THE HIGH COURT

[2018 No. 139SP]

IN THE MATTER OF SECTION 71 OF THE MEDICAL PRACTITIONERS ACT 2007
AND
IN THE MATTER OF A REGISTERED MEDICAL PRACTITIONER AND ON THE APPLICATION OF THE MEDICAL COUNCIL

BETWEEN

MEDICAL COUNCIL OF IRELAND

APPLICANT

AND
ARJAN BHATIA

RESPONDENT

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 8th day of May, 2018

Introduction
1. On 9th April, 2018 I struck the respondent (Dr. Bhatia) off the Medical Register. He may no longer practise medicine in this State.

2. I made that order on foot of a recommendation of the applicant (the Council) which was made after the Council's Fitness to Practise Committee (FTPC) found Dr. Bhatia guilty of multiple allegations of wrongdoing which cumulatively amounted to poor professional performance. Complaints were made against him in respect of his treatment of 43 named patients but many of the complaints contained a number of sub allegations. He was found not guilty in respect of a small number of these but in total in excess of 80 allegations were found proved against him beyond reasonable doubt.

3. All of those allegations arose during the three months that he worked at Cavan General Hospital. He was employed there as a Locum Consultant Radiologist between 3rd June, 2014 and 12th September, 2014.

4. In the course of the report presented to the FTPC by an independent expert (a consultant radiologist from the United Kingdom) he said:

> *"In the 43 cases there was very significant missed pathology including, trauma, active bleeding, fractures, liver abscess, pulmonary emboli, multiple cancerous masses, stroke, bone metastases, vascular occlusion, tumour recurrence, post-operative collections and a clear lack of comprehension of Doppler ultrasound principles".*

5. In a written report from that independent expert witness dated 1st August, