

Consultant Contract 2008 Settlement Agreement

Guidance

31st August 2018

Purpose of guidance

Please note that this guidance is intended to clarify a range of issues associated with the implementation of the Consultant Contract 2008 Settlement Agreement between the Health Service Executive, Department of Health, Department of Finance, Department of Public Expenditure & Reform, Irish Medical Organisation, Irish Hospital Consultants Association and ten individual plaintiffs of 15th June 2018.

This document does not supersede the terms of the Terms of Settlement.

Queries in relation to this guidance should be sent to email: settlement2008@hse.ie

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1. Context

Beginning in 2014, more than 700 Consultants initiated legal proceedings against their employers – either the Health Service Executive (HSE), a hospital or agency funded by the HSE or an agency funded by the Department of Health; the Department of Health, Department of Finance and the Department of Public Expenditure and Reform alleging a failure to pay remuneration and/or pension entitlements in accordance with the terms of their contract of employment, the Consultant Contract 2008.

A significant number of the Consultants taking proceedings are members of the Irish Hospital Consultants Association or the Irish Medical Organisation.

In 2017 the High Court directed that ten cases should progress as “Lead Cases”.

On the 15th June 2018 a settlement was reached with the Lead Cases and the agreement reached was recorded in Terms of Settlement (attached at Appendix I).

Both (a) Consultants who issued legal proceedings and (b) certain Consultants who did not issue legal proceedings may be eligible to avail of the benefit from the Terms of Settlement.

2. Eligibility to receive an offer of the Terms of Settlement

The Terms of Settlement set out which Consultants are eligible for an offer by defining an “Eligible Consultant”. An eligible Consultant is a Consultant who is or was employed by the HSE or in a HSE or Department of Health funded hospital or agency (a list of such hospitals or agencies is attached at Appendix II) under the Consultant Contract 2008 and who:

- i. first signed a permanent version of Consultant Contract 2008 between 25th July 2008 and 30th September 2012;

or

- ii. first signed a permanent version of Consultant Contract 2008 on or after 1st October 2012 but had been successfully interviewed for the relevant permanent post between 25th July 2008 and 30th September 2012;

or

- iii. was employed on a permanent basis under either a Consultant Contract 1991 or Consultant Contract 1997, or held a permanent Consultant post in the public service of another European Union member state, and who, on or after 1st October 2012 and before 15th June 2018, without breaking service, signed any version of Consultant Contract 2008;

or

- iv. was employed on 30th September 2012 on a fixed term or specified purpose version of Consultant Contract 2008

and

had been so employed continuously for at least 6 months immediately prior to that date;

and

who subsequently without a break in service and before 15th June 2018 signed a permanent

version of the Consultants' Contract 2008 as set out Appendix 2 of the Terms of Settlement.

The Terms of Settlement state that 'all other Consultants who signed fixed or specified purpose contracts are excluded'.

Taking account of the above, it is noted that some of the Consultants above may:

- continue to work in the Public Health Service, whether under Consultant Contract 2008 or otherwise;
- or**
- be retired from the Public Health Service;
- or**
- have resigned from the Public Health Service;
- or**
- have passed away in which case their estate may have a claim under the Terms of Settlement.

Consultants who ceased service in the Public health service after signing the Consultant Contract 2008 are not entitled to the terms of the Consultant Contract 2008 in relation to any new term of employment after 30th September 2012. In that context, please note that a career break (whereby the career break meets the criteria set out in Circular S/146/99) does not result in a Consultant ceasing service.

Only eligible Consultants can accept an offer of the Terms of Settlement. Should the HSE, in error, make an offer to an ineligible Consultant, it reserves the right to withdraw the offer.

3. Litigating Consultants and non-litigating Consultants receive different offers

Eligible Consultants fall into one of two groups, 'Litigating Consultants' or 'Non-Litigating Consultants'.

A Litigating Consultant means an eligible Consultant who commenced legal proceedings prior to 14th June 2018 and served legal proceedings (the method by which Plaintiffs notify parties, in this case the Consultant's employer - or the HSE if not the employer - of cases coming before the Courts) on his or her employer or the HSE before 29th June 2018.

A Non-Litigating Consultant means an eligible Consultant who did not commence legal proceedings against his or her employer or the HSE prior to 14th June 2018.

Depending on which group a Consultant is in, (s) he will receive a different offer of the Terms of Settlement. A comprehensive explanation of the difference between litigating and non-litigating consultants is set out in Point 5 below.

4. Notification of the Terms of Settlement

a) Litigating Consultants

Litigating Consultants will be notified of the Terms of Settlement by solicitors for the HSE. The HSE's solicitors will write to all solicitors acting for Litigating Consultants and request completion of a prescribed form (to be circulated with this guidance) to assess eligibility.

b) Non-Litigating Consultants

Non-Litigating Consultants will be informed – to the maximum extent possible – of the Terms of Settlement and invited to complete the prescribed form (as referenced above) by the HSE or by the relevant HSE or DoH funded hospital or agency. The HSE will also contact the IMO, IHCA, Medical Council, postgraduate medical training bodies regarding communication of the Terms of Settlement and how to apply for same and advertise in relevant media. The Terms of Settlement require that the HSE informs Non-Litigating Consultants, to the greatest extent possible – of the Terms of Settlement and how to apply for them by 10th August 2018. This information has issued.

