



**An Roinn Dlí agus Cirt  
agus Comhionannais**  
Department of Justice  
and Equality



**AN BORD ATHBHREITHNITHE MEABHAIR-SHLÁINTE (AN DLÍ COIRIÚIL)**  
MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

# **Oversight Agreement 2020-22**

**Department of Justice and Equality**

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

## **1. Introduction**

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

This Oversight Agreement has been drawn up by the Department of Justice and Equality (“the Department”) in consultation with the Mental Health (Criminal Law) Review Board (“the Board”), in accordance with the 2016 edition of the Code of Practice for the Governance of State Bodies (“Code of Practice”). It succeeds the previous Oversight/Performance Delivery Agreement 2019 between the two parties.

This Oversight Agreement sets out the broad governance and accountability framework within which the Board operates, and defines the key roles and responsibilities which underpin the relationship between it and the Department. While this Agreement will remain in force until end 2022, the parties will, in accordance with the Code of Practice, review it approximately every 12 months and update it as necessary.

### **1.2 Background and context**

#### *1.2.1 Role of the Board*

The Board is a statutory body under the aegis of the Minister for Justice and Equality 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. The principal function of the Board 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.

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

#### *1.2.2 Strategic fit within in the Justice and Equality Sector*

The Boards’ work aligns with the Department’s overall functional mandate and strategic objectives. The Department has overall responsibility, *inter alia*, for the administration of the criminal justice system. Its relevant strategic objectives include leadership in and oversight of justice policy and delivery, and maintaining a safe and secure Ireland<sup>1</sup>.

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<sup>1</sup> These objectives feature in the Department’s Statement of Strategy 2016-19. A successor Strategy Statement is under development.

### 1.2.3 Department's Transformation Programme

Major structural reform has taken place in the Department with the implementation of its Transformation Programme during 2019. This Programme moves the Department from a traditional Divisional structure to a streamlined functional model under which the core work of the Department has been realigned under two separate pillars: Criminal Justice and Civil Justice & Equality. Each pillar is subdivided into the four functional areas of Policy, Legislation, Governance, and Service Delivery. The criminal and civil pillars are supported by a third, central pillar comprising the enabling and co-ordination functions of Corporate Affairs, Transparency and European Affairs.

The varied work carried out by the Department's former Prisons & Probation Policy Division is now, in the main, being undertaken by the Transparency, Criminal Justice Policy and Criminal Justice Governance functions respectively. The **Transparency** function is responsible for sourcing, assessing and communicating all information required by the Minister, as well as managing internal and external communications including press queries, representations, complaints from members of the public, parliamentary questions, event management etc. Transparency has direct dealings with the Board in all such matters. The **Criminal Justice Policy** function liaises directly with the Board on relevant policy issues.

The establishment of a dedicated **Criminal Justice Governance** function is intended to enable the Department to build and consolidate its governance capacity and expertise, thereby resulting in more focused and mutually beneficial relationships with the bodies under its remit and, ultimately, supporting a better service to stakeholders and the wider public. This functional area has primary responsibility for oversight of all criminal justice agencies under the aegis of the Department. It comprises six Principal Officer-led teams, of which the following four have specific dealings with the Board:

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

## **2. Corporate Governance Arrangements and Obligations**

### **2.1 Roles and Responsibilities**

#### *2.1.1 Accounting Officer*

The Board is funded under the Justice and Equality 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 the Department's control, for the efficiency and economy of administration by the Department and for the 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.

#### *2.1.2 Chairperson of the Board*

In accordance with the provisions of Schedule 1 to 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.

#### *2.1.3 Members of the Board*

In accordance with the provisions of Schedule 1 to the Act, the Board will 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 Board members will be 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.

#### *2.1.4 Chief Executive Officer*

The Chief Executive Officer (CEO) of the Board is responsible for the day-to-day management and administration of the business and resources (financial and non-financial) of the Board. The CEO is responsible for establishing and maintaining high standards in implementing the functions of the 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, for setting strategic direction and being the public face of the Board. The current CEO is an Assistant Principal Officer of the Department who devotes part of her time to these duties.

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

The Board is subject to a range of statutory and other corporate governance obligations including those set out in the Code of Practice and in the Governance Standard for Justice and Equality Sector Bodies. The Board will ensure compliance with these obligations.

## **2.3 Auditing and Risk Management**

The Board has a risk management system in place, including a risk register. Copies of the Risk Register, and of significant changes thereto, will be provided to Criminal Justice Governance (Performance and Compliance).

As a small body funded under the Justice and Equality Vote, the Board does not have its own Internal Audit Unit or Audit/Risk Committee. The Department's Internal Audit Unit (IAU) supports to the Board in monitoring and reviewing the effectiveness of its arrangements for governance, risk management and internal control. Any necessary audit work will be agreed between the CEO and the Head of Internal Audit in the Department, and the IAU will carry out the work within an agreed timeframe. Similarly, the Department's Audit Committee and Risk Committee perform the relevant advisory roles in ensuring that the interests of Government and other stakeholders are protected with regard to business and financial reporting, internal control and risk management.

For the same reasons as above, the Board is not required to produce Financial Statements. The CEO liaises with the Department's Financial Management Unit who report on the relevant income and spending in their monthly management reports.

