery Agreement

4. Objectives of this Agreement[2]

The purpose of this Agreement is to formalise a process through which the outputs and outcomes required from the Review Board can be measured and assessed. Equally, the Agreement will set out the expectations of the Review Board in relation to the support, guidance and information-flow from the Department which are vital in enabling the Review Board to achieve its strategic and operational goals. To achieve this, it is necessary to set out the following:

- the Department's expectations of the Review Board;
- the key inputs, outputs and expected outcomes of the Review Board's activities;
- assessment of performance by monitoring of agreed targets in respect of those key outputs, inputs and outcomes; and
- support of the Review Board by the Department in the delivery of its functions as set out in the Criminal Law (Insanity) Act 2006 (as amended).

The Agreement seeks to:

(a) facilitate the Review Board in carrying out its functions;

(b) make progress with regard to the ongoing development of output measures for its expenditure; and

(c) improve the effectiveness and efficiency of public services.

The Agreement will support the Review Board in achieving its high level goals.

[2] Appendix E to the 2016 *Code of Practice for the Governance of State Bodies* sets out the expected format and detail to be included in Performance Delivery Agreements.

5. Commitments

5.1 Mutual Commitments

- Both parties to this Agreement agree to proactive and timely communications, cooperation and information on service delivery.
- Both parties agree to consult and keep each other fully appraised on all matters of mutual relevance, particularly in the context of the Review Board's functions.
- Both parties support the effective achievement of agreed targets, as well as the promotion of partnership, responsiveness and mutual cooperation in their ongoing interactions.

The annual budgetary provision for the Review Board will form part of the Estimates process for the Justice and Equality Vote and the requirements of the Review Board will be considered in that context.

The Review Board will identify, based on its business plans, its budgetary requirements to the Department as part of the budgetary process. When the budget is settled, consideration may have to be given to the preparation and submission of a revised business plan by the Review Board.

5.2 The Department's Commitments to the Review Board

The Department will provide a wide range of supports to the Review Board to enable it to deliver on its statutory objectives. The Department will:

- ensure a sufficiently resourced Review Board;
- liaise with the Department of Public Expenditure and Reform to ensure, as far as possible, timely sanction for expenditure and staffing in line with Public Financial Procedures and Public Service Numbers policy;
- provide dedicated support from within the Department;
- liaise with the Review Board in relation to any change of Departmental Policy;
- ensure an appropriate legislative basis to allow the Review Board to carry out its functions effectively.
- provide guidance on Government Accounting and Governance;

- provide financial services (e.g. payroll and accounting services) through the Department's Financial Shared Services;
- provide internal audit services to the Review Board;
- work with the Review Board in the regular reporting processes under the Public Sector Reform and Civil Service Renewal Programmes; and
- provide monthly financial reports, processing of telephone bills, asset tracking and general financial advice via the Department's Financial Management Unit.

6. Inputs

6.1 Financial Inputs

The following table summarises the budget allocation for the Review Board for 2017.

Expenditure	2018 Budget Allocation
Pay	€
Non-Pay	€
Total	€

Finances are reviewed monthly by the CEO of the Review Board and systems are in place to ensure that every patient is reviewed within the statutory time limits.

The Chairperson is paid a fee not to exceed €70,875 per annum. Review Board members are paid a fee of €250 per case.

6.2 Staffing Resources

Grade	Staffing Level June 2018 (FTE)
Principal Officer	15% of One Full time Equivalent dedicated to Review Board work ?????
Higher Executive Officer	1?????
Clerical Officer	1?????
Total	**2.15????**

7. Outputs/Targets

The following section sets out the Key Performance Indicators (KPIs) which will be used to assess the Review Board's progress towards achieving its key mandate and core function; the review of the detention of patients, in accordance with its statutory obligations as set out by the Criminal Law (Insanity) Act 2006 (as amended).

7.1 The Review Board's current work programme can be broken down into the following key objectives:

1. A) to review the detention of patients detailed in the Central Mental Hospital at intervals of not greater than six months who are awaiting trial on criminal charges, but are currently unfit to stand trial because of their mental illness;

   B) to review the detention of patients detailed in the Central Mental Hospital at intervals of not greater than six months who have been tried by a Court and, by reason of insanity, have been found not guilty of having committed a criminal offence; or

   C) to review the detention of patients detailed in the Central Mental Hospital at intervals of not greater than six months who were in prison on remand or having been convicted of committing an offence, and were transferred from prison, including military prison, for treatment.

2. During a review, the Board will have regard to the welfare and safety of the person being reviewed and to the public interest, in line with Section 11 (2) of the Criminal Law (Insanity) Act 2006 (as amended).

3. During Reviews, the Board will ensure compliance with all aspects of the Criminal Law (Insanity) Act 2006 (as amended) and ensure that procedures are applied.

4. The Board following a review will make whatever order it considers proper and appropriate in the circumstances in line with Section 13 of the Criminal Law (Insanity) Act 2006 (as amended).

The Review Board is committed to:

- performing its functions in an effective and efficient manner in line with its obligations;
- reviewing circa 80 patients within each six month statutory deadline – depending on the number of patients whose detention comes within the remit of the Board for review;
- considering the possible conditional or unconditional discharge of suitable patients from the Central Mental Hospital;
- delivering Annual Reports which include relevant statistics;
- ensuring effective controls are in place;
- ensuring the optimum use of available resources without compromising on quality;
- producing high quality, timely, well informed decisions in relation to patient reviews; and
- managing resources effectively to meet statutory requirements.

7.2 Service Levels and Performance Measurement 2018

Goals	Actions	KPIs	Target
To produce high quality, timely, well informed decisions in relation to patient reviews.	• Review patients within statutory deadlines. • Continue to review decisions and ensure consistency.	• Number of patients reviewed within six month deadline.	80

Goals	Actions	KPIs	Target
To manage resources effectively to meet statutory requirements.	• To review expenditure and budget on a monthly basis. • To ensure compliance with financial procedures & guidelines in respect of expenditure and procurement.	To Keep within Budget Profiles.	Discussions with CEO on an exceptional basis if Budget profile is exceeded.
To promote use of the Review Board's website.	• Seek to raise awareness of the Review Board's website. • Ensure continued availability of high quality information to visitors to the Review Board's website.	• Updates to the website where required with relevant information in plain/accessible English.	Yearly.
	• To produce and submit an annual report to the Minister.	• Annual Report to be published in Irish and English on its website http://www.mhcirb.ie/en/MHB/Pages/Annual_Reports.	30 April

Goals	Actions	KPIs	Target
		(not later than four months after the end of the relevant year.	
	• To produce a Compliance Statement from CEO indicating the Review Board's level of compliance with the requirements of the 2016 *Code of Practice*.	• Submit Compliance Statement to the Minister in conjunction with Annual Report	30 April

8. Potential Risk Factors

The Review Board operates a risk management framework in relation to governance and other relevant issues. The maintenance of a risk management framework, ensures that risks are identified and assessed and mitigating actions are, where necessary, put in place.

Reflecting the key priorities of the Review Board, the main potential risks to the achievement of targets set out in this Agreement at the time of writing are:

- the risk of a discharged patient committing a serious criminal offence;
- the risk of a major increase of patients requiring review;
- the risk of a judicial review of a review decision in respect of the application of natural justice and fair procedures;
- the risk of some aspect of the legislation governing the role and functions of the Board being overturned due to a legal challenge;
- the risk of the misappropriation of funds through the lack of oversight and compliance with financial procedures and guidelines.

9. Flexibility and Amendment of Targets

Where amendments to this Agreement become necessary, both parties will engage to discuss and agree appropriate amendments.

10. Monitoring Arrangements

In accordance with the Department's policy on the monitoring of governance arrangements in relation to the agencies within its remit, the CEO of the Review Board will meet with the Department twice yearly, or more frequently if required by the Department, to provide an update on developments and achievement of targets as set out in this Agreement.

11. Duration and Signatories of the Agreement

Greg Heylin, Chief Executive Officer, Mental Health (Criminal Law) Review Board and Jimmy Martin, Assistant Secretary General, Department of Justice and Equality, agree that the arrangements as set out in this Agreement will apply with effect from the date signed hereunder until 31 December 2018.

Greg Heylin
Chief Executive Officer
Mental Health (Criminal Law) Review Board

Date: 31/1/2018

Jimmy Martin
Assistant Secretary
Department of Justice and Equality

Date: 31/1/2018