5. Details of the Terms of Settlement on offer

a) Litigating Consultants

In summary terms, eligible Litigating Consultants who accept the Terms of Settlement benefit from the following:

- i. Revised remuneration / pension entitlements with effect from 1st January 2019;
- ii. Payment of revised remuneration / pension for the period from 15th June 2018 to 31st December 2018 paid in arrears no later than 1st March 2019;
- iii. 55% of “retrospective payment of remuneration” and / or “retrospective payment of pension entitlements” for a period commencing up to six years before the date the Consultant issued legal proceedings and ending on the 15th June 2018;
- iv. Payment of all sums due by way of retrospective payment of remuneration and / or retrospective payment of pension entitlements on or before the following dates and in the following amounts:
 1. 40% on or before 1 June 2019; and
 2. 60% on or before 1 March 2020.
- v. If an offer is accepted, an order shall be made as soon as possible striking out the proceedings and providing that the reasonable costs of the proceedings up to the date of acceptance shall be paid by the State.

b) Non- Litigating Consultants

In summary terms, eligible Non-Litigating Consultants who accept the Terms of Settlement benefit from the following:

- i. Revised remuneration / pension entitlements with effect from 1st January 2019;
- ii. Payment of revised remuneration / pension for the period from 15th June 2018 to 31st December 2018 paid in arrears no later than 1st March 2019;
- iii. 55% of “retrospective payment of remuneration” and / or “retrospective payment of pension entitlements” for a period of up to six years before 15th June 2018 and in any case no earlier than the date they signed Consultant Contract 2008;
- iv. Payment of all sums due by way of retrospective payment of remuneration and / or retrospective payment of pension entitlements on or before the following dates and in the following amounts:
 1. 40% on or before 1 June 2019; and
 2. 60% on or before 1 March 2020.

For clarity and in broad terms, retrospective payment of remuneration” and / or “retrospective payment of pension entitlements” is the difference between the remuneration or pension actually paid to that Consultant during the period of retrospection and the remuneration or pension (s)he would have been paid if the provisions of paragraph 23 of version 1 of the Consultants Contract 2008 had been properly and fully applied.

6. Application for an offer, assessment by the HSE and deadline for application

a) Litigating Consultants

Litigating Consultants, subject to assessment of the prescribed form by the HSE and relevant HSE or DoH-funded hospital or agency to verify eligibility, shall be offered the opportunity to benefit from the Terms of Settlement. To enable the verification of eligibility by the HSE, Litigating Consultants are asked to complete and submit the prescribed form by 14th September 2018 to email: settlement2008@hse.ie

b) Non- Litigating Consultants

Non-Litigating Consultants who submit an application for an offer via the prescribed form shall, subject to assessment of the form by the HSE and relevant HSE or DoH-funded hospital or agency to verify eligibility, be offered the opportunity to benefit from the Terms of Settlement. They must submit an application for the offer by 14th September 2018 to email to: settlement2008@hse.ie

In each of a) and b) above, assessment will include the Consultant's eligibility, employment status, service, Contract category and type and remuneration during service amongst other matters.

7. Verification by the HSE

Once the prescribed form is received at email to: settlement2008@hse.ie the following steps will be taken:

- a) The form will be checked for completeness. Incomplete forms will be returned and the data required identified. Revised data should be submitted within three working days. Where, as of the 14th September, revised data is outstanding beyond the three working day period, the Consultant will be deemed to have missed the deadline.
- b) Completed forms from HSE Consultants will be forwarded for verification and calculation of retrospection to a named contact person in each of the Hospital Groups and Community Health Organisations and copied to a named contact person in HSE Superannuation as appropriate. Information regarding the entirety of the Consultant's relevant employment or claim will be sought from their current employer or last employer. Completed forms from non-HSE Consultants will be forwarded for verification and calculation of retrospection to a named contact person in the relevant HSE or DoH-funded hospital or agency and copied to a named contact person in HSE Superannuation as appropriate. Again, information regarding the entirety of the Consultant's relevant employment or claim will be sought from their current employer or last employer. However, where, immediately prior to entering into the Consultant Contract 2008, a Consultant was employed on either a 1991 or 1997 Consultant Contract, the employee need only provide details of that particular contract, and is not required to provide details of any previous consultant contracts held;
- c) It should be noted that a significant portion of the information required to support verification will be held by local Human Resources and in that regard it is vital that local Human Resources and Medical Manpower functions work closely to verify the information provided, determine if the Consultant is eligible and, if so, support calculation of the offer.
- d) The named contact person will return the following in respect of each Consultant:

Determination of Eligibility and associated settlement offer		
Is the Consultant eligible for the settlement and if so, under which ONE of the following four criteria:		Yes / No
i)	first signed a permanent version of Consultant Contract 2008 between 25 th July 2008 and 30 th September 2012;	
ii)	first signed a permanent version of Consultant Contract 2008 on or after 1 st October 2012 but had been successfully interviewed for the relevant permanent post between 25 th July 2008 and 30 th September 2012;	
iii)	was employed on a permanent basis under either a Consultant Contract 1991 or Consultant Contract 1997, or held a permanent Consultant post in the public service of another European Union member state, and who, on or after 1 st October 2012 and before 15 th June 2018, without breaking service, signed any version of Consultant Contract 2008;	
iv)	was employed on 30 th September 2012 on a fixed term or specified purpose version of Consultant Contract 2008 and had been so employed continuously for at least 6 months immediately prior to that date; and who subsequently, without a break in service and before 15 th June 2018, signed a permanent version of the Consultants' Contract 2008 as set out Appendix 2 of the Terms of Settlement.	
Settlement amount		€
Total retrospection up to 15 th June 2018		
40% of retrospection up to 15 th June 2018 to be paid by 1 st June 2019		
60% of retrospection up to 15 th June 2018 to be paid by 1 st March 2020		
Retrospection from 15 th June 2018 to 31 st December 2018 to be paid by 1 st March 2019		
Revised salary to be paid with effect from 1 st January 2019		

- e) Once verified, the relevant Contact person will confirm by email to settlement2008@hse.ie that the application has been verified and identify an amount of retrospection that may be offered by the HSE to that Consultant.

8. Issue of an offer by or on behalf of the HSE

Following verification and confirmation of eligibility the HSE or solicitors representing the HSE shall offer eligible Litigating Consultants or Non-Litigating Consultants the opportunity to benefit from the settlement agreement, as follows:

a) Litigating Consultants

If the Consultant is eligible, an offer will be made by or behalf of the HSE to the Consultant's solicitor on or before 26th October 2018.

b) Non- Litigating Consultants

If the Consultant is eligible, an offer will be made by the HSE to the Consultant on or before 26th October 2018.

