



**An Roinn Dlí agus Cirt**  
Department of Justice



**An Bord Athbheathnithe  
Meabhair-Shláinte (An Dlí Coiriúil)**  
Mental Health (Criminal Law)  
Review Board

# **Oversight Agreement 2023-25**

**Department of Justice**

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**Mental Health (Criminal Law)  
Review Board**

## **1. Introduction**

### **1.1 Scope of this Agreement**

This Oversight Agreement sets out the broad governance and accountability framework within which the Mental Health (Criminal Law) Review Board (“the Board”) operates, and defines the key roles, responsibilities and commitments that underpin its relationship with the Department of Justice (The Department). The Agreement has been drawn up by the Department in consultation with the Board in accordance with the Code of Practice for the Governance of State Bodies (“Code of Practice”). It succeeds the previous Oversight Agreement 2020-22 between the two parties, and will be subject to a formal review approximately midway through its operation.

### **1.2 Background and context**

The Board is a statutory body under the aegis of the Minister for Justice and was established under Section 11 of the Criminal Law (Insanity) Act 2006 as amended (“the Act”). The Board is independent in the performance of its functions under the Act. Its primary function is to review the detention of patients in the Central Mental Hospital (CMH) 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 Board is also responsible for reviewing the detention in the CMH of persons suffering from mental disorders who have been transferred there from a prison, and of military personnel who have been referred by tribunals under the relevant Defence Acts.

The Act provides that the Board shall ensure that the detention of each patient is reviewed at intervals of not greater than six months. 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, either at the behest of the Board, at the request of the Minister, at the request of a patient or at the request of the Clinical Director. Decisions of the Board are given, where reasonably possible, within fourteen working days.

Upon reviewing the detention of a patient, the Board may order their continued detention in the CMH or their conditional or unconditional discharge. Upon reviewing the detention of a person who has been transferred from prison to the CMH, the Board may order their continued detention in the CMH or their return to prison.

### **1.3 Strategic fit of the Board within in the Justice Sector**

The functions and objectives of the Board align with Goal 3 of the Department’s Strategy Statement 2021-2023, viz. to “*Strengthen community safety, reduce reoffending, support victims and combat domestic, sexual and gender based violence*”.

## **2. Governance and oversight – key roles and relationships**

### **2.1 The Minister, Accounting Officer and Department**

#### *2.1.1 The Minister*

With monies voted by the Oireachtas, the Minister provides the Board with the resources that it requires to function. While the Board is independent in the performance of its

functions, the Minister and the Government are ultimately accountable to the Oireachtas for the performance of the Board as a publicly funded body under the aegis of the Minister.

### *2.1.2 Accounting Officer*

The Board is funded under the Justice Vote (Vote 24), for which the Secretary General of the Department is the Accounting Officer. The Accounting Officer is responsible for safeguarding public funds and property under their control, for the efficiency and economy of administration by their Department and for the regularity and propriety of all transactions in the appropriation account. External scrutiny of the Appropriation Accounts and related matters is provided by the Comptroller and Auditor General and ultimately by the Oireachtas via the Public Accounts Committee.

### *2.1.3 Core areas of Departmental interaction with the Board*

The Department's Criminal Justice Governance Function has primary Departmental responsibility for overseeing the discharge by the Board of its corporate governance and performance obligations. Four of the Function's Principal Officer-led units have specific responsibilities in this regard, as follows:

<b><i>Team</i></b>	<b><i>Purpose</i></b>
<b>Governance Standards</b>	To develop and promote consistent approaches to oversight, put in place effective governance agreements, and advise on specific governance structures and proposals.
<b>Performance &amp; Compliance</b>	To support, monitor and appraise Board's overall performance and compliance with its corporate governance obligations.
<b>Financial &amp; Capital Resources</b>	To oversee the Board's management of its financial resources and to manage approvals for such resources.
<b>Human Resources &amp; Appointments</b>	To advise and consult on strategic HR issues and Board appointments.

## **2.2 Organisational structure**

### *2.2.1 Chairperson of the Board*

In accordance with the provisions of Schedule 1 of the Act, the Chairperson of the Board shall have had not less than ten 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 Board hearings and giving guidance in managing legal cases to which the Board is a party.

### *2.2.2 Members of the Board*

In accordance with the provisions of Schedule 1 of the Act, the Board consists 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 Board members is five years. The Board will have as an ordinary member at least

one approved medical officer. The Board currently consists of four members and generally sits in a panel of three to review cases.

### *2.2.3 Chief Executive Officer*

The Chief Executive Officer (CEO) of the Board is responsible for the day-to-day administration of the business and resources of the Board. The current CEO is an Assistant Principal Officer of the Department who devotes part of her time to these duties and is supported in this regard by a small number of other Departmental staff.

## **2.3 Adherence to relevant Governance Codes and Standards**

The Board is subject to a range of statutory and other corporate governance obligations including the applicable provisions of the Code of Practice. The Board will ensure compliance with all relevant obligations.

## **2.4 Risk management and Audit**

The Board has its own risk management policy which is aligned with that of the Department. The Board's risks are recorded on the Risk Register maintained by the Department's Service Delivery Function, and are regularly reviewed and updated as necessary. The outcome of these assessments is used to plan and allocate resources to ensure that risks are managed to an acceptable level. Details of the Board's risks, and updates thereto, will be provided to the Performance and Compliance Unit in Criminal Justice Governance (hereafter "Performance & Compliance") upon request.

As a small body funded under the Justice Vote (Vote 24), the Board does not have its own internal audit function or audit committee. The Board has access to the Department's Internal Audit Unit (IAU) for any support required in reviewing the effectiveness of the Board's arrangements for internal governance, risk management and internal control.

## **2.5 Other key obligations and arrangements**

### *2.5.1 Procurement*

The Board will ensure competitive tendering as standard in the procurement processes of the Board, and that the applicable procurement policies are disseminated to all staff and adhered to. The Board will report on its compliance, and on any issues arising, to the Department's Internal Audit Unit and/or Finance and Procurement Unit in line with established procedures. In addition, the CEO's annual Comprehensive Report to the Minister will also confirm adherence (or otherwise) to the applicable procurement policies and procedures.

### *2.5.2 Board expenditure*

The Board will ensure adherence to the applicable levels of delegated sanction for authorising expenditure. In any instance where the Board is unclear as to its authority or otherwise to incur a given expenditure, it will seek advice from Criminal Justice Governance (Financial and Capital Resources).

### *2.5.3 Provision of information to Members of the Oireachtas*

The Board will comply with D/PER Circular 25/2016 ('Provision of information to Members of the Oireachtas by State bodies under the aegis of Government Departments/Offices').

#### *2.5.4 Data Protection*

The Board is committed to complying with its obligations under the Data Protection Acts 1988-2018, the EU General Data Protection Regulation (GDPR) and the EU Law Enforcement Directive. The Board has adopted the Department's data protection policy and the Department's Data Protection Officer (DPO) is also the DPO for the Board.

The Board deals extensively with legally privileged, medically confidential and personal data. Health information is defined as a special category of data in Article 9 of the GDPR. The Board's obligations in this regard will be strictly adhered to in terms of the provision of any information (including, as outlined above, to members of the Oireachtas).

#### *2.5.5 Conduct and Ethics*

Board members will comply with the applicable conduct and ethical obligations of the Ethics in Public Office Acts and the Code of Practice for the Governance of State Bodies.

#### *2.5.6 Protected Disclosures*

The Protected Disclosures Act 2014 ("the Act") was amended by the Protected Disclosures (Amendment) Act 2022. The amended Act commenced operation on 1 January 2023. The Board will maintain awareness of all attendant obligations under the Act and will have regard to the principles set out in the guidance published by DPER in November 2022: "*Protected Disclosures Act: Interim Guidance for Public Bodies and Prescribed Persons*" and any subsequent guidance issued over the lifetime of this Oversight Agreement.

In accordance with the Act, the Board has adopted the Department's Protected Disclosures policy and it has been communicated to all staff. This policy outlines the process for the making of protected disclosures by workers who are or were employed in the organisation and the process for dealing with such disclosures. If a worker wishes to report wrongdoing they should contact the Department's dedicated email at: [Speakup@justice.ie](mailto:Speakup@justice.ie). Further information in relation to making a protected disclosure is available on the Department's website.

## **2.6 Annual Report and CEO's Comprehensive Report to the Minister**

### *2.6.1 Annual Report*

In line with section 6 of the Code of Practice, the Board shall, not later than four months after the end of the relevant year, prepare and submit to the Minister a report on the performance of the functions and activities of the Board during the year concerned. The report will be published as soon as possible thereafter.

In line with Appendix A of the 'Code of Practice for the Governance of State Bodies – Business & Financial Reporting Requirements', the Annual Report will include (*inter alia*):

- An explanatory note on any derogations (as agreed between the Board and the Department) from the applicable provisions of the Code of Practice.

- Confirmation that the Board has carried out an appropriate assessment of its principal risks (which should also be described) and, where appropriate, outline any associated mitigation measures or strategies.
- Confirmation of adherence to all relevant aspects of the Public Spending Code.
- A statement on the system of internal control in the Board, addressing the applicable items listed in Appendix D of the 'Code of Practice for the Governance of State Bodies – Business and Financial Reporting Requirements'.

