

Chapter 44

**Health Service Executive
Consultants Private Practice**

Consultants Private Practice

44.1 Under Consultant Contract 2008 the private practice limit for new consultants is 20%. The Contract also makes provision for limits up to 30% for consultants who had existing contracts of employment that permitted levels of private practice in excess of 20%. Four contract types now exist under Consultant Contract 2008 with different levels of permitted private practice. Figure 201 describes the levels of permitted private practice under each contract type and the number of consultants on each at the end of December 2009.

Figure 201 Types of Consultant Contract under the New Contractual Arrangements

Type		Number of Consultants at 31 December 2009
A	Consultants who work exclusively for the public hospital and are solely remunerated by way of salary.	682
B	Consultants who may engage in private practice including <ul style="list-style-type: none"> • new entrants who may engage in limited private practice on-site in a ratio of 80% public to 20% private. • existing consultants who may engage in private practice in a ratio of 70% public to 30% private practice and retain off-site outpatient private practice. 	320 685
B*	Existing consultants who may engage in private practice in a ratio of 70% public to 30% private practice and retain off-site inpatient and outpatient private practice.	338
C	New consultants entitled to engage in off-site inpatient and outpatient private practice.	-
Total		2,025

Source: HSE

Note:

a In addition to the above, there were also 335 consultants on previous contracts of employment.

Chapter Focus

The focus of the audit reported in this chapter was to update previous reporting and ascertain the extent to which the HSE had put arrangements in place to enable it to implement provisions of Consultant Contract 2008 that provide for excess income from private practice to be remitted to a special fund.

Compliance Monitoring Arrangements

44.2 Consultant Contract 2008 requires that each consultant reports to a Clinical Director whose responsibility includes monitoring and managing consultants' public/private practice. To date 49 Clinical Directors²⁹⁸ have been appointed across the hospital system from among those consultants who accepted the new contract. While Clinical Directors are contractually obliged to report to the Hospital Manager/CEO on matters regarding monitoring and managing consultants' public and private activity, at the current time there are no mechanisms in place to record the extent to which this is performed.

44.3 Consultant Contract 2008 provides for measurement and monitoring of the volume of consultants' public and private workloads. Consultants are regarded as in breach of their contract terms if they exceed the specified levels of private practice in any of their clinical activities which include inpatients, day cases, outpatients and diagnostics. In accordance with Consultant Contract 2008 the volume of practice is measured on the basis of patient throughput with an adjustment for case complexity based on casemix weightings. It does not include consultants' non-clinical activities²⁹⁹.

Basis of Monitoring

Casemix is an internationally accepted system that measures consultants' activity, public and private, taking place on the public hospital campus. It provides a weighting for consultants' clinical activities whereby the volume of consultants' practice workload is adjusted for the complexity of the treatment involved and is based on patient throughput established from patient discharge records. Treatments are classified into a number of discrete manageable groups called Diagnostic Related Groups (DRGs). These are groupings of consultant treatment services based on each patient's clinical condition and resource consumption.

Data is gathered on each episode of patient care through a Hospital Inpatient Enquiry (HIPE) system. Consultants (or a member of the Consultant's team), enter information onto a standard form which is processed using DRG coding and data entered into the HIPE database by local Casemix Units. The system then allocates each episode to one DRG and also attributes that episode to the consultant that delivered the service on a weighted basis. The HIPE system allows the data to be produced in the form of a hospital report or an individual consultant report. Casemix is the basis for the monthly reports for inpatient and day cases. They are provided to each consultant and to Clinical Directors or Hospital Managers, as appropriate, for compliance monitoring purposes.

²⁹⁸ 35 Clinical Directors were appointed to acute hospitals and 14 to mental health services.

²⁹⁹ Consultant's non-clinical activities include teaching, patient chart updating/review, meeting relatives of patients, arranging and reviewing tests, medical audit, managerial duties, interview boards, meetings and participation on committees.

Measurement of Practice

44.4 The HSE National Hospitals Office (NHO) issued a number of guidance documents to hospital managers during 2008 and 2009 relating to the measurement and organisation of consultant public and private practice.