As above, the offer will contain the following information regarding amounts payable under the Terms of

Settlement:

Settlement amount	€
Total retrospection up to 15 th June 2018	
40% of retrospection up to 15 th June 2018 to be paid by 1 st June 2019	
60% of retrospection up to 15 th June 2018 to be paid by 1 st March 2020	
Retrospection from 15 th June 2018 to 31 st December 2018 to be paid by 1 st March 2019	
Revised salary to be paid with effect from 1 st January 2019	

9. Acceptance or rejection of an offer

a) Litigating Consultants

Litigating Consultants who chose to accept the offer of the Terms of Settlement must do so by way of the execution of a Letter of Consent and Release in the terms set out at Appendix III.

They must send their Letter of Consent and Release by hard copy and registered post to:

Consultant Settlement,
National Doctors Training & Planning, Health Service Executive,
Sancton Wood Building,
Heuston South Quarter,
Saint John's Road West,
Dublin 8

by 7th December 2018.

b) Non-Litigating Consultants

Non-Litigating Consultants who chose to accept of the offer the Terms of Settlement must do so by way of the execution of a Letter of Consent and Release in the terms set out at Appendix IV.

They must send their Letter of Consent and Release by hard copy and registered post to:

Consultant Settlement,
National Doctors Training & Planning, Health Service Executive,
Sancton Wood Building,
Heuston South Quarter,
Saint John's Road West,
Dublin 8

by 23rd November 2018.

10. Payment and implementation of Settlement offers

Where a Consultant has a joint appointment with commitments to two or more sites but a single paymaster, it is envisaged that the paymaster will be funded to pay the entirety of any retrospection or remuneration arising from an offer.

Where a Consultant has a joint appointment with commitments to two or more sites and multiple paymasters, it is envisaged that a single paymaster will be funded to pay retrospection and each paymaster

will be funded to pay adjusted remuneration.

Funding for payment will be sought by the HSE as part of ongoing engagement with the Department of Health regarding the 2019 HSE Service Plan.

11. Appeal for an extension of the timescale to accept the offer

In exceptional cases a Consultant can apply to via email to: settlement2008@hse.ie to the National Director of Human Resources, HSE for an extension to the deadline of 7th December 2018 (Litigating Consultants) or 23rd November 2018 (Non-Litigating Consultants).

The National Director's consent shall not be unreasonably withheld. If the National Director refuses to grant such extension, the Consultant can apply to the High Court to extend the time allowed for acceptance of the offer.

12. Queries

All queries relating to this document and appendices, the Terms of Settlement, verification, issue of offers or otherwise should be sent by email to: settlement2008@hse.ie.

Disclaimer: This document is for guidance only and does not supersede the Terms of Settlement 2018.

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Appendix I: TERMS OF SETTLEMENT

TERMS OF SETTLEMENT

WHEREAS

- (a) In excess of 700 hospital Consultants have commenced proceedings against their employers and other parties alleging a failure to pay remuneration and/or pension in accordance with the terms of their contract of employment, the Consultants' Contract 2008.
- (b) A significant number of Consultants are members of the Irish Hospital Consultants Association or the Irish Medical Organisation ("**the Professional Organisations**").
- (c) The High Court directed that the 10 cases set out at Appendix One hereto should act as lead cases in respect of such litigation.
- (d) The parties in the lead cases have agreed upon Terms of Settlement.
- (e) The arrangements set out in the said Terms of Settlement are to be made available to the other litigating Consultants who fall within the Terms of Settlement, for acceptance or rejection by them.
- (f) In view of the commitments made by the Irish Medical Organisation in these Terms of Settlement, it is appropriate that it should be a party to these Terms of Settlement.
- (g) The arrangements set out in the said Terms of Settlement are to be made available to other non-litigating Consultants who fall within the Terms of Settlement, for acceptance or rejection by them.

The parties have agreed to settle and compromise the proceedings referred to in the recitals hereto on the following terms:

1. For the purposes of these Terms of Settlement the following definitions shall apply.

“corrected pension entitlements” means payment in full of all elements of an eligible Consultants’ pension entitlements calculated on the basis of and having regard to the provisions of version 1 of the Consultants’ Contract 2008, having regard to applicable deductions under law including the FEMPI legislation

“corrected remuneration” means payment in full of all elements of a Consultant’s remuneration as provided and specified in version 1 of the Consultants’ Contract 2008, having regard to applicable deductions under law including the FEMPI legislation

“date of settlement” means the 15th of June 2018.

“eligible Consultant” means a Consultant who is or was employed under the Consultants’ Contract 2008 and who first signed any version of such a contract in the Period or who first signed such a contract after the Period but had been successfully interviewed for the relevant post in the Period .

The term includes:

- (i) Consultants who continue to work in the Public health service, whether under the Consultants’ Contract 2008, or otherwise;
- (ii) Consultants who retired from the Public health service subsequent to signing the Consultants’ Contract 2008;
- (iii) Consultants who left (ceased service in) the Public health service subsequent to signing their Consultants’ Contract 2008 (whether or not they are now retired) save that such Consultants shall not be entitled to the terms of the Consultant Contract 2008 in respect of any new term of employment after the period. For the avoidance of doubt Consultants who take a career break have not ceased service by reason thereof.

- (iv) Consultants who signed any version of the Consultants' Contract 2008 after the Period but prior to the settlement date, and have not broken service, having previously held either a 1991 or a 1997 Common Contract (or held a permanent Consultant post in the public service of another EU Member State) immediately prior to signing the Consultants' Contract 2008.
- (v) Consultants who on 30th September 2012 were employed on a fixed term or specified purpose Consultants' Contract 2008 for a continuous period of at least 6 months immediately prior to that date and who subsequently without a break in service executed a permanent version of the Consultants' Contract 2008 as referenced at Appendix 2 prior to the date of settlement. All other Consultants who signed fixed or specified purpose contracts are excluded.