## **2.4 Other key obligations and arrangements**

### *2.4.1 Procurement*

In accordance with section 8.16 of the Code of Practice, the Board will ensure competitive tendering as standard in its procurement processes. The CEO's annual Comprehensive Report to the Minister (see subsection 2.5.2 below) will affirm adherence (or otherwise) to the applicable procurement policies and procedures. However, the CEO will at the earliest opportunity notify Criminal Justice Governance (Financial and Capital Resources) of any significant compliance difficulties or breaches<sup>2</sup>.

### *2.4.2 Other expenditure*

The Board will ensure adherence to the applicable levels of delegated sanction for authorising expenditure. In any instance where there does not exist clear authority to incur a given expenditure, the CEO will consult in advance with Criminal Justice Governance (Financial and Capital Resources).

### *2.4.3 Protected Disclosures*

In accordance with section 21(1) of the Protected Disclosures Act, 2014, 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 may contact their line manager, the CEO or the Department's Head of Internal Audit.

### *2.4.4 Data Protection*

The Board and its staff will make every effort, including with the various bodies with whom they exchange personal data, to ensure full and continued compliance with the General

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<sup>2</sup> E.g. of a recurring nature, or involving substantial contract values (or values above EU thresholds) or a serious divergence from procurement rules and/or the Public Spending Code.

Data Protection Regulation (GDPR) and the Data Protection Acts 1988 and 2018. The Board has adopted the Department's data protection policy and the Department's Data Protection Officer (DPO) is 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 below, to members of the Oireachtas).

#### *2.4.5 Public Sector Equality and Human Rights Duty*

Section 42 of the Irish Human Rights and Equality Commission Act 2014 establishes a positive duty on public bodies to have regard to the need to eliminate discrimination, promote equality and protect the human rights of staff and persons to whom services are provided. In particular, the Board will have regard to its obligations under section 42 to:

- Assess and identify human rights and equality issues relevant to its functions;
- Identify the policies and practices that are/will be put in place to address those issues;
- Report on related developments in its Annual Report.

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

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

#### *2.4.7 Periodic Critical Review*

The Code of Practice includes a general provision for Periodic Critical Reviews (PCR) of individual non-commercial State bodies every five years. Sections 8.14, 8.15 and Appendix F of the Code provide details on how such reviews are to be conducted. Both parties to this Agreement will engage in a timely, constructive and comprehensive manner on the scheduling, planning and conduct of any PCR proposed for the Board.

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

### *2.5.1 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 preceding year. 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'.

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

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

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

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

- Delivery of the Board's annual Business Plan;
- Compliance with the Board's statutory obligations;
- Financial management and budgetary matters;
- Human resource issues including staffing, training and industrial relations matters;
- Risk management;
- Any internal governance-related issue;
- Any matter relating to the Board that might have been the subject of, or might give rise to, public commentary or scrutiny;
- Any matter that might impact on the reputation of the Board;
- Any other matter comprehended in, or arising from, this Agreement.

Outside of the aforementioned governance meetings there will continue to be regular, less formal interaction between the CEO and the Department in accordance with their business needs and commitments. In this context, informal and unscheduled contact forms an integral part of the relationship between the parties.

## **4. Commitments**

### **4.1 Mutual Commitments**

Both parties will:

- Be proactive and timely in communicating requests and responses to meet the Minister's obligations to the Oireachtas or to inform responses to representations, media queries etc. This will be underpinned by a 'no surprises' approach to matters of mutual interest or concern.

- Consult or (as applicable) inform each other in a timely manner regarding relevant strategic, policy and legislative issues of relevance to the Board's functions.
- Engage as appropriate on wider public service reform/ engagement initiatives.

## **4.2 Departmental commitments**

The Department will:

- Provide for and resource the annual budget for the Board.
- Provide, via its HR Division, services encompassing recruitment, employee relations, workforce development, performance management and liaison with HR Shared Services as required.
- Provide invoice processing and other accounting services through the Department's Financial Shared Services.
- Provide other dedicated supports and resources such as ICT facilities and accommodation.
- Liaise with D/PER with a view to obtaining timely sanction for expenditure/resources in line with public financial procedures and policies on public service numbers.
- Provide any necessary guidance/direction on procurement and expenditure rules, government accounting and governance generally.

## **4.3 Board commitments**

The Board will (via the CEO, as appropriate):

- Provide timely, relevant and appropriately detailed information to facilitate the monitoring of this Oversight Agreement, including in the context of the formal governance meetings;
- Return relevant and appropriately detailed performance information for inclusion in the Revised Estimates for Public Services volume; and
- In keeping with the 'no surprises' principle, ensure that significant governance-related issues or concerns are brought formally to the attention of Criminal Justice Governance at the earliest possible opportunity.

## **5. Comply or Explain**

As a small body funded under the Justice and Equality Vote, the Board does not have its own Internal Audit Unit or Audit/Risk Committee. Alternative arrangements are in place as outlined above.

In view of the particular nature and narrow range of the Board's functions and its very small size, the parties have also 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. However, the CEO prepares an annual Business Plan for the Board.
- The Board is not required to produce a Customer Charter or associated Action Plan. The CEO and staff of the Board follow the principles and procedures set out in the Department's Customer Charter.
- 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**

John O'Callaghan, Head of Criminal Justice Governance, Department of Justice and Equality, and Paula Connolly, Chief Executive Officer, Mental Health (Criminal Law) Review Board, affirm that this Oversight Agreement will apply from the date hereunder until 31<sup>st</sup> December 2022.



*John O'Callaghan*  
Head of Criminal Justice Governance  
Department of Justice and Equality



*Paula Connolly*  
Chief Executive Officer  
Mental Health Review Board

**Date: 24<sup>th</sup> June 2020**