[approved] **[no redaction needed]**

COURT OF APPEAL

CIVIL

[2024 No. 1134 JR]
[2026. No. 5]

Costello P **Neutral Citation Number [2026] IECA 118**

Faherty J

Tara Burns J

BETWEEN

D.K.

APPLICANT/APPELLANT

AND

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

RESPONDENT

AND

CLINICAL DIRECTOR, CENTRAL MENTAL HOSPITAL

NOTICE PARTY

JUDGMENT of Ms Justice Costello delivered on the 1st day of July 2026

1. The appellant challenged a decision made by the respondent ("the Review Board") dated 20th June 2024, pursuant to s. 13 of the Criminal Law (Insanity) Act 2006, as amended, ("the 2006 Act") which continued his detention in the Central Mental Hospital ("the CMH") pursuant to an order of the Circuit Court. The Circuit Criminal Court in Carlow, returned a special verdict of not guilty by reason of insanity in respect of the appellant on 9th May 2019 and the appellant was committed by the Circuit Court, pursuant to s. 5(2) of the 2006 Act, as a person suffering from a mental disorder, to the CMH, the designated centre in the State. The 2006 Act provides, *inter alia*, for the independent review of persons detained in the CMH, pursuant to the 2006 Act. On 20th June 2024, the Review Board determined that the appellant

was "*still in need of in-patient treatment in a designated centre*", and accordingly, he remained in the CMH.

2. The appellant argued that the decision should be quashed because the Review Board failed to give any, or any adequate or proper reasons for the decision, it failed to engage with the appellant's evidence at the hearing on 13th June 2024 in its decision of 20th June 2024, and it failed to apply the statutory test established by the 2006 Act when reaching its decision. The High Court rejected the appellant's application for judicial review and the appellant appealed.

3. For the reasons I set out below, I would reject the appeal.

Background

4. On 31st October 2016, the appellant set fire to certain premises in Carlow. Subsequently, he was arrested and remanded in custody for approximately two weeks. In November 2016, the appellant was admitted to the Department of Psychiatry, St Luke's Hospital, Kilkenny, as an involuntary patient pursuant to the provisions of the Mental Health Act 2001 (as amended) ("the 2001 Act"). The order was renewed, and then, on 7th February 2017, the order detaining the appellant in the approved centre was revoked by a Mental Health Tribunal, pursuant to the 2001 Act on the basis that he was no longer suffering from a mental disorder within the meaning of the 2001 Act. Between February 2017 and May 2019, the appellant was remanded on bail on condition, *inter alia*, that he resided in a low support hostel in Carlow. He resided in the hostel and complied with the terms of his bail until his committal to the CMH in December 2019.

5. The appellant was charged with offences of burglary, contrary to the Criminal Justice (Theft and Fraud Offences) Act 2001, s. 12(1)(b); damaging property, contrary to the

Criminal Damage Act 1991, s. 2(1), and arson, contrary to the Criminal Damage Act 1991, ss. (2)(1) and (4), arising from the events of the night of 31st October 2016.

6. The appellant pleaded not guilty by reason of insanity as provided in s. 5(1)(a) and (b) of the 2006 Act. A consultant psychiatrist gave evidence at the trial as to his mental condition. Following the trial in the Circuit Court, the jury returned a special verdict of not guilty by reason of insanity, on 9th May 2019, on all charges.

7. On 11th December 2019, the Circuit Court was satisfied that the appellant was suffering from "*a mental disorder (within the meaning of the Mental Health Act 2001)*" and was "*in need of in-patient care or treatment in a designated centre*" and committed the appellant to the CMH pursuant to s. 5(2) of the 2006 Act. The appellant is subject to the order of committal in the CMH until an order is made under s. 13 or s. 13A of the 2006 Act directing his conditional or unconditional discharge.

8. Section 13 of the 2006 Act mandates regular review of such a detention by the Review Board. His detention has been continually reviewed, approximately every six months. The review, in June 2024, was the eleventh such review.

The Review of June 2024

9. In preparation for the review of the appellant's detention by the Review Board, his treating consultant psychiatrist, Dr Linehan, prepared a report dated 6th June 2024. The report updates reports previously furnished to the Review Board. At section 3 of her report, Dr Linehan summarised the dynamic risk factors applicable to the appellant, which were set out in two pages of Schedules to the report, as follows:

- *Mr K suffers from schizophrenia. He has made progress since admission to the Central Mental Hospital with regard to improving his insight into his mental illness.*

- *His HCR-20 risk assessment reveals the presence of a number of dynamic risk factors for future violence.*
- *He is compliant with his individual care plan.*
- *He is in regular contact with his mother, who provides support to him.*
- *His dynamic risk factors are adequately managed in his current placement in the Clermont Unit."*

10. In section 4 of the report, Dr Linehan sets out the appellant's progress since the last Mental Health Review Board hearing on 18th January 2024, under seven "*Pillars*" (Physical Health, Mental Health, Drugs & Alcohol, Problem Behaviours, Self-Care, Occupation & Social Functioning). Dr Linehan dealt with his mental health as follows:

> *"4.10 Mr K's mental state has remained stable since his last hearing. He reported that he continues to experience intrusive thoughts with violent content. During review on 23rd January 2024 Mr K reported that his prescribed medications had positively contributed to his improved mental state. His occupational therapist reported that in his initial money management session, Mr K stated that God would punish him if he spent too much money.*
>
> *4.11 On 6th February 2024 he reported that he experienced thoughts of 'maybe hitting somebody' once every two weeks. He said that he did not feel the need to act on this. He said believed (sic) that his mental illness was not a contributory factor in him committing his index offences. He said that he did not agree with the judge at his most recent Mental Review Board that he had been admitted to the Central Mental Hospital in the context of his mental diagnosis. Mr K elaborated that it was 'not a legal issue, but a social issue'. He then said that he did not disagree that he had a mental illness. He said that his homeless status was a contributory factor to his admission to the Central Mental Hospital. He said that that (sic) his diagnosis of*

schizophrenia was also a contributory factor. He denied experiencing any recent thoughts about witches or freemasons. His prescription of Olanzapine was decreased to 10mg daily.

4.12 On 8th February 2024 I received a letter from Mr K dated the 6th February 2024. In this letter, Mr K acknowledged his mental illness. He expressed his disappointment regarded services.

4.13 On 27th February 2024 it was noted by the multidisciplinary team that Mr K was vulnerable to exploitation. This was highlighted in the context of a request by Mr K to withdraw €450 to purchase a gift of Lego for a third party.

4.14 Mr K was transferred to Clermont ward on 20th March 2024. It was noted that he settled well into the ward routine.

4.15 At ward round review on 2nd April 2024 Mr K said he could become 'agitated' at times due to 'social anxiety' around others. He denied any thoughts of harming others.

4.16 At ward round review on 16th April 2024, Mr K stated at times, he experienced agitation and an urge for 'name calling'. He said that he had been utilising the techniques from psychology sessions in this context and felt 'a massive weight off my shoulders', adding 'I'm feeling positive'.

4.17 At his case conference on 7th May 2024, Mr K said that he struggled at times with 'calling-names' and 'slight thoughts of hitting'. He highlighted an improvement in these. He said that infrequently he experienced negative thoughts about himself and thoughts that God would blame or punish him. He cited a decrease in the intensity and frequency of these thoughts. He said that he no longer felt fearful around his peers.

4.18 On 14th May 2024 Mr K apologised to the team for having anger and irritable thoughts at times. He said that he had been using psychology techniques to cope with these thoughts.

4.19 At review on 28th May 2024, it was noted that Mr K had disclosed fears of being punished during a psychology session. He added that he had a 'lack of trust' with people. He said that he believed that childhood trauma had caused him to be more cautious of others. He said that he also recently struggled with 'name-calling thoughts'. He identified feelings of 'nervousness' prior to these thoughts. He was unable to identify any triggers for this. He said that he was very 'sensitive'. He described feelings of paranoia, while interpreting the actions of others. He gave an example of how he would interpret the way that a nurse placed his inhaler on the desk as a negative perception of his character."

11. Under Pillar 4 (Problem Behaviours), Dr Linehan noted that Mr K commenced the psycho education programme on 25th January 2024, and he found the sessions beneficial and enjoyed engaging with the work. She also noted that he commenced accompanied leave in June 2023, that he complied fully with his conditions of leave to date, and that he remained in regular contact with his mother and also had regular contact with his friend, Mr Gerry Maloney. At section 5, she set out his current medications.

12. Section 6 of the report sets out her opinion. It reads:

"6.1 Mental Disorder

6.1.1 Mr K suffers from schizophrenia, a mental illness as defined in the Mental Health Act 2001. He meets criteria for mental disorder as defined in the Criminal Law (Insanity) Act 2006 and the Mental Health Act 2001.

6.2 In accordance with Section 13 of the Criminal Law (Insanity) Act, I offer my psychiatric opinion as follows:

6.2.1 Renew detention under the Criminal Law (Insanity) Act 2006, with no change in legal status at present: I recommend continued detention as it would facilitate Mr K's continued care, treatment and rehabilitation in conditions of therapeutic security. This remains necessary because of the current risk assessment (HCR-20, SRAMM) and the related risk management plans arising from it. These are demonstrated by Mr K's profile using the DUNDRUM-3 Programme Completion scale and the DUNDRUM-4 Recovery scale. These draw attention to Mr K's continuing treatment needs.

6.2.2 Conditional discharge under Section 13A: I cannot recommend conditional discharge at this time because Mr K's profile using the DUNDRUM-3 and the DUNDRUM-4 shows that there are outstanding areas of concern regarding unmet treatment needs. I am satisfied that he will benefit from a further period of detention and treatment as an inpatient in the Central Mental Hospital.

6.2.3 Absolute discharge under section 13: I cannot recommend absolute discharge because Mr K's risk assessment shows continuing risk factors for violence which require a structured care and treatment regime if these risks are to be safely managed."

13. The report was furnished to Mr K and his solicitor on the morning of the hearing and was furnished to the members of the Review Board.

14. The actual hearing of the Review Board is as informal as possible. The patient is entitled to be represented by a solicitor and to have a family member or friend present. The patient may present his or her own expert report. On this occasion, the appellant was accompanied by his solicitor, Mr Peter Reilly, and by his friend, Mr Gerry Maloney. He had no independent psychiatrist's report for this review, though in the past, he did avail of this

opportunity. When he was furnished with a copy of the report on the morning of the hearing, no objection was taken to this by the appellant or his solicitor.

15. The minutes of the meeting of the Review Board of 13th June 2024 were exhibited by its solicitor. These show that the appellant's legal representative, Mr Reilly, and his friend, Mr Maloney, attended with him. Dr Linehan provided an update since his last review. She noted that his mental health had been relatively stable, but he has ongoing thoughts of violence towards others. She said he had difficulty in accepting his mental illness. His accompanied leave had been increased to weekly leave. She said the appellant's mother remains his main support and that he has regular contact with his friend, Mr Maloney. He continues to suffer with schizophrenia and "*there are still therapeutic objectives to achieve".*

16. The minutes show that Dr Linehan was questioned about Mr K's intrusive thoughts. Dr Linehan said that the thoughts were quite upsetting for Mr K and not thoughts he "*wants to be having".* She said they are more of a background issue. A member of the Board, Dr Browne, asked if Mr K understood this. Mr K said, yes, and that the thoughts were niggling at times. Mr Reilly, solicitor, asked about Mr K's insight. Dr Linehan advised that this was an ongoing process and that there was *"potential for progress*".

17. The Chairman asked Mr Maloney for his view. Mr Maloney said that, in his view, Mr K has no victim, he did not injure anyone, and he is not a risk to anyone. Mr Maloney looked at the DUNDRUM toolkit and said he had concerns about the way it is used. Dr Linehan replied, stating that she was aware of Mr Maloney's concerns about the ratings, and she had met with Mr Maloney to discuss this. She said that the team has training in this area, and they will continue to make use of the ratings as they see fit.

18. Mr K said that in 2016, the Mental Health Commission (*sic*) discharged him into the community for two years and this was never brought up at his court case. The Chairman of the Review Board told Mr K that he was in the CMH due to his index offence and his mental

disorder of schizophrenia, which is serious. Mr Reilly, solicitor, said that he has tried to explain to Mr K the necessity to work with Dr Linehan and the team here.

The Decision of the Review Board

19. The decision of the Review Board is recorded in a one-page form. It is appropriate to set it out in full in view of the nature of the challenge to this decision:

> "*Diagnosis*
>
> *Mr K is diagnosed with schizophrenia.*
>
> *Current Symptoms*
>
> *His mental state has remained reasonably stable since his last hearing. He does not display any psychotic symptoms but continues to experience intermittent intrusive and negative thoughts. Insight into his illness is improving. He required admission to Beaumont hospital for treatment of pneumonia in April and has required further courses of antibiotic treatment since then with further physical interventions planned. He continues to require care and treatment in the Central Mental Hospital to manage dynamic risks associated with his illness, as identified on the HCR-20.*
>
> *Treatment Progress*
>
> *Medication:*
>
> *He is prescribed clozapine augmented with a second antipsychotic as well as a range of medications for his physical health needs.*
>
> *Therapeutic Programmes:*
>
> *Mr K was transferred to Clermont Unit in March. Staff reported he has settled in well. He has commenced Psychology Pillar IV psychoeducation programme. He has stated that he finds these sessions beneficial. He has completed the stress and anger management programme, and it was reported that he engaged well. On completion*

of the Book of Evidence work, he expressed anger and frustration about his treatment by the Mental Health Services. He has engaged with Occupational Therapy regarding money management and has completed five sessions. He intermittently attends the music appreciation and current affairs group.

Social:

He has accompanied community leave and complies fully with conditions of his leave. He has regular contact with his mother and friend. His friend attended the hearing.

Decision of the Board

The Board is satisfied that Mr K continues to suffer with a serious and chronic mental disorder which requires in-patient treatment and care in the Central Mental Hospital. He is properly detained there and should remain so detained pending further review.

Date: 20th June 2024."

20. Since the review of 13th June 2024, the appellant's detention has been further reviewed in decisions on 16th December 2024, 25th April 2025, 12th September 2025 and 13th February 2026. He remains in the CMH. Counsel for the appellant accepted that were this Court to quash the decision of 20th June 2024, this would not affect the validity of the appellant's detention in the CMH, which is pursuant to the order of the Circuit Court of December 2019, and that he remains so detained unless and until the Review Board makes an order, pursuant to s. 13 or s. 13A of the 2006 Act.

The Proceedings

21. The appellant filed a statement of grounds in these proceedings on 10th September 2024, and on 18th November 2024, he was granted leave to seek three declaratory reliefs and

an order of *certiorari* quashing the decision of 20th June 2024, and damages and costs. He sought a declaration that the decision of 20th June 2024 was made in breach of the Review Board's common law duty to give reasons for its decision, that the decision failed to engage with the appellant's evidence at its hearing on 13th June 2024, and was thus unlawful, invalid, void and of no effect, and that in reaching its decision, it failed to apply the required statutory test for the his ongoing detention in the CMH. In particular, it was argued that the Review Board, in reviewing the continued detention of the appellant, must be satisfied as to its lawfulness, and in particular, that the statutory criteria for detention, including on the grounds of mental disorder, are met, and provide sufficient reasons for the decision it reaches or makes. At ground 18, it was pleaded that the Review Board's decision failed to engage with the evidence before it as relates to:

(i) the statutory criteria for a person's detention by reference to s. 5 of the Act of 2006, in particular, the dual limbs of s. 3(1)(b)(i) and (ii) of the 2001 Act, and the provisions of s. 3(1)(a), and the necessity for his detention specifically in the CMH, or

(ii) the options available to it, including the question of a conditional discharge.

22. The respondent opposed the application for judicial review. It contended that there was no obligation on the Review Board to determine, at each review hearing, that the appellant is suffering from a mental disorder; that requirement is not present in s. 13 of the 2006 Act, and a comparison with connected provisions reveals that the Oireachtas clearly intended no such obligation would be placed on the Review Board. It argues that the reasons given in the decision of 20th June 2024 are more than adequate and addressed the principal important issues in controversy in the proceedings before it. In relation to the appellant's discharge arguments, those arguments were heard and weighed by the Review Board. Critically, the evidence before the Review Board, from the relevant consultant psychiatrist,

was not challenged, and it is clear that this evidence was pivotal to the decision made by the Review Board as to why a discharge was inappropriate.

Relevant Statutory Provisions

23. Section 5 of the 2006 Act governs the special verdict of not guilty by reason of insanity. In relevant part, it provides:

> *"5.— (1) Where an accused person is tried for an offence and . . . the jury finds that the accused person committed the act alleged against him or her and, having heard evidence relating to the mental condition of the accused given by a consultant psychiatrist, finds that—*
>
> *(a) the accused person was suffering at the time from a mental disorder, and*
>
> *(b) the mental disorder was such that the accused person ought not to be held responsible for the act alleged by reason of the fact that he or she—*
>
> *(i) did not know the nature and quality of the act, or*
>
> *(ii) did not know that what he or she was doing was wrong, or*
>
> *(iii) was unable to refrain from committing the act,*
>
> *... the jury . . . shall return a special verdict to the effect that the accused person is not guilty by reason of insanity."*

24. The jury must hear evidence in relation to the mental condition of the accused from a consultant psychiatrist. The evidence must relate to the mental health of the person at the time of the act the subject of the charge or charges. The jury must find as a fact that the accused person was suffering from a "*mental disorder".* A mental disorder is defined in s. 1 of the 2006 Act as including "*mental illness, mental disability, dementia or any disease of the mind, but does not include intoxication".* Thus, it is different to the definition of mental disorder in s. 3 of the Mental Health Act 2001, to which I shall return. The jury must be further satisfied

that the mental disorder was such that the accused person ought not to be held responsible for the act alleged by reason of one of three options set out in subparagraph (b).

25. Where a jury returns a special verdict, pursuant to s. 5(1) of the 2006 Act, the court must then consider whether the accused person *is* suffering from a mental disorder within the meaning of the 2001 Act and may be in need of in-patient care or treatment in a designated centre. At s. 5(3)(a), the 2006 Act provides that in such circumstances, the court may commit an accused person, who has been found not guilty by reason of insanity, pursuant to subsection (1), to a specified designated centre for a period of not more than 14 days, and direct that during such period, he or she be examined by an approved medical officer at that centre. The period of time may be extended, up to a maximum of six months. The approved medical officer is required to report to the court on whether, in his or her opinion, the accused person, committed under s. 5(3)(a), "*is suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre".*

26. The court is then required to consider that report and any other evidence which may be adduced before it. If, in light of the report and the evidence, the court:

> "*is satisfied that an accused person not guilty by reason of insanity pursuant to subsection (1) is suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre, the court shall commit that person to a specified designated centre until an order is made under s. 13 or s. 13A."*

27. When making an order under s. 5 (2), the court must be satisfied, both that the individual is suffering from a mental disorder, and that the individual is in need of in-patient care or treatment in a designated centre. The test for a mental disorder under subsection (2) is that provided in the 2001 Act, not the definition employed in the 2006 Act.

28. Section 3 of the Mental Health Act 2001 defines mental disorder as follows:

"In subsection (1)—

'mental illness' means a state of mind of a person which affects the person's thinking, perceiving, emotion or judgment and which seriously impairs the mental function of the person to the extent that he or she requires care or medical treatment in his or her own interest or in the interest of other persons;

'severe dementia' means a deterioration of the brain of a person which significantly impairs the intellectual function of the person thereby affecting thought, comprehension and memory and which includes severe psychiatric or behavioural symptoms such as physical aggression;

'significant intellectual disability' means a state of arrested or incomplete development of mind of a person which includes significant impairment of intelligence and social functioning and abnormally aggressive or seriously irresponsible conduct on the part of the person."

29. Section 3(1)(a) focuses on the serious likelihood of the person concerned causing immediate and serious harm to himself, herself or another. Subparagraph (b)(i) and (ii) focuses on the requirement to admit the person to an approved centre to facilitate treatment.

30. The 2006 Act established the Mental Health (Criminal Law) Review Board to review the detention or conditions of discharge or applications for unconditional discharge of persons who have been committed to the CMH, pursuant to s. 5(2) of the 2006 Act. Section 13 governs the review of the detention of individuals by the Review Board. Subsection (1) requires the Review Board to ensure that the detention of a patient is reviewed at least every six months. A patient detained, pursuant to s. 5 of the Act, may apply to the Review Board for a review of his or her detention (subsection (8)), or the Review Board may, on its own initiative, review such a detention (subsection (9)). Subsection (8) requires that the Review Board:

"*. . . shall, having heard evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, determine the question of whether or not the patient is still in need of in-patient treatment in a designated centre and shall make such order as it thinks proper in relation to the patient, whether for further detention, care or treatment in a designated centre, for his or her conditional discharge under s. 13A or for his or her unconditional discharge."*

31. The Review Board is thus required to hear evidence from the consultant psychiatrist responsible for the care of the detained patient. It may hear other evidence from other parties if required (s. 12). Having heard the evidence, the Review Board is required to determine the question of whether or not the patient "*is still in need of in-patient treatment in a designated centre".* In answering that question, the Review Board is given three options: for further detention, care or treatment of the patient in the designated centre, for his or her conditional discharge under the regime established by s. 13A, or for his or her unconditional discharge.

32. The dispute in this appeal turns on the obligations of the Review Board under s. 13(8) and the differing interpretations of this statutory provision advocated by the appellant and the Review Board.

Principles of Statutory Interpretation

33. In *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43, the Supreme Court (Murray J) addressed the principles regarding statutory interpretation in some detail. He referred to the judgment of McKechnie J in *Minister for Justice v Vilkas* [2018] IESC 69, [2020] 1 IR 676. He summarised the essential points made by McKechnie J as:

"(i) The first and most important port of call is the words of the statute itself, those words being given their ordinary and natural meaning (at paras. 92 and 93).

(ii) However, those words must be viewed in context; what this means will depend on the statute and the circumstances, but may include ' the immediate context of the sentence within which the words are used; the other subsections of the provision in question; other sections within the relevant Part of the Act; the Act as a whole; any legislative antecedents to the statute/the legislative history of the Act, including ... LRC or other reports; and perhaps ... the mischief which the Act sought to remedy' (at para. 94).

(iii) In construing those words in that context, the court will be guided by the various canons, maxims, principles and rules of interpretation all of which will assist in elucidating the meaning to be attributed to the language (see para. 92).

(iv) If that exercise in interpreting the words (and this includes interpreting them in the light of that context) yields ambiguity, then the court will seek to discern the intended object of the Act and the reasons the statute was enacted (at para. 95).

34. At para. 214 of his judgment, Murray J concluded:

"214. The words of the section are the first port of call in its interpretation, and while the court must construe those words having regard to the context of the section, of the Act in which the section appears, the pre-existing relevant legal framework and the object of the legislation insofar as discernible, the onus is on those contending that a statutory provision does not have the effect suggested by the plain meaning of the words chosen by the legislature to establish this."