"Later Entrant" means an eligible Consultant who first signed the Consultants' Contract 2008 on or after 1st January 2011 and who was subject to the 10% reduction applicable to all new entrant public servants from that date.

"lead Consultant" means a Consultant who is an eligible Consultant and is a plaintiff in one of the lead cases.

"litigating Consultant" means an eligible Consultant who has commenced proceedings prior to the 14th June 2018 alleging a failure to pay the appropriate rate of remuneration or rate of pension in accordance with the terms of the Consultants' Contract 2008 and who is not a lead Consultant.

"non-litigating Consultant" means an eligible Consultant who has not commenced proceedings prior to the 14th June 2018 alleging a failure to pay the appropriate rate of remuneration or rate of pension in accordance with the terms of the Consultants' Contract 2008.

“pension entitlements” means all elements of pension payable under any applicable pension scheme including, but not limited to,

- (i) a pension lump sum
- (ii) retirement benefit
- (iii) spousal or dependants benefit
- (iv) death in service or death in retirement payments.

“period” means the period of time between the 25th July 2008 and the 30th September 2012 (inclusive) .

“Public Health Service” meaning those public service bodies falling within the ambit of the Financial Emergency Measures in the Public Interest Acts.

“remuneration” means any and all sums payable to Consultants pursuant to version 1 of the Consultants’ Contracts 2008 including, but not limited to,

- (i) Annual salary as set out and defined in paragraph 23 of the said contract.
- (ii) B and/or C Factor payments
- (iii) On-call, structured weekend or other arrangements to which separate payments attaches pursuant to any of the terms of the said contract
- (iv) Clinical Directors Allowance
- (v) Payments during periods of approved paid leave.
- (vi) Rest days for which payment was made to a Consultant during the period of retrospection (in lieu of the provision of rest days),

save that Later Entrants shall remain subject to the 10% reduction of salary and allowances applicable to all new entrant public servants from that date while they remain on a point on the scale to which the said reduction applies and ‘remuneration’ shall be construed accordingly.

“retrospective payment of remuneration” means 55% of the difference between the remuneration actually paid to a Consultant during the period of

retrospection and the remuneration which he or she would have been paid if the provisions of paragraph 23 of version 1 of the Consultants' Contracts 2008 had been properly and fully applied to him or her, including payment of all increases of whatever nature provided for therein. Retrospective payment shall have regard to applicable deductions under law including FEMPI legislation and the deductions applicable to Later Entrants. The calculation of the difference shall exclude the elements of remuneration set out at numbers (ii) and Structured Overtime at the rate of time and a half after 1st July 2013 which shall from that date be paid at time and a quarter in the definition of remuneration above.

“retrospective payment of pension entitlements” means 55% of the difference between the pension entitlements actually paid to a Consultant during the period of retrospection and the pension entitlements which he or she would have been paid during such period if such entitlements had been calculated having regard to the level of remuneration to which he or she was entitled pursuant to the provisions of paragraph 23 of version 1 of the Consultants' Contracts 2008, including any increases of whatever nature provided for therein. Retrospective payment shall have regard to applicable deductions under law including FEMPI legislation and the deductions applicable to Later Entrants. The calculation of the difference shall exclude the elements of remuneration set out at numbers (ii) and Structured Overtime at the rate of time and a half after 1st July 2013 which shall from that date be paid at time and a quarter in the definition of remuneration above.

“period of retrospection” means the period during which an eligible Consultant is entitled to receive retrospective payment of remuneration or retrospective payment of pension entitlements pursuant to paragraph 3 hereof.

“Version 1 of the Consultants' Contract 2008” means the Consultants' Contract 2008 containing the version of paragraph 23 contained in Appendix 2 hereto.

2. An eligible Consultant who has accepted the offer within the specified timeframe shall be entitled to full correction of remuneration or full correction of pension entitlements as the case may be effective from the Date of Settlement but payable from 1st January 2019.. Payment of corrected remuneration for the period from the Date of Settlement up to the date of commencement of payment of corrected remuneration shall be made no later than the 1st March 2019.
3. An eligible Consultant who has accepted the offer within the specified timeframe shall be entitled to retrospective payment of remuneration in respect of the period of employment and/or retrospective payment of associated pension entitlements as follows
 - (i) Lead Consultants and litigating Consultants: for a period commencing up to six years prior to the date of issue of proceedings and ending on the Date of Settlement
 - (ii) Non-litigating Consultants: for a period of up to six years prior to the Date of Settlement and ending on the Date of Settlement.
4. All sums due by way of retrospective payment of remuneration and/or retrospective payment of pension entitlements shall be paid to the eligible Consultant who has accepted the offer within the specified timeframe on or before the following dates and in the following amounts:
 - (i) 40% on or before 1st June 2019; and
 - (ii) 60% on or before 1st March 2020.

and such sums shall be paid net of all taxes or any other deductions required by law.

