

Consultants Contracts - Independent Appeals Panel

Terms of Reference

1. In 2008, the terms of a new contract for hospital consultants in Ireland (hereinafter “the Contract”) was agreed between the Health Service Executive (hereinafter “the HSE”) and the consultants’ representative bodies. Since 2008, consultants working in the public health services in Ireland are appointed under different categories of contract, namely Type A, Type B, Type B* or Type C, which allow varying entitlements to engage in privately remunerated professional medical/dental practice, under section 21 of the Contract.
2. Section 22 of the Contract entitles the consultants to apply to change their category type to Type A, B, B* or C at five-yearly intervals and in the event that the HSE does not accede to the request, a Consultant seeking a change to Type A, B or B*¹ may refer the matter to the Independent Appeals Panel for a recommendation.² The HSE’s Consultant Application Advisory Committee (hereinafter “the CAAC”), which regulates the type and number of consultant appointments, considers the initial application for a category change in respect of applications for a change of Contract Type A, B or B*. A decision on such application will be made by the HSE following the advice of the committee.
3. Section 22(d) of the Contract provides for an appeal to an Independent Appeals Panel for a recommendation if the application is turned down at first instance.
4. The Contract provides, at Section 22(d), that the Independent Appeals Panel shall be composed of:
 - (i) an Independent Chairperson,
 - (ii) a representative of the Consultant (e.g. from the relevant medical organisation), and
 - (iii) an Employer representative.
5. Based on each Consultant’s preference, either the Irish Hospital Consultants Association (hereinafter “the IHCA”) or the Irish Medical Organisation (hereinafter “the IMO”) will be the representative of the Consultant at his or

² The contract also provides that those consultants who previously held a Category I or Category II contract under the Consultants Contract 1997, and were in post at the time of the offer of the 2008 Contract, may, 2 years after accepting the Consultant Contract 2008 and thereafter at 5 yearly intervals, make application to the CAAC to transfer to a Contract Type B*. There is also provision that where significant changes occur in a particular area in the delivery of acute hospital care or where the volume of private practice is significantly below 20% of total clinical workload, the Consultant shall be entitled to have his Contract Type reviewed by the CAAC within the 5 year period.

her Independent Appeals Panel hearing within the meaning of these Terms of Reference.

6. The Contract provides, at Section 22 (e) that appointments for reclassification to a Type C post will be considered by the Health Service Executive Type C Committee and that a decision on such application will be made by the HSE following the advice of the Committee. The Contract further provides that applications for change of Contract Type to Type C will be considered with reference to the total number of Consultants holding Type B*, Type C and Category II Contracts not exceeding the specified limit. It is provided that, in the event that the Type C Committee does not accede to the request the matter will be referred to Chief Executive Officer of the Health Service Executive for a final decision.
7. While the Contract does not provide for an appeal to the Independent Appeals Panel from a decision in respect of Type C contracts, it has been agreed by the Health Service Executive and the consultants' representative bodies that applicants for reclassification to a Type C post shall have the same right of appeal to the Independent Appeals Panel as applicants for a change of contract Type A, B and B*. This appeal will follow from the decision of the Chief Executive Officer of the Health Service Executive, as provided for at Section 22(e) of the Contract. It is hereby agreed that all references to the appeal process in respect of contracts Type A, B and B* shall apply equally to contract Type C.
8. Appendix III of the Procedures for the Regulation of Consultants Appointments sets out the Procedures for change in Type of Contract under the Consultants Contract 2008, consistent with Section 22 of the contract.
9. Section 4 of Appendix III sets out the procedure for submission of requests for change of Contract Type. Section 5c of Appendix III repeats the provisions of the Contract in terms of the membership of the Independent Appeals Panel.
10. Section 3.10 of the 1997 Consultant Contract provides that Consultants on that contract may apply to have the category of their post changed at 5 yearly intervals. Applications for a change in contract type must be submitted to the Consultants Appointment Unit for consideration by the CAAC. It is agreed that the Independent Appeals Panel will also decide on any appeals arising from this process, where the application for change has not been granted

The parties to this process (i.e. the Health Service Executive – Corporate Employee Relations (“the HSE-CERS”), the IHCA and the IMO) have agreed the following terms of reference for the Independent Appeals Panel process:-

- (i) Aoife Forrest has been appointed as the Chairperson of the Independent Appeals Panel (“the Panel”), having been nominated

by the IHCA and the IMO and that nomination having been accepted by the HSE-CERS.