The Issues in the Appeal

35. The appellant essentially raises three grounds of appeal. It is convenient to take the third ground first, which relates to the proper interpretation of the relevant statutory provisions.

The test established by section 13(8) of the 2006 Act

36. The key issue of contention in the appeal is the meaning of s. 13(8) of the 2006 Act. The appellant says that the Review Board is reviewing the appellant's detention in a designated centre. In order for that detention lawfully to continue, the appellant asserts that the Review Board must reach the conclusion that the appellant is at the time suffering from a mental disorder, as defined in the 2001 Act, and requires to receive in-patient care or treatment in the designated centre. The appellant's case is that if the Review Board cannot or does not so conclude, based upon its own independent assessment of the evidence, then any purported extension of the order of detention is invalid.

37. It is apparent from the guidance set out in *Heather Hill* that the first port of call must be the words of the subsection, having regard to the context of the section, of the Act, and the preexisting relevant legal framework and the object of the legislation insofar as discernible.

38. The context is s. 13. Subsection (1) requires the Review Board to ensure that the detention of a patient is reviewed at intervals of not more than six months, as the Board considers appropriate. The patient detained pursuant to s. 5 of the Act may apply to the Review Board for a review of his or her detention (subsection (8)). The Review Board may, on its own initiative, review the detention of a patient detained (subsection (9)). In conducting a review, the Review Board is required to hear evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment. The review is to be conducted in the presence of the patient (unless this is contraindicated). Subsection (8) then provides that the Review Board "*shall . . . determine the question of whether or not the patient is still in need of in-patient treatment in a designated centre and shall make such order as it thinks proper in relation to the patient, whether for further*

detention, care or treatment in a designated centre, or his or her conditional discharge under section 13A or for his or her unconditional discharge".

39. The subsection requires the Review Board to hear evidence in relation to the mental condition of the patient. The Review Board is then required to determine the statutory question of whether or not he or she is "*still*" in need of in-patient treatment in a designated centre. Depending on the answer it gives to that question, three possible orders are open to it.

40. The section does not require the Review Board to determine whether the patient is still suffering from a *mental disorder* (whether as defined in the 2006 Act or within the meaning of the 2001 Act). This is in contrast with the provisions of s. 5(1) and (2) of the 2006 Act. A jury may deliver a special verdict where it finds, in accordance with s. 5(1) of the 2006 Act, that the accused person was suffering at the time from "*a mental disorder*" and that "*the mental disorder was such that the accused person ought not to be held responsible for the act alleged*" by reason of one of three alternatives set out in subparagraph (b). As already referred to, the phrase "*mental disorder*" in s. 5(1) is defined in s. 1 of the 2006 Act as including mental illness, mental disability, dementia or any disease of the mind, but does not include intoxication.

41. In subsection (2), after a jury has found that the accused person is not guilty by reason of insanity, the court must consider whether the accused person "*is suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre".* The words of subsection (2) are clear. The court must assess whether the accused person *is suffering* from a mental disorder, as defined in the Act of 2001. The court must also determine whether or not the accused person is in need of in-patient care or treatment in a designated centre – not an approved centre. It will be recalled that the designated centre in the State is the CMH. An approved centre under the 2001 Act is a centre

registered under the Act as an approved centre. It includes a hospital or other in-patient facility for the care or treatment of persons suffering from mental illness or mental disorder.

42. The meaning of mental disorder is defined in the 2001 Act and I have set it out above. This is the meaning of the "*mental disorder"* which the court must be satisfied an accused person is suffering from when carrying out the s. 5(2) assessment under the 2006 Act. In essence, the appellant's case is that this assessment must be carried out on each and every occasion that the Review Board reviews the detention of a patient detained in the hospital pursuant to s. 5 of the 2006 Act. I do not agree that this is the correct construction of s. 13(8).

43. In the first place, s. 13(8) does not use the term *"mental disorder".* Neither does it refer to a *"mental disorder"* as defined in the Act of 2001. If the Oireachtas had wished the Review Board to assess the patient to this standard upon each s. 13 review, it could simply have said so, as it did in s. 5(2). The fact that it did not, strongly suggests that the two tests are not the same.

44. Secondly, the obligation of a Mental Health Tribunal to review a person detained under the 2001 Act is set out in s. 18 of that Act. The Mental Health Tribunal is required to satisfy itself that the patient "*is suffering from a mental disorder".* If it is not so satisfied, it is then required to revoke the order and direct that the patient be discharged from the approved centre concerned. When the Oireachtas enacted the 2006 Act, it did not provide an equivalent standard of review by the Review Board. In my judgement, the contrast between s. 13(8) of the 2006 Act, and s. 18 of the 2001 Act, is very clear.

45. Thirdly, s. 13 expressly requires the Review Board to do three things on a review:

(i) Hear evidence from the consultant psychiatrist responsible for the care or treatment of the patient.

(ii) Determine whether or not the patient is still in need of in-patient care in a designated centre.

(iii) Make one of three possible decisions: further detention, conditional discharge under s. 13A or unconditional discharge.

On its face, the section does not require the Review Board to determine whether the patient is suffering from a mental disorder, and, to my mind, it is not required to do so by implication.

46. It is important to note that the detention under the 2006 Act is preceded by findings of the jury under s. 5(1) and then findings of the court under s. 5(2) of the Act. This is in contradistinction to the manner in which a person can be detained under the 2001 Act. In effect, the review by the Mental Health Tribunal is the first independent view of the legality and the necessity for the civil detention of the person concerned. Thus, the review is of a different nature and quality to that carried out by the Review Board. The Review Board is reviewing the requirement for the continued detention of a patient, the lawfulness of whose committal is not in doubt (or would otherwise be subject to an appeal to the Court of Appeal in the ordinary way). On its face, s.13(8) of the 2006 Act applies to a patient who is detained, pursuant to s. 5 of the 2006 Act. There is no necessity to revisit the lawfulness of that original order of detention. The focus of the Review Board is on the present condition and future care or treatment needs of the patient. This is underscored by the reference to the question as to whether the patient is "*still in need of in-patient treatment*".

47. The appellant argues that the patient must be suffering from a mental disorder at the time the Review Board reviews the detention if an order continuing the patient's detention is to be lawful. Put otherwise, if the patient is not shown and found by the Review Board to be suffering from a mental disorder, the appellant argues that he cannot lawfully be detained. In my judgement, this argument is flawed. It amounts to conflating civil detention with criminal detention. The appellant's submission is correct for civil detention under the 2001 Act. As I have already said, there is an express requirement that the Mental Health Tribunal be satisfied that the person is suffering from a mental disorder, within the meaning of s. 3(1)(a) or (b)

each time a Mental Health Tribunal carries out a review. If the person is not so suffering at the time of the review by the Mental Health Tribunal, then the tribunal must release the patient from involuntary detention. The patient may, of course, remain in the approved centre as a voluntary patient, but the fact that a patient may still require in-patient care in an approved centre is not to be equated with whether they meet the threshold for detention in such a centre.

48. It is entirely a different regime under the 2006 Act. Detention under the 2006 Act arises out of an index event, which is a criminal matter, in this case the crime of arson. The patient must originally have been charged with an indictable offence and have pleaded not guilty by reason of insanity. This, in turn, has given rise to a jury delivering a special verdict, pursuant to s. 5(1), and the trial judge, at a separate hearing, and upon further evidence from a consultant psychiatrist in the designated centre, being satisfied that the person is (a) suffering from a mental disorder within the meaning of the 2001 Act and (b) is in need of in-patient care or treatment in a designated centre. The person is committed to the designated centre (the CMH) on foot of the order of the court. The legality of the detention has been determined by a court prior to the actual detention of the patient pursuant to s. 5(2).

49. The order of the Circuit Court committing the applicant to the CMH is "*until an order is made under s. 13 or 13A*" (s. 5(2)). Accordingly, as was held in *EC v Clinical Director of the Central Mental Hospital* [2012] IEHC 152, the order made under s. 5(2) remains the basis for the detention of the applicant unless an order has been made under s. 13 or 13A. It is not within the powers of the Review Board to review the legality of the order detaining the patient. Its focus is whether the detention ought to be ended (by either a conditional or absolute discharge) or continued for further care and treatment.

50. The situation is otherwise with respect to detentions pursuant to the 2001 Act. Once a Mental Health Tribunal reviews the detention of a patient, it is each subsequent decision of a

Mental Health Tribunal that provides the fresh basis for the civil detention of the patient, not the original act of detention. To my mind, this underscores the fact that the Review Board is not required to consider whether the patient ought to be detained each time it reviews the detention of the detained person. That has been previously decided by the court, pursuant to s. 5(2). What is required of the Review Board is to look at the current and future needs of the person. The question is: is the patient still in need of in-patient treatment in a designated centre or not?

51. Furthermore, in contrast to a Mental Health Tribunal, a Review Board cannot simply determine to direct a conditional discharge of a patient and then implement that decision immediately. There is a complex statutory architecture governing the provisions of a conditional discharge set out in s. 13A, which has no analogue under the 2001 Act.

52. So, for all of these reasons, I am satisfied that a Review Board, conducting a review, pursuant to s. 13 of the 2006 Act, is not required to consider whether the patient is suffering from a mental disorder, whether within the meaning of the 2006 Act, or the 2001 Act. It is required simply to do precisely what is stated in subsection (8):

> (i) To hear evidence relating to the mental condition of the patient to be given by the consultant psychiatrist responsible for the care or of the patient.
>
> (ii) To determine whether or not the patient is still in need of in-patient treatment in a designated centre.
>
> (iii) To make an order as it thinks proper in relation to the patient being either
>
> (a) For the patient's further detention, care or treatment in a designated centre.
>
> (b) For the patient's conditional discharge under s. 13A.
>
> (c) Or for the patient's unconditional discharge.

Adequacy of Reasons

53. The appellant argued that the decision of the Review Board failed to engage with the evidence before it as it relates to the statutory criteria for a person's detention by reference to s. 5 of the 2006 Act, and in particular, the dual limbs of s. 3(1)(b)(i) and (ii) of the 2001 Act, and the provisions of s. 3(1)(a) of the 2001 Act, and the necessity for detention specifically in the CMH. For the reasons I have just set out, the Review Board was not required to make any such assessment. It necessarily follows that the fact that the decision does not consider the evidence before it from that perspective, or make any findings in that regard, cannot afford a basis for impugning the lawfulness of the decision. Insofar as the appellant seeks to rely upon decisions relating to the obligations on a Mental Health Tribunal to provide reasons for its decision and to address the statutory criteria in s. 3 of the 2001 Act, they simply do not apply to a Review Board exercising its statutory powers, pursuant to s. 13 of the 2006 Act. Simply put, a failure to address all of the elements of s. 3(1)(a) or (b) of the 2001 Act is not a valid basis for impugning the validity of the decision of the Review Board.

54. The two authorities upon which the appellant particularly relied were *FC v Mental Health Tribunal* [2022] IECA 290, and *KW v Mental Health Tribunal* [2025] IEHC 685. In *FC*, Ní Raifeartaigh J delivered the judgment of this Court. She noted that it was accepted that it was not in dispute that, in principle, adequate reasons should be given for the decision of the Mental Health Tribunal. At para. 55, she held that:

> "*It is not in dispute that, in principle, adequate reasons should be given for the [Mental Health Tribunal's] decision."*

At para. 56, she held that:

> *"56 The answer to [the question whether the reasons given by the respondent were adequate] is not only context-specific, in the sense of the legal context in which the decision is being made, but also case-specific in the sense that the issue turns on the*

specific language used in communicating the particular decision in the context of the hearing which has gone before, including the evidence adduced and the submissions made. Accordingly, . . . the Court must keep to the forefront of its consideration of the present case the two matters identified above: (a) the particular legal context in which the decision was being made; (b) the language and immediate circumstances of the decision in question."