5. It is noted that for the purposes of the Public Service Pay and Pensions Act 2017 the “basic pay” of eligible Consultants immediately prior to the enactment of the Financial Emergency Measures in the Public Interest (No 2) Act 2009 was and is the full corrected remuneration applicable under the provisions of the 2008 Consultants Contract. Nothing in this Settlement shall remove or prejudice the right of eligible Consultants to receive restorations of pay pursuant to the provisions of the 2017 Act or the Financial Emergency Measures in the Public Interest Act 2015 or otherwise.
6. For the purposes of calculating the pension entitlements of eligible Consultants who retire from the public health service within three years of the Date of Settlement, their remuneration shall be treated as, and deemed to be, the corrected remuneration payable pursuant to the provisions of the Consultants’ Contract 2008, in accordance with applicable pension rules.
7. Each lead case shall be settled and compromised on the terms set out herein and an Order made therein in the terms of the draft Order set out at Appendix 3.
8. A litigating Consultant who has served or serves proceedings shall be offered the opportunity to compromise his or her proceedings on the basis of the terms set out in this Settlement providing such proceedings are served within 14 days of the date of settlement. Such offer shall be made in writing by a solicitor for any of the Defendants to the Solicitor for the Consultant on or before 26th October 2018. The Consultant shall have a period of six weeks to accept or reject the offer. In exceptional cases an application to extend such period can be made to the National Director of Human Resources, Health Service Executive whose consent shall not be unreasonably withheld. If the National Director refuses to grant such extension, the Consultant can apply to Court to extend the time for acceptance. Acceptance of the offer shall be by way of the execution of a Letter of Consent and Release in the terms set out at Appendix 4 hereof. Upon acceptance of the offer, an Order shall be made as soon as practicable thereafter striking out the

proceedings and providing that the reasonable costs of the proceedings up to the date of acceptance shall be paid by the Minister for Health and/or Minister for Finance and/or Minister for Public Expenditure and Reform, as appropriate having regard to the named ministerial defendants, to be taxed in default of agreement. A Consultant who fails or refuses to accept the offer shall be free to proceed with his or her litigation. In circumstances where the Consultant and his or her employer cannot agree the amount due to the Consultant under the Terms of Settlement, he or she shall be bound by and entitled to rely upon the Terms of Settlement including in any process or proceedings. Nothing in this paragraph shall remove the entitlement of a Consultant to maintain a claim which is permitted by the provisions of paragraph 14.

9. The Defendants will contact such existing Consultant employees as they believe are non-litigating Consultants to circulate the terms of settlement within eight weeks of the date of settlement. A non-litigating Consultant shall apply in a prescribed form to be offered the opportunity to receive the benefits of these terms of settlement. Such applications will be made by the 14th of September 2018. Offers shall be made in writing by on or on behalf of the Health Service Executive on or before 26th October 2018. The Consultants shall have a period of four weeks to accept the terms of the said offer. In exceptional cases an application to extend such period can be made to the National Director of Human Resources, Health Service Executive whose consent shall not be unreasonably withheld. Acceptance of the offer shall be by way of the execution of a Letter of Consent and Release in the terms set out at Appendix 5. In circumstances where the Consultant and his or her employer cannot agree the amount due to the Consultant under the Terms of Settlement, he or she shall be bound by and entitled to rely upon the Terms of Settlement including in any process or proceedings.
10. In the case of an eligible Consultant who has died prior to the date of the execution of these Terms of Settlement, but would have been entitled to payments

in accordance with the provisions thereof, such payments subject to application by his/her Executors/Personal Representatives/surviving spouse, dependent or next of kin in accordance with the terms set out above shall accrue to the benefit of his or her Estate and any necessary Letter of Consent and Release may be executed by his/her Executors/Personal Representatives.

11. The relevant signatory Ministers sanction these Terms and the implementation of these Terms of Settlement. The making of payments due thereunder is not subject to any further Ministerial approval and/or sanction.
12. For the avoidance of doubt, the making of payments to which Consultants are entitled under these Terms of Settlement is not subject to any condition or requirement other than the provision of an appropriate Letter of Consent and Release as may be required in accordance with the terms of paragraphs 8, 9 and 10 hereof.
13. Having regard to, and in consideration of, the provisions of these Terms of Settlement, the professional organisations shall furnish a letter of confirmation to the Minister for Health in the terms set out in Appendix 6 hereto.
14. The parties acknowledge and agree that acceptance of these Terms of Settlement by an eligible Consultant shall not remove or prejudice the right of such a Consultant to maintain a claim in respect of a matter other than an alleged failure to pay or provide full remuneration or full pension entitlements in accordance with provisions of the Consultants' Contract 2008 as claimed in the "lead cases", for example a claim in relation to rest days, holiday entitlements, sick pay, structured weekend pay and claims in respect of Clinical Directors' allowance.
15. Without prejudice to the generality of paragraph 14, the within terms of settlement are in full and final settlement of all or any claims that the lead Consultants or any litigating or non-litigating Consultant who accepts an offer to

receive the benefits of the terms thereof, may have in respect of an alleged failure to pay or provide full remuneration or full pension entitlements in accordance with provisions of the Consultants' Contract 2008 including but not limited to any claim pursuant to the Payment of Wages Act 1991 as amended.

16. The parties hereto acknowledge the following:

The IMO, the IHCA, Consultants, the Department of Health, the HSE and health employers are committed to the provision of a public health service of the highest quality and recognize that Consultants' Contract 2008 is fundamental to such provision.

All eligible Consultants who settle their claims under this agreement affirm the terms of the Consultants' Contract 2008. The parties accept the importance of compliance by all parties with the terms of the Consultants' Contract 2008 with a view to ensuring the more timely delivery of effective care to patients. These include, in particular, terms relating to the scope and extent of private practice on site and off-site, the ratio of public to private practice, working hours, different work patterns, work scheduling, and arrangements for monitoring and audit of same.

The parties recognise the need for mutual trust, confidence and respect in giving effect to the terms of the Consultants' Contract 2008.

The parties reaffirm the mutual obligations set out at Section 4 b) and the regulation of private practice provisions set out at Section 20 of the Consultants' Contract 2008 and affirm that they shall co-operate in giving effect to such arrangements as are put into place to verify the delivery of the Consultant's contractual commitments.

APPENDIX 1

APPENDIX 2

**Paragraph 23 of 2008 Consultants Contract as per Consultant Contract 2008 at 25^a
July 2008:**

23) Salary and other payments

- a) The Consultant's annual salary shall be as follows (in June 2007 terms) and shall be implemented on a phased basis as set out at d) below:
 - i) for Type A Contracts a salary scale in four points as follows will apply: €222,000, €228,000, €234,000, €240,000;
 - ii) for Type B Contracts a salary scale in four points as follows will apply: €205,000, €210,000, €215,000, €220,000;
 - iii) for Type B* Contracts a salary rate of €190,000 will apply.
 - iv) for Type C Contracts a salary scale in four points as follows will apply: €160,000, €165,000, €170,000, €175,000.
- b) The annual salary for Consultant Academics shall be as follows:
 - i) For a Professor (Type A Contract) a salary scale in four points as follows will apply: €272,860, €280,240, €287,620, €295,000.
 - ii) For a Professor (Type B Contract) a salary scale in four points as follows will apply: €265,650, €272,100, €278,550, €285,000
 - iii) For a Professor (Type B* Contract) a salary of €255,000 will apply.
 - iv) For a Professor (Type C Contract) a salary scale in four points as follows will apply: €219,450, €226,300, €233,150, €240,000

- c) All serving Consultants who take up the offer of the Consultant Contract 2008 by 31st August 2008 will be assimilated to the maximum point of the applicable new salary scale.
- d) The salary scales at a) and b) above will be phased on the following basis:
 - i) a 5% increase on the Consultant's existing (June 2007) rate from the 14th of September 2007;
 - ii) half the balance¹⁶ from 1st June 2008;
 - iii) the remaining balance from 1st June 2009.

These rates will attract a 2.5% Towards 2016 general round increase from the 1st of March 2008 and a further 2.5% Towards 2016 general round increase from 1st September 2008.

- e) An allowance of €50,000 per annum will be paid to those Consultants appointed as Clinical Directors.
- f) Saturday, Sunday and Public Holidays:

Structured on-site attendance at weekends and on public holidays will be subject to the following premium payments:

- i) Time + ½ on Saturdays
- ii) Double time on Sundays and Public Holidays

- g) Continuing Medical Education

The CME allowance will be increased to €3,000 with effect from the 1st June 2008. Payment will continue to be on a vouched basis, to be adjusted in line with the Consumer Price Index (C.P.I.). This allowance may be carried over annually for a maximum of five years.

- h) Telecommunications

The Consultant shall be reimbursed either the cost of home or mobile phone rental.

- i) B Factor (On-Call) Payments

An increase in the flat annual payment to €6,000 will take effect from the 1st June 2008. The payments for more onerous rosters will increase by 5% from the same date.

- j) C Factor (Call-Out) Payments

The Consultant will be eligible for payment on a per call-out basis for the provision of on-site services when:

- i) rostered for on-call duty and is contacted by another medical practitioner in the hospital, by a senior nurse or other member of staff specifically

¹⁶ The term 'half the balance' refers to the difference between the 14th September 2007 rate and the fully implemented salary scale.

designated for that purpose and attends on-site to provide emergency services;

- ii) rostered for on-call duty and who, in the exercise of his/her professional judgment, attends on-site and performs clinical work of an urgent nature or carries out urgent diagnostic or therapeutic procedures;
- iii) requested by another Consultant to provide on-site services in public hospital / agency to which the Consultant does not have a scheduled commitment and where such services cannot be provided within the Consultant's scheduled commitment as adjusted by the Clinical Director / Employer. This payment shall be on the basis of the equivalent payment per call-out.

Revised structures and rates for C Factor payments from the 1st June 2008 are as follows:

	<i>First 30 Call-Outs</i>	<i>31-120 Call-Outs</i>	<i>121 Call-Outs or More</i>
Per Call-Out (Hourly rate or part thereof):	€100	€150	€200
If Call-Out Occurs After Midnight (hourly rate or part thereof):	€125	€187.50	€250
	Annual limit €30,000		

With the exception of the payments referred to at sub-paragraphs g) and h) above the foregoing rates will be increased in line with general round increases under National Pay Agreements.

APPENDIX 3

Draft Order in Lead cases

"The Court having received the Terms of Settlement made between the parties herein dated the __th day of June 2018 which is set out in the Schedule to this Order the Court dismisses the claims and counterclaims save for the granting of orders in the following terms

A Declaration that the Plaintiff shall be entitled to be paid corrected remuneration as provided for in the Terms of Settlement set out in the Schedule to this Order

A Declaration that the Plaintiff shall be entitled to retrospective payment of remuneration as provided for in the Terms of Settlement set out in the Schedule to this Order.

The Plaintiff shall be entitled to an Order for Costs as against the Defendants, such costs to include all reserved costs, costs of motions issued and/or court hearings not covered by specific costs orders, including costs of discovery (including making discovery), costs of counterclaims, outlay (including refresher fees of counsel, the trial having commenced on 5th June 2018) for the period of negotiation of this settlement from June 6th to 15th June 2018), to be taxed in default of agreement.

The proceedings shall be struck out with liberty to the parties to apply in relation to any issues arising in relation to the implementation of this Order and the Terms of Settlement."

APPENDIX 4

DRAFT Letter of Consent and Release to be signed by litigating Consultants

"To The HSE

Re: Litigation concerning the level of remuneration and pension benefits payable to Consultants pursuant to the 2008 Consultants Contract.

Dear Sir,

I refer to your Letter of Offer of the ____ day of _____ 20 in regard to the above. I confirm that I am willing to settle and compromise my proceedings on the basis of the Terms of Settlement arrived at in the lead cases in relation to Consultants' entitlements under the Consultants' Contract 2008.

I note and accept that I am bound by clause 16 of the Terms of Settlement to the extent that that clause applies to individual Consultants.

Finally, I confirm that I have taken such legal advice as I consider appropriate prior to signing this Letter of Consent and Release.

Yours faithfully

Consultant: _____

Witness: _____

Solicitor: _____"

APPENDIX 5

DRAFT Letter of Consent and Release to be signed by non-litigating Consultants

"To The HSE

Re: Litigation concerning the level of remuneration and pension benefits payable to Consultants pursuant to the 2008 Consultants Contract.