- (ii) The Panel will comprise of the Chairperson, a representative of the Consultant (from either the IHCA or the IMO) in each case, and a representative of the Employer.
- (iii) Each participant in the Independent Appeals process will sign an individual agreement, as set at Schedule 1 hereunder, to participate in this process in accordance with these Terms of Reference.
- (iv) The Panel will hold an oral hearing in respect of each individual appeal (unless the appellant expressly waives his or her right to a hearing) and at such hearing will hear from the appellant and/or his or her representative and shall also hear from a representative of the Employer. As far as possible and practicable, hearings will take place within four weeks of the receipt of notification of appeal.
- (v) Written submissions, together with any supporting documentation that the parties intend to rely on, will be requested in advance from the appellant and the Employer in respect of each individual appeal. Documentation relating to the individual application or appeal previously considered by and/or generated by the CAAC or the Type C committee and the HSE CEO will be provided to the applicant and Panel two weeks in advance of the hearing. Written submissions must be received by the Panel in electronic format at least five working days prior to the hearing date and will be exchanged between the parties by the Chairperson once both submissions have been received.
- (vi) Hearings will take place at the offices of the HSE-CERS in Dublin or, where necessary and/or in the interests of efficiency, the Panel will travel to conduct hearings at appropriate venues around the country.
- (vii) The Panel will consider the written and oral submissions in respect of each individual appeal and issue a decision, in writing, in respect of each appeal.
- (viii) In respect of each case, the Panel will consider whether the applicant has demonstrated that the change in contract type
 - (a) Is consistent with the public interest and
 - (b) There is a demonstrable benefit to the public health system
- (ix) Each case shall be determined on its own merits, the decision shall be binding on all the parties. As far as possible and practicable, decisions will issue within three weeks of the date of the hearing

and will be communicated by email to the HSE-CERS and the relevant representative body. Where the application is refused, the grounds for refusal will be outlined.

- (x) The Panel will have such powers as are appropriate and necessary for the performance of its duties under these Terms of Reference and the parties agree to be bound by any direction made by the Panel in relation to the procedure to be adopted or any other matters. The Panel reserves the right to make such enquiries, conduct such interviews, examine such documents and engage in such correspondence as it considers appropriate for the proper performance of its function.
- (xi) The decision of the Chairperson will be final in relation to any matter of dispute among the Panel or between the parties.
- (xii) Every effort must be made by the parties to ensure each appeal under this process is dealt with as quickly as possible. Time-lines set out in these Terms of Reference or otherwise by the Panel must be strictly adhered to.
- (xiii) The Panel reserves the right to amend the process outlined herein in a manner that it deems appropriate or necessary for the proper conduct of the Appeals process.
- (xiv) In the interests of expediency, the parties shall correspond by email as far as possible.
- (xv) The fees of the Chairperson, together with appropriate vouched expenses, shall be met by the HSE-CERS. Each party will be responsible for all other fees, expenses and costs which it incurs.

Schedule 1

Agreement to participate in the Independent Appeals Process

I, _____ (*name*), holding the position of _____ (*position held*) having applied for a change in contract type under my Contract and that application not having been acceded to by the Employer or HSE, now wish to participate in the Independent Appeals Process as provided for under my Contract.

I confirm my agreement to participate in the Independent Appeals Process in accordance with the attached Terms of Reference and to accept the binding decision of the Independent Appeals Panel that will issue under that process.

Signed: _____

Date: _____

Witness: _____

Date: _____