44.5 The guidance relates to the implementation of revised arrangements for processing and treatment of public and private patients to reflect changes to the interpretation of eligibility legislation. The new arrangements were introduced to ensure that persons attending public hospitals would have access to services on an equitable basis, irrespective of their status as public or private patients. The guidance also described the data sources and systems to be used to record consultant inpatient, daycase, outpatient and diagnostic activities.

44.6 New measurement systems have been developed by the HSE, in conjunction with the Economic and Social Research Institute (ESRI), to monitor consultants' private practice levels individually in the manner envisaged in the Consultant Contract 2008 (i.e. volume of clinical inpatient and day case activity adjusted for casemix). These measurement systems have been installed across the 49 acute hospitals. However, at this point adequate systems for monitoring outpatient and diagnostic activity have yet to be developed.

44.7 Consultant clinical activity, both public and private, is reported insofar as it takes place on a hospital campus. Measurement does not extend to non-clinical activities.

44.8 Information on consultants' public and private inpatient and day case activity levels (as weighted for casemix) are generated monthly from the HIPE system in the 49 acute hospitals. The resulting monthly reports are provided to consultants and to their Clinical Directors or Hospital Managers and to the national HSE Consultant Contract Implementation Group for compliance monitoring purposes.

Reporting Private Practice

44.9 Two main types of reports are being generated

- the practice mix of individual consultants
- summarised reports on practice mix.

Individual Consultant Practice Reports

44.10 Arrangements, introduced in January 2009, for monitoring consultants' private practice levels require every consultant in the employment of the public health service – irrespective of whether they hold Consultant Contract 2008 or not – to be issued with a public/private mix measurement report every month. This should document their activity in relation to inpatient, outpatient and day patient cases activity. For the purposes of compliance monitoring, the work of consultants is measured on a three-month basis in arrears.

44.11 From the January 2009 reporting period onwards, reports on individual consultant compliance have been provided to Clinical Directors and Hospital Managers.

44.12 There is a time lag of about four months (under normal circumstances) in providing consultants and managers with reports. This is due to the time required to code activities from patient records. Compliance reports for the first activity measurement period, January – March 2009, were issued to individual consultants in July 2009.

HSE Summary Reports - Internal

44.13 As well as notifying consultants individually, an overall status report is also prepared for the HSE for internal monitoring and management purposes. The HSE have compiled summary reports for three-month periods of consultant activity as set out in Figure 202.

Figure 202 Summary Reports on Consultant Activity

Report Date	Activity Period Covered
September 2009	February – April 2009
October 2009	March – May 2009
November 2009	April – June 2009
January 2010	June – August 2009
April 2010	September – November 2009

HSE Summary Reports – Public Reporting

44.14 The HSE publishes summary reports, which show the levels of public and private inpatient and day case consultant activities. These summarised reports record

- the proportion of consultants who have signed Consultant Contract 2008
- the proportion of consultants within 10% of their specified private practice limit.

Results of Reporting

44.15 The latest available HSE Summary Report on Consultant Private Practice Measurement covering consultant clinical activity for inpatient and day cases in the period September to November 2009 (dated April 2010 and issued in July 2010) reported compliance levels for 45 out of 49 acute public hospitals

- data was not available for three hospitals
- one hospital reported on private practice activity levels on the basis of Inpatient and Day Case discharge rates and consultant teams.

44.16 The proportion of consultants operating within agreed contract ratios (as weighted for casemix), and for which private practice data was reported, shows that the proportion of consultants in breach of their 2008 Contract terms is of the order of 33%.

Inpatient Practice

44.17 Overall, when viewed from a hospital perspective the 45 reporting hospitals showed the following compliance patterns

- five hospitals reported 100% compliance by their consultants with contracted levels of private practice
- an additional thirty hospitals reported that more than 50% of their consultants were in compliance with their contracted private practice levels.

Day Case Work

44.18 Data was also reported on private patient day case activity levels for 45 hospitals. This indicated that

- Three hospitals had 100% consultant compliance rates.
- An additional 36 hospitals reported that more than 50% of their consultants were in compliance with their contracted private practice levels.

44.19 The HSE stated that, by the end of July 2010, 296 consultants had been written to by Clinical Directors/Hospital Managers regarding the need for them to address excessive levels of private practice.