55. I am satisfied that these observations apply equally to the assessment of a decision by the Review Board, pursuant to the 2006 Act.

56. Ní Raifeartaigh J considered the language used in the decision itself, in the context of the evidence adduced at the hearing of the tribunal. She noted that a balance is to be struck, and she held:

"*It is of course ultimately a question of substance and not form, and there must be an element of common sense and practicality in approaching the question of adequacy of reasons. As O'Neill J said in M.R.—*

"In approaching an assessment of the decision of the Respondent as revealed by the record of it, both as to substance and form, in my view, it is not appropriate to subject the record to intensive dissection, analysis and construction, as would be the case when dealing with legally binding documents such as statutes, statutory instruments or contracts. The appropriate approach is to look at the record as a whole and take from it the sense and meaning that is revealed from the entirety of the record. This must be done also in the appropriate context; namely the record must be seen as the result of a hearing which has taken place immediately before the creation of the record, and it must be read in the context of the evidence both oral and written which has just been presented to the Respondent. The record is not to

be seen as, or treated as a discursive judgment, but simply as the record of a decision made contemporaneously, on specific evidence or material, within a specific statutory framework. i.e. the relevant sections of the Act of 2001 as set out above.'"

57. I accept that this statement of principle applies equally to the assessment of the adequacy of the reasons for a decision of a Review Board exercising its s. 13 jurisdiction.

58. The type of reasons a decision maker is required to give will be determined by the applicable statutory framework. In *Mallak v Minister for Justice* [2012] 3 IR 297, Fennelly J held that the extent of the obligation to give reasons is determined by "*reference to the particular statutory provision".* Furthermore, insofar as reasons are required, they may be derived in a variety of ways. In *Connelly v An Bord Pleanála* [2018] IESC 31, [2012] 2 IR 752, Clarke CJ observed, at para. 7.5:

> "*Therefore, it is possible that the reasons for a decision may be derived in a variety of ways, either from a range of documents or from the context of the decision, or in some other fashion. However, . . . this is always subject to the requirement that the reasons must actually be ascertainable and capable of being determined."*

59. The decision in this case must therefore be seen in its appropriate statutory context. It is a decision made pursuant to the procedures set out in s. 13 of the 2006 Act. The Review Board reviews the detention of a person who has been found not guilty by reason of insanity and committed to the CMH, pursuant to s. 5(2) of the Act of 2006. There will frequently be a whole series of reviews. The impugned decision was the eleventh such review. It is therefore appropriate to look at the decision in the context of the sequence of reviews which preceded it, the treating consultant psychiatrists' reports, the note of the oral hearing, including the submissions from the appellant, his solicitor and his friend. It is important to note that the procedure is intended to be as informal as possible. The decision is not confined to the "*40*

words" referred to under the heading of the decision, as the appellant contended. It is appropriate to read the entire document and to understand it in the context of the oral hearing which had recently preceded it. It is to be read as it would be understood by an informed addressee.

60. The evidence before the Review Board of the appellant's condition included the findings in Dr Linehan's report that:

- His HRC-20 risk assessment reveals the presence of a number of dynamic risk factors for future violence.
- His dynamic risk factors are adequately managed in his current placement in the Clermont Unit.
- He continues to experience intrusive thoughts with violent content.
- He experienced agitation and an urge for 'name calling'.
- He struggled at times with 'calling names' and 'slight thoughts of hitting'.
- There are outstanding areas of concern regarding unmet treatment needs.
- Continuing risk factors for violence which require a structured care and treatment regime if these risks are to be safely managed.

The minutes of the meeting of the Review Board of 13th June 2024 recount that the Board had evidence before it:

- That the appellant has ongoing thoughts of violence towards others.
- That Dr Linehan believed there was still therapeutic objectives to achieve.
- She also advised that there was potential for progress in relation to the appellant's insight.

61. The report of Dr Linehan recommends the continued detention of the appellant "*as it would facilitate Mr K's continued care, treatment and rehabilitation in conditions of therapeutic security. This remains necessary because of the current risk assessment (HCR-20,*

SRAMM) and the related risk management plans arising from it. These are demonstrated by Mr K's profile using the DUNDRUM-3 Programme Completion scale and the DUNDRUM-4 Recovery scale. These draw attention to Mr K's continuing treatment needs".

62. It is clear from the findings of the Review Board that, in light of the evidence in the report and at the hearing, it concluded that the appellant was still symptomatic and in need of in-patient care and treatment in the CMH. In its decision the Review Board recorded its finding that the appellant was suffering from schizophrenia, that he *"continues to experience intermittent intrusive and negative thoughts"* and that *"[i]nsight into his illness is improving".*

63. In that context, it agreed with and accepted Dr Linehan's recommendation as set out in her report. The adequacy of the decision of the Review Board must be assessed in light of those findings, the evidence, the report and recommendation. The decision stated that *"[t]he Board is satisfied that Mr K continues to suffer with a serious and chronic mental disorder which requires in-patient treatment and care in the Central Mental Hospital. He is properly detained there and should remain so detained pending further reviews."* In my judgement it is not invalid for want of reasons.

64. It is likewise clear from Dr Linehan's report that the three possible orders provided in s. 13(8) of the 2006 Act were before the Review Board for consideration. It is equally clear that having concluded that the appropriate order was to continue the detention of the appellant until further review, there was no need to expressly state that it was not directing either conditional or unconditional discharge. Neither was it required to explain its reasons why it was not making either of these possible orders where it explained why it was making the order it actually made.