### *2.6.2 CEO's Comprehensive Report to the Minister*

In conjunction with the submission of the Board's Annual Report, the CEO shall furnish a Comprehensive Report to the Minister in line with the applicable provisions of section 1.9 and Appendix C of the 'Code of Practice for the Governance of State Bodies – Business & Financial Reporting Requirements'. The purpose of this Report is to provide assurance that the necessary systems of internal control, risk management and other areas of compliance are operating effectively in the body. In line with the Code of Practice, the aforementioned statement on the system of internal control forms part of the CEO's Comprehensive Report in addition to its inclusion in the Board's Annual Report.

## **3. Monitoring arrangements and interactions**

### *3.1.1 Formal interactions*

Criminal Justice Governance will hold two formal governance meetings per year with the CEO of the Board (or more if so required). These meetings will consider, as required and *inter alia*:

- Compliance with the Board's statutory obligations;
- Budgetary management and resourcing;
- Data governance and protection;
- Risk management and other internal controls;
- Any other matter comprehended in, or arising from, this Agreement.

### *3.1.2 Informal engagement*

Outside of the aforementioned governance agreements and quarterly reports there will continue to be regular, less formal interactions between the Department and the CEO of the Board in accordance with the needs and commitments of each party. Informal and unscheduled contact between the parties will remain an integral part of the relationship.

### *3.1.3 'No Surprises'*

More generally, the relationship between the two parties will be underpinned by a principle of 'no surprises', with both parties informing and/or consulting each other in a timely manner on matters of mutual interest or concern. In this regard the Board will, as soon as it becomes aware of same, immediately inform the appropriate area(s) of the Department regarding:

- Any evidence or allegation of a significant governance or performance issue having occurred within the Board;

- Any other incident or issue that appears reasonably likely to generate public commentary or scrutiny in connection with the management of the Board, or that might otherwise affect its reputation.

## **4. Commitments**

### **4.1 Mutual Commitments**

Both parties will:

Be proactive and timely in communicating on (a) relevant matters including significant public announcements, media engagements and publications and (b) specific information requests and responses to meet the Minister's obligations to the Oireachtas or to inform Ministerial responses to representations, media queries etc.

- Engage in a timely and constructive manner on any strategic, policy and data-related initiatives of relevance to the Board.

### **4.2 Board commitments**

The Board will (via the CEO):

- Provide timely, relevant and appropriately detailed information to facilitate the monitoring of this Oversight Agreement, including in the context of the formal governance meetings.
- Provide, in its annual Estimates submission and in any other business cases for additional resources/funding, detailed and measurable information as to what new or enhanced outputs and outcomes it expects to deliver in return.
- Engage fully and constructively with any Department-led research or evaluations (including any Periodic Critical Review initiated under the Code of Practice) which relate substantively to the functions of the Board.

### **4.3 Departmental commitments**

The Department will:

- Provide for and resource the annual budget for the Board.
- Provide ICT services and supports through the Managed Service.
- Provide, through its staff, the necessary administrative support for the Board.
- Provide any necessary guidance/direction on procurement and expenditure rules, government accounting and governance generally.
- Provide invoice processing and other accounting services through the Department's Financial Shared Services.
- Liaise with the Board on public service reform/engagement initiatives as appropriate.

## **5. Comply or Explain**

In view of the particular nature and scope of the Board's functions and its very small size, the parties have agreed the following:

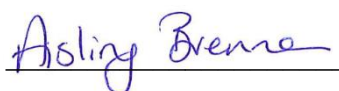
- A separate Performance Delivery Agreement is not required. This Oversight Agreement already notes the Board's statutory obligation to review the detention of each patient at intervals of not greater than six months. This forms the principal basis for monitoring the Board's performance.
- The Board is not required to produce a Strategic Plan.
- The Board is not required to produce a Customer Charter or associated Action Plan. The principles and procedures of the Department's Customer Charter are followed.
- The CEO, rather than the Chairperson, may furnish the Comprehensive Report to the Minister (in conjunction with the submission of the Board's Annual Report).

## **6. Duration and signatories to the Agreement**

Carole Sullivan, Acting Assistant Secretary, Department of Justice, and Aisling Brennan, Chief Executive Officer, Mental Health (Criminal Law) Review Board, affirm that this Oversight Agreement will be in effect until 31<sup>st</sup> December 2025.



*Carole Sullivan  
Assistant Secretary (Acting)  
Department of Justice*



*Aisling Brennan  
Chief Executive Officer  
Mental Health Review Board*

**Date: 03 April 2023**