Inpatient Practice Pattern 2006-2009 by Hospital Group

44.20 Information supplied by the HSE for the aggregated public and private mix of inpatient activity for all consultants in each of the eight HSE Network Areas for the 2006 – 2009 period are set out in Figure 203. National totals are also reported.

Figure 203 Inpatient Public Private Mix (Casemix Adjusted) 2006 - 2009

Hospital Group	2006		2007		2008		2009	
	Public	Private	Public	Private	Public	Private	Public	Private
	%	%	%	%	%	%	%	%
Dublin/Midlands	73.2	26.8	74.7	25.3	76.9	23.1	78.6	21.4
Dublin North	73.1	26.9	73.9	26.1	74.8	25.2	76.0	24.0
Dublin South	75.2	24.8	75.0	25.0	73.6	26.4	74.4	25.6
Mid Western	66.5	33.5	67.2	32.8	63.2	36.8	64.3	35.7
North Eastern	99.9	0.1	76.2	23.8	76.3	23.7	78.2	21.8
South Eastern	76.0	24.0	75.4	24.6	75.7	24.3	76.9	23.1
Southern	70.5	29.5	69.3	30.7	68.9	31.1	70.6	29.4
Western	78.3	21.7	78.7	21.3	78.0	22.0	79.2	20.8
National Totals	76.0	24.0	74.2	25.8	74.1	25.9	75.5	24.5

Source: HSE Business Intelligence Unit based on 49 reporting hospitals.

44.21 The national total for inpatient private treatments was almost 26% in 2007 and 2008. This ratio fell slightly to 24.5% in 2009.

44.22 The underlying data on the 49 hospitals for which information was received for inpatient public and private activity showed that in 2009

- 13 hospitals had rates of private practice of 30% or more
- The highest rates of private practice were in the Regional Hospital – Limerick (53%) and in St. Johns Hospital – Limerick (52.4%)
- In 38 hospitals private practice levels were in excess of a 20% overall limit³⁰⁰.

³⁰⁰ This is a composite limit for monitoring purposes. In practice, limits can vary for individual consultants employed under Consultant Contract 2008 from zero to 30% depending on contract type.

Day Case Practice Pattern 2006-2009 by Hospital Group

44.23 The national private day case practice level for all consultants was 15.9% in 2009, and it was generally less than 20% in the 2006 – 2009 period. The trend for day cases is towards reductions in the levels of private activity. These aggregates, however, mask significant variations in respect of individual hospitals. The underlying hospital data in respect of day case practice indicates that in 2009

- 17 hospitals had private practice levels exceeding 30%.
- Private practice in 28 hospitals was greater than 20%.
- The Regional Orthopaedic Hospital – Limerick had a private practice level of 48.5%.

44.24 The detail by Hospital Group over the period 2006-2009 is set out in Figure 204.

Figure 204 Day Cases Public Private Mix (Casemix Adjusted) 2006 - 2009

Hospital Group	2006		2007		2008		2009	
	Public	Private	Public	Private	Public	Private	Public	Private
	%	%	%	%	%	%	%	%
Dublin/Midlands	68.9	31.1	75.3	24.7	76.4	23.6	79.3	20.7
Dublin North	79.3	20.7	79.8	20.2	86.5	13.5	87.4	12.6
Dublin South	92.1	7.9	93.1	6.9	90.4	9.6	91.0	9.0
Mid Western	57.9	42.1	68.2	31.8	66.7	33.3	70.4	29.6
North Eastern	100.0	-	77.7	22.3	77.9	22.1	78.3	21.7
South Eastern	71.5	28.5	75.0	25.0	72.3	27.7	71.8	28.2
Southern	79.7	20.3	59.8	40.2	84.6	15.4	83.8	16.2
Western	84.9	15.1	87.0	13.0	88.3	11.7	88.0	12.0
National Totals	81.2	18.8	78.7	21.3	83.5	16.5	84.1	15.9

Source: HSE Business Intelligence Unit

Private Practice – Financial Adjustments

44.25 The 2008 Contract implementation arrangements called for the establishment of systems to advise consultants of instances where any type of private practice was in excess of the ratio specified in their contract of employment. Written notification was to issue within at least one month of the matter being identified. If the matter were resolved within six months then no further action would be required. However, if the problem persisted after six months had elapsed, the consultant should be issued with written notification of this fact and required to meet with the Clinical Director, Hospital Manager or Chief Executive Officer and other relevant staff and a timetable established for resolution of the matter within the following three months.