65. I am satisfied that the appellant's reliance on *FC* is misplaced. Unlike *FC*, there were no disputes as to either the law or the evidence to be resolved by the Review Board in June

2024, and so it is of limited assistance in resolving this appeal. The decision in *FC* was unlawful precisely because the Tribunal did not explain that it preferred the medical evidence to that of patient and did not explain its reasons for that preference on the key issue whether he would comply with his medication regimen if discharged from a hospital setting. There is no equivalent uncertainty arising from an unexplained resolution of a disputed fact in this case.

66. For these reasons, in my judgement, the High Court did not err when it concluded that the reasons for the decision of the Review Board were clear when read in context as required by *F.C.*. In substance and in form, the reasons for the decision of the Review Board were set out in the decision and addressed the issues which the Review Board was required to address and resolve.

Failure to take Account of the Submissions of the Appellant

67. The final ground of appeal relates to a complaint that the Review Board allegedly failed to take account of the appellant's submissions made at the hearing on 13th June 2024. The minutes of the meeting record that three matters were discussed. These were the appellant's successful discharge into the community in 2017; the fact that the crimes in respect of which he was charged were *"victimless",* and his friend, Mr Maloney's, doubts as to the validity of the diagnostic testing employed in the CMH. The argument was that none of these three issues were mentioned in the decision. It followed that no reason had been advanced why these arguments were rejected, and furthermore, it could not be said that they had been taken into account. This, it was contended, rendered the decision unlawful.

68. It is well established law that a decision maker is not required to address every single point made to the decision maker. The requirement is to address the key issues of dispute or the core points. None of these three issues could be described as core points.

69. The first point related to the appellant's discharge from civil detention under the 2001 Act, and his proven ability, between 2017 and 2019, to adhere to his medication regimen and to live in a low support hostel in the community. This is not actually relevant to the question to be determined by the Review Board in June 2024. As I have previously held, s. 13 is forward looking and is concerned with whether the patient "*still"* needs treatment in the CMH. Evidence of his compliant behaviour from five years earlier was not relevant to the question whether he was still in need of treatment and care in the CMH. The Board considered and addressed the most recent medical evidence, as it was required to do, in making the determination whether he was "*still*" in need of continued in-patient care. Its failure to address a matter which was not relevant to its decision cannot invalidate the decision so reached for an alleged failure adequately to explain the reasons for its decision or to address the key issues in the case.

70. Furthermore, the appellant merely stated that he felt that his track history ought to have been mentioned at his trial, in December 2019, rather than the fact that it was actually germane to the decision to be made in 2024. That does not and did not make it relevant to the s. 13 question, which was the sole matter for the Review Board. It follows that it was not necessary for the Review Board to refer to this point and this evidence in reaching its decision on 20th June 2024.

71. Similar observations apply to the second point; the fact that the crimes were *"victimless"* is not relevant to the issue to be determined, pursuant to s. 13. Accordingly, it was not necessary to refer to that point and to explain why it was rejected. It was not an issue in dispute and nor was it relevant to a core point for determination by the Review Board.

72. Finally, Mr Maloney's doubts as to the validity of the diagnostic testing employed by the CMH was not an expert opinion. The issue was responded to by the treating consultant psychiatrist at the hearing. It did not give rise to a dispute as to the appropriate use of the

diagnostic assessment tools which the Review Board was required, in any way, to resolve. Nor did it invalidate or call into question the report of Dr Linehan insofar as it relied upon the outcomes of the diagnostic assessments of the appellant in the appendix of her report.

73. For these reasons, the failure of the decision to discuss any of this evidence or to explain the Review Board's assessment of this evidence does not render the decision unlawful for want of reasons or for a failure to have regard to material which it ought to have considered in reaching its decision. This case is not comparable to *FC*, where the key factual issue was the likelihood of the patient remaining compliant with the medication regimen once he was discharged from the approved centre. That was a valid key issue which fell to be determined by the Mental Health Tribunal in that case. None of the issues referred to here were key issues upon which the Review Board was required to reach a conclusion and express reasons for that conclusion. Accordingly, I would dismiss this remaining ground of appeal.

Conclusions

74. When carrying out a review, pursuant to s. 13 of the 2006 Act, a Review Board is not required to consider whether a patient is, at the time of the review, suffering from a mental disorder within the meaning of either the 2001 Act or the 2006 Act, or that they require to be detained in the CMH, as opposed to an approved centre. The question to be determined is whether or not the patient is still in need of in-patient treatment in the CMH. This decision is made by reference to the medical evidence before the Review Board, the present condition of the patient and their prognosis and is forward looking.

75. The decision of the Review Board did not apply the wrong legal test in its decision of 20th June 2024, as it was not required to determine whether or not the appellant was at that

time suffering from a mental disorder within the meaning of either the 2001 or the 2006 Acts, and required treatment in the CMH.

76. The decision of the Review Board should be read in the context of the statutory framework and the provisions of s. 13, and also in the factual context of the report of the treating consultant psychiatrist, the hearing of the Review Board and the terms of the entire decision. In that context, the Review Board complied with its obligations to give reasons for its decision.

77. The Review Board was not required to address each and every argument or observation made to it during the oral hearing. The fact that the appellant adhered to a medical regimen and successfully lived in a low support hostel, following discharge by a Mental Health Tribunal in 2017, until his committal in 2019, was not a factor which fell to be considered by the Board in its review, pursuant to s. 13 of the Act of 2006, in June 2024. Likewise, the fact that the crimes committed by the appellant were "*victimless*" was not a matter to be weighed and considered by the Review Board, and the observations of the appellant's friend regarding the efficacy of the analytical tools employed by the staff at the CMH was not expert testimony and could give rise to no conflict of fact which fell to be resolved by the Review Board at its decision in June 2024. Accordingly, the failure to refer expressly to these three matters, which were discussed at the hearing on 13th June 2024, in the decision of 20th June 2024, did not render the decision unlawful.

78. For all of these reasons, I would refuse the appeal and uphold the decision of the High Court.

79. Faherty and Burns JJ have authorised me to record their agreement with this judgment.

80. The Court will hear the parties on the question of costs at a date to be fixed by the Court.