



**mhc**  
coimisiun meabhair - shláinte  
mental health commission

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## **Re: Opening Statement to the Joint Committee on Justice**

**November 2021**

## **Introduction**

On behalf of the Mental Health Commission (the Commission), I would like to thank you for the opportunity to address the Committee today. I am joined by my colleague Orla Keane, General Counsel for the Commission (Decision Support Service).

The Commission is an independent statutory body established in April 2002 under the provisions of the Mental Health Act 2001, as amended (the 2001 Act). The principal functions of the Commission are to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres.

The remit of the Commission was extended by the Assisted Decision-Making Capacity Act 2015 (the 2015 Act) which provides for the establishment of the Decision Support Service (the "DSS"). The DSS will support decision-making by and for adults with capacity difficulties and will regulate individuals who are providing support to people with capacity difficulties.

As part of the Commission's strategic plan for 2019-2022, our vision is the highest quality mental health and decision support services underpinned by a person's human rights

## **Key Points Raised in the Submissions**

The Commission focused on the interaction of people with mental illness and An Garda Síochána. People with mental illness represent a growing minority in Ireland and although there have been significant improvements in the attitude towards and treatment of people with mental illness in the justice system there still remains significant barriers.

In 2009, the Commission and An Garda Síochána issued the 'Report of the Joint Working Group on Mental Health Services and the Police'. That report made a number of recommendations including the creation of a 24/7 statutory social work service, expanded training for Gardaí and the implementation of adequate court diversion programmes to deal with minor criminal matters involving individuals with mental health problems.

Twelve years later and none of these recommendations have come to fruition. At most, we can say that there has been some limited expansion of training for Gardaí but not to the level required.

Furthermore, since sending you the Commission's Submission, Dr Susan Finnerty, the Inspector of Mental Health Services, has published her report on Access to Mental Health Services for People in the Criminal Justice System which raises various concerns.

<https://www.mhcirl.ie/publications/access-mental-health-services-people-criminal-justice-system>

One issue which we focused on in the Submission was the increased volume of applications made under the 2001 Act by members of An Garda Síochána and, more specifically, the increased use of section 12 of the 2001 Act. Section 12 of the 2001 Act gives a member of An Garda Síochána the power to take a person into custody if they believe that a person is suffering from a mental disorder and that because of the mental disorder there is a serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons.

Although section 12 was enacted with the expectation that it would be used in exceptional circumstances there has been a worrying increase in the volume of section 12 applications made. The most recent figures show a 5% increase in the amount of section 12 applications made in 2021 as compared to 2020.

The Commission is glad to note that the General Scheme to amend the 2001 Act includes amendments to sections 9 and 12 with the result being that only authorised officers may make applications under these provisions.

However, this does not remove the impetus to make further improvements. As it stands, An Garda Síochána still remains the only agency immediately available day or night to respond to crises in the community and the limited training and support available to them creates a situation where the most vulnerable in our society are being failed.

The Commission met with members of An Garda Síochána in July and are awaiting further information from them on a number of matters further to that meeting. The Commission has offered its service and assistance in relation to the expansion of Garda training in mental health matters and it is our hope that through increased training and the implementation of an adequate diversion system we can improve the experience of people with mental illness who interact with the justice system.

### **Additional Matters Related to Minority Groups**

In addition to the points raised in the Commission's Submission to the Committee, the following should be noted –

- In 2019, the Commission introduced a Stakeholder Initiative to give organisations the opportunity to present to the Commission - Cairde presented to the Commission in 2020 and Pavee Point is due to present to the Commission in December 2021, having already presented at the Annual Seminar for Tribunal Panel Members in September 2020 on the topic of mental health in the Travelling community.
- The Commission also strives to facilitate ease of access to information for our service users. The Mental Health Tribunals team published several booklets and leaflets which have been published in English, Irish, Spanish, French, Lithuanian, Polish, Portuguese, Romanian and Somalian along with audio versions. The available documents include:
  - Guidance and Information on Involuntary Detention Poster** – A summary of the various guidance documents and where information can be located relating to involuntary detention. This poster is available in A1, A4 and A5.
  - Know Your Rights** – A guide for involuntary patients receiving mental health treatment.
  - Your Right to an Additional Review** – Information for involuntary patients on the right to request an additional review.
  - Admission Process** – A guide to help family and friends understand the admissions process (For further information see here: <https://www.mhcirl.ie/what-we-do/mental-health-tribunals>)
- The Regulatory Management Team has also completed work on the Revised Guidelines for Mental Health Services and Staff Working with People from Ethnic Minority Communities.
- The Regulatory Management Team are in the process of completing work on a public consultation process to review the Commission's Rules and Codes on seclusion and restrictive practices which involves a dedicated service user group who could inform the process.