

**Opening Statement by Ms Teresa Cody, Assistant Secretary, Department of Health to the  
Joint Committee on Health (13<sup>th</sup> December, 2017)**

**Oversight and Monitoring of Hospital Consultant Contracts**

**Chairman and members of the Committee**

I am Teresa Cody, Assistant Secretary in charge of National HR Division in the Department of Health. I am joined by Paddy Barrett, Assistant Principal in National HR Unit.

I want to begin by thanking the Chairman and the committee for inviting us here today to discuss a range of issues concerning the Consultant Contract. The invitation follows on from the RTE Investigates programme which aired on 21 November 2017, about the level of private practice being carried out by hospital consultants and the effect this is having on public patients.

A key objective of Consultant Contract 2008 was, and still is, to improve access for public patients to public hospital care. It should be noted that at the time this new contract represented a fundamental change from previous contracts and was the largest redesign of the consultants' contract for 30 years. It specifically included a framework developed to protect the position of public patients and provided for increased availability of senior clinical decision makers.

Revised work practices under the new contract, the extended working day, the appointment of Clinical Directors, in conjunction with other developments such as clinical care programmes, have allowed greater flexibility in meeting the challenges facing the health system.

There are a number of different types of contract, which allow consultants to work in different ways. The monitoring of public/private mix is an ongoing part of implementation of the consultant contract.

If we look at the system as a whole, the data from September 2017 shows that the public/private mix at a system level stands at 82% public for elective in-patient work and at almost 86% for day-case work. National performance has been consistent at this level. These rates are also consistent with the typical 80/20 split provided for in the consultant contract.

The framework for the regulation of a consultant's private practice is contained in Section 20 of the 2008 Contract. It provides that the public to private practice ratio is to be implemented through the Clinical Directorate structure. It also gives the employer of the consultant full authority to take all necessary steps to ensure a Consultant's practice shall not exceed the agreed ratio of public to private practice.

The HSE therefore has responsibility for ensuring consultant compliance with their contracts. Responsibility for reporting individual consultant compliance lies with the Hospital Groups. The

main reason for this is to ensure local accountability. Hospitals know their consultants and the work they deliver.

However, it is clear that the arrangements that are in place, or enforcement of these, are not robust enough to deliver compliance in all circumstances. As a result, some consultants have engaged in private practice activity at levels that significantly exceed the levels provided for in their contracts. This may arise in relation to the level of private activity undertaken on-site, or they engage in significant levels of off-site private practice, although their contract does not provide for this.

The Department of Health is working closely with the HSE to find a solution to ensure compliance is monitored more effectively. And, more importantly, that breaches are dealt with appropriately.

The need to get delivery of real change under the revised contractual arrangements for the benefit of public patients has been the subject of engagement between the Department and the HSE over the years.

Indeed, the benefits provided for in the 2008 Contract in relation to greater consultant availability were further strengthened and enhanced in an agreement reached between the parties at the Workforce Relations Commission in September 2012.

Following further engagement with the Department, the Director General of the HSE issued clear instructions to relevant health sector management in October 2012. These instructions reaffirmed the need for individual hospitals and Hospital Groups to ensure full compliance with the terms of consultant contracts.

In terms of more recent developments, directly after the airing of the RTE programme, you will be aware that the Minister for Health was very strong in his condemnation of the practices reported. He asked the HSE to ensure that more robust measures are in place in 2018 to make sure all consultants comply with their contractual obligations.

There had already been a number of engagements this year between the Department and the HSE in this context.

In September, in response to a letter from the Secretary General of the Department, the Director General confirmed that consultant contract compliance is an agenda item at the monthly performance meetings held by the HSE Acute Hospitals Division with the Hospital Groups. The National Director for that Division, Mr Liam Woods, is here today and he can speak further on that process.

In recent weeks in line with the Minister's requirements, on 1<sup>st</sup> December, the Secretary General wrote to the Director General, repeating that it is essential that robust arrangements are put in place to actively monitor compliance with the provisions of the contract and to ensure that corrective action is taken where breaches are identified. A comprehensive framework, at both national and local level, has been requested to see that this is done. The Department has also

sought confirmation of the steps being taken by the HSE to investigate the apparent contract breaches by individual consultants.

The Department will shortly be engaging with the HSE in response to some broader issues which the HSE has raised concerning oversight of the contract, including the impact of the Health (Amendment) Act 2013 and the need for hospitals to collect private patient income. However, the HSE has already been advised that those issues do not affect the implementation of measures required to ensure robust governance and monitoring of compliance with the contractual provisions applicable to consultants engaging in private practice, with remedial action pursued where required. The matter of consultant compliance with their contracts is also being discussed in the context of the High Court legal cases that are currently in train.

Finally, as the Committee members will be aware, the Minister has established an independent expert review group to examine the impact of separating private practice from the public hospital system. The removal of private practice from public hospitals was one of the key recommendations of the Sláintecare Report. This Group will conclude its work by the end of next summer.

I trust this information has been of some assistance. My colleague and I will endeavour to answer questions the Committee may have.

This concludes my opening statement.