44.26 If after the elapse of nine months, from the date the breach was first identified, the appropriate balance has not been restored, Consultant Contract 2008 provides for the hospital management to remove the facilities for the excess private practice³⁰¹ or to require the consultant to

³⁰¹ Cease the consultant's private practice in respect of that element of practice which is in excess of the specified ratio.

remit the private practice fees in respect of the excess activity to a hospital Research and Study Fund under the control of the Clinical Director.

44.27 A financial regulation has been made by the HSE setting out the mechanism for remittance of excess private practice fees. In summary, the regulation provides that all private fee income in excess of the prescribed limits will be refunded. The regulation was issued in early August 2010.

44.28 The regulation envisages that a consultant who has exceeded his private practice limit will be given 30 days to remit any amount due to the Research and Study Fund. It also envisages that

- should the consultant remit the required amount, he/she will be entitled to resume private practice on receipt of confirmation of receipt of the required amount from the employer
- should the required amount not be submitted, the consultant will not resume private practice in respect of the cohort of practice where he/she is in excess of the specified ratio pending remittance of outstanding fees to the Research and Study Fund.

44.29 The HSE has stated that no private fee income has yet been collected from consultants who are exceeding their permitted private practice levels. By mid-August 35 consultants with private practice in excess of the authorised limits had received letters from the HSE seeking remittance of their excess private practice income. Non-payment of any amount determined as due would constitute breach of contract and the standard procedures relating to breaches would commence after the appropriate time had elapsed.

Verification of Local Arrangements

44.30 The HSE, as part of its annual audit programme, is conducting audits at a number of hospitals in respect of certain aspects of implementation of the Consultants' Contract. The audit examines consultant rosters, public/private data, common waiting lists³⁰² and the processes in place for notifying consultants of non-compliance.

44.31 HSE's Internal Audit Directorate engaged PricewaterhouseCoopers (PWC) to assist in jointly developing and executing a detailed work programme for these audits. The first audit, which was conducted on a pilot basis at one hospital, is nearing completion and a refined approach will be applied to other hospitals in the near future.

³⁰² A common waiting list is one which includes all patients – irrespective of public or private status – awaiting a particular procedure.

Progress in Implementing Rectification Procedures

44.32 The key milestones envisaged in the introduction of practice measurement are as set out in Figure 205.

Figure 205 Milestones for Implementation of Public: Private Mix

Milestone	Activity
1 January 2009	Commencement of measurement
1 July 2009	First quarterly compliance reports to consultants
July/August 2009	Notifications of breaches issued to relevant consultants
January 2010	Period of six months to redress any imbalance expires
March 2010	Further three month rectification period expires
August 2010	Letters issued to 35 consultants seeking remittance of excess private practice fees

44.33 In practice, reports issued to consultants generally refer to activity periods up to seven months previously. The position regarding individual consultants' public/private practice ratios for January – March 2009 was therefore not known until July of that year.

44.34 The consequence is that in cases where breaches of private practice levels are identified, the duration between the breach being identified and any sanctions being imposed can potentially take up to sixteen months when account is taken of the three month activity period, a four months delay in compiling reports and nine months allowed to resolve the matter.

Conclusion

As part of contractual arrangement agreed in 2008, consultants undertook to limit private practice to set levels.

There has been limited progress in implementing this provision in that

- private practice levels in many hospitals continue to exceed permitted levels, in some cases significantly so
- monitoring is very much in arrears being reported up to nine months after the work was done.

Although an implicit objective of Consultants Contract 2008 was to remove any financial incentive on the part of consultants to engage in private practice above an agreed level, no financial adjustment has yet been effected.

General Views of the Accounting Officer

44.35 While the scope of the review reported above was limited to the extent to which financial arrangements to disincentivise excess private practice were in place, the contract is being implemented in a wider change setting. The Accounting Officer stated that there are some early indications of good progress in the involvement of consultants in management with widespread consultant leadership in both reconfiguration and the quality directorate within the HSE. He stated that large numbers of consultants are engaged in the design of national programmes of care across a wide variety of settings. Clinical Directors are in place throughout the health system and although their involvement is not uniform, in some locations they are exceeding expectations.