Dear Sir,

I refer to your Letter of Offer of the ____ day of _____ 20 in regard to the above.

I confirm that I am willing to accept the offer to apply the provisions of the Terms of Settlement to me. Further I confirm that I am agreeable to be bound by the provisions of the said Terms of Settlement insofar as same relate to my appropriate remuneration and my appropriate pension entitlements based upon the Consultants' Contract 2008.

I note and accept that I am bound by clause 16 of the Terms of Settlement to the extent that that clause applies to individual Consultants.

Finally, I confirm that I have taken such legal advice as I consider appropriate prior to signing this Letter of Consent and Release.

Yours faithfully

Consultant: _____"

APPENDIX 6

Draft Letter of Confirmation to the Minister for Health

“Re: Litigation in relation to remuneration and pension entitlements of Hospital Consultants under the 2008 Consultants Contract

Dear Sir,

I refer to the above matter and to the Terms of Settlement which were arrived at in the lead cases in relation to Consultants’ remuneration and pension entitlements under the 2008 Consultants Contract. I confirm, that in consideration of and having regard to, the said Terms of Settlement, the Irish Medical Organisation will

- (a) recommend, and use its best endeavours to ensure, that its members settle and compromise any outstanding proceedings seeking arrears of remuneration and /or pension entitlements on the basis of the said Terms of Settlement.
- (b) recommend, and use its best endeavours, to ensure, that its members who have not commenced proceedings, accept an offer to apply the said Terms of Settlement to them.
- (c) not take any measures to support any outstanding litigation or any new litigation, seeking arrears of remuneration or pension entitlements pursuant to the 2008 Consultants Contract, to the extent that same are included by way of claim in the “lead cases”, save as may be necessary and required to ensure implementation of the terms of the said Settlement.

Finally, the Irish Medical Organisation confirms that it is committed to the provision of a public health service of the highest quality and recognizes that it is bound by clause 16 of

the Terms of Settlement to the extent that that clause applies to Irish Medical Organisation

Yours faithfully,

For and on behalf of the Irish Medical Organisation

Appendix II – Employment arrangements for Consultants in the public health service

Introduction

Consultant Contract 2008 encompasses all Consultant doctors engaged by the public health service since August 2008 and those Consultants who transferred to same in 2008-2009. Approximately 365 Consultants remain on earlier contractual arrangements – Consultant Contract 1997, Academic Consultant Contract 1998 and Consultant Contract 1991.

Within the public health service, Consultants are employed by either:

1. a HSE hospital or agency,
2. a hospital or agency funded by the HSE under Section 38 of the Health Act 2004;
3. an agency funded by the Department of Health.

Additionally, Academic Consultants holding Consultant Contract 2008 engaged by one or more of the following:

- University College Dublin,
- University College Cork,
- University College Galway
- University of Dublin (Trinity College Dublin)
- University of Limerick
- Royal College of Surgeons in Ireland

and holding a Consultant post approved by the HSE or Comhairle na nOspidéal with defined, structured commitments to one of the hospitals or agencies listed below are regarded as working in the public health service.

Details of hospitals and agencies forming part of the public health service are set out below.

1. HSE Hospitals and Agencies

The Health Service Executive directly employs Consultants via either:

a) hospitals operated by the HSE

or

b) HSE Community Healthcare Organisations – such organisations are the governing entity for public Mental Health, Public Health, Primary Care and Palliative Care services in a particular area

a) Hospitals operated by the HSE:

- St Columcille's Hospital, Loughlinstown, Co. Dublin
- Wexford General Hospital, Wexford
- Our Lady's Hospital Navan, Navan, Co. Meath

- Naas General Hospital, Co. Kildare
- Midland Regional Hospital Portlaoise, Co. Laois
- Midland Regional Hospital Tullamore, Co. Offaly
- St Luke's Hospital, Kilkenny

- Connolly Hospital, Blanchardstown, Dublin 15
- Our Lady of Lourdes Hospital, Drogheda, Co. Louth
- Louth County Hospital, Dundalk, Co. Louth
- Cavan General Hospital, Co. Cavan
- Monaghan General Hospital, Co. Monaghan

- Limerick Regional Hospital, Dooradoyle, Limerick
- Regional Maternity Hospital, Limerick
- Croom Orthopaedic Hospital, Croom, Co. Limerick
- Ennis General Hospital, Co. Clare
- St Joseph's Hospital, Nenagh, Co. Tipperary
- Cork University Hospital, Cork
- Mallow General Hospital, Mallow, Co. Cork
- Bantry General Hospital, Co. Cork
- Kerry General Hospital, Tralee, Co. Kerry
- University Hospital Waterford, Waterford
- South Tipperary General Hospital, Clonmel, Co. Tipperary
- South Tipperary General Hospital, Cashel, Co. Tipperary
- University Hospital Galway, Galway
- Merlin Park Hospital, Galway
- Roscommon County Hospital, Roscommon
- Mayo General Hospital, Castlebar, Co. Mayo
- Sligo General Hospital, Sligo
- Letterkenny General Hospital, Letterkenny, Co. Donegal

b) HSE Community Healthcare Organisations

The HSE directly employs Consultants working in the public Mental Health, Public Health, Primary Care and Palliative Care services in nine Community Health Organisations, each covering a specific geographical area made up of counties or parts of counties, as follows:

- Community Healthcare Organisation 1 – Donegal, Sligo, Leitrim, Cavan Monaghan
- Community Healthcare Organisation 2 – Galway, Roscommon, Mayo
- Community Healthcare Organisation 3 – Clare, Limerick, North Tipperary
- Community Healthcare Organisation 4 – Kerry, Cork,
- Community Healthcare Organisation 5 – South Tipperary, Carlow, Kilkenny, Waterford, Wexford
- Community Healthcare Organisation 6 - East Wicklow, Dun Laoghaire, Dublin South East
- Community Healthcare Organisation 7 – Kildare, West Wicklow, Dublin West, Dublin South City, Dublin South West
- Community Healthcare Organisation 8 – Laois, Offaly, Longford, Westmeath, Louth, Meath
- Community Healthcare Organisation 9 – Dublin North, Dublin North Central, Dublin North West

2. Agencies funded by the Health Service Executive under Section 38 of the Health Act 2004

Hospitals / Agencies funded under Section 38 of the Health Act 2004 can be split into two groups:

- a) those established under statute;
- and
- b) those established by voluntary groups or organisations.

a) Hospitals / Agencies established under statute

The following hospitals / agencies established under statute and funded under Section 38 of the Health Act 2004 employ Consultants:

- Beaumont Hospital, P.O. Box 1297, Beaumont Road, Dublin 9.
- St. James's Hospital, 1 St. James's Street, Dublin 3.
- National Rehabilitation Hospital, Rochestown Avenue, Dun Laoghaire, Co. Dublin.
- National Maternity Hospital, Holles Street, Dublin 2.

- Rotunda Hospital, Parnell Square, Dublin 1.
- Leopardstown Park Hospital, Foxrock, Dublin 18.
- Adelaide & Meath Hospital incorporating the National Children's Hospital, Tallaght, Dublin 24.
- Cork University Dental School & Hospital - UCC Orthodontic Training School, University College Cork, College Road, Cork, Co. Cork.
- Dublin Dental School & Hospital, Lincoln Place, Dublin 2.

b) Voluntary hospitals / agencies

The following voluntary hospitals / agencies funded under Section 38 of the Health Act 2004 employ Consultants:

- Brothers of Charity (Clare), Banner House, Clare Road, Ennis, Co. Clare.
- Brothers of Charity (Galway), Woodlands Centre, Renmore, Galway, Co. Galway.
- Brothers of Charity (Limerick), Bawnmore, Limerick, Co. Limerick.
- Brothers of Charity (Roscommon), Lanesboro Street, Roscommon Town, Co. Roscommon.
- Brothers of Charity (South East Region), Belmont Park, Waterford, Co. Waterford.
- Brothers of Charity (Southern Region), Lota, Glanmire, Cork, Co. Cork.
- Cappagh National Orthopaedic Hospital, Finglas, Dublin 11.
- Cheeverstown House, Kilvare, Templeogue, Dublin 6W.
- Coombe Women's Hospital, 8 Dolphin's Barn, Dublin 8.
- Daughters of Charity Services for Persons with Intellectual Disability, St. Vincent's Centre, Lisnagry, Limerick, Co. Limerick
- Mater Misericordiae Hospital, Eccles Street, Dublin 7.
- Mercy University Hospital, Grenville Place, Cork, Co. Cork.
- Our Lady's Children's Hospital, Crumlin, Dublin 12.
- Our Lady's Hospice Ltd., Harold's Cross, Dublin 6W.
- Peamount Hospital, Newcastle, Co. Dublin.
- Royal Hospital Donnybrook, Morehampton Road, Donnybrook, Dublin 4.
- Royal Victoria Eye & Ear Hospital, Adelaide Road, Dublin 2.
- South Infirmary Victoria University Hospital, Old Blackrock Road, Cork, Co. Cork.
- St. John of God Hospitaller Services, 'Granada', Stillorgan, Co. Dublin
- St. John's Hospital, St. John's Square, Limerick, Co. Limerick.
- St. Michael's House, Dublin North Regional Headquarters, Ballymun, Road, Dublin 9.
- St. Vincent's Healthcare Group, Elm Park, Dublin 4 (including St. Michael's Hospital, Dun Laoghaire).
- St. Vincent's Hospital, Convent Avenue, Richmond Road, Fairview, Dublin 3.
- Stewarts Hospital, Palmerstown, Dublin 20.
- Temple Street Children's University Hospital, Temple Street, Dublin 1.

3. Agencies funded by the Department of Health

Three agencies funded by the Department of Health as part of the public health service employ Consultants:

- The Health Research Board
- The Irish Blood Transfusion Service
- The Mental Health Commission

Appendix III – Letter of Consent and Release for Litigating Consultants

DRAFT Letter of Consent and Release to be signed by litigating Consultants

“To The HSE

Re: Litigation concerning the level of remuneration and pension benefits payable to Consultants pursuant to the 2008 Consultants Contract.

Dear Sir,

I refer to your Letter of Offer of the ____ day of _____ 20 in regard to the above. I confirm that I am willing to settle and compromise my proceedings on the basis of the Terms of Settlement arrived at in the lead cases in relation to Consultants’ entitlements under the Consultants’ Contract 2008.

I note and accept that I am bound by clause 16 of the Terms of Settlement to the extent that that clause applies to individual Consultants.

Finally, I confirm that I have taken such legal advice as I consider appropriate prior to signing this Letter of Consent and Release.

Yours faithfully

Consultant: _____

Witness: _____

Solicitor: _____”

Appendix IV – Letter of Consent and Release for Non-Litigating Consultants

DRAFT Letter of Consent and Release to be signed by non-litigating Consultants

“To The HSE

Re: Litigation concerning the level of remuneration and pension benefits payable to Consultants pursuant to the 2008 Consultants Contract.

Dear Sir,

I refer to your Letter of Offer of the ____ day of _____ 20__ in regard to the above.

I confirm that I am willing to accept the offer to apply the provisions of the Terms of Settlement to me. Further I confirm that I am agreeable to be bound by the provisions of the said Terms of Settlement insofar as same relate to my appropriate remuneration and my appropriate pension entitlements based upon the Consultants’ Contract 2008.

I note and accept that I am bound by clause 16 of the Terms of Settlement to the extent that that clause applies to individual Consultants.

Finally, I confirm that I have taken such legal advice as I consider appropriate prior to signing this Letter of Consent and Release.

Yours faithfully

Consultant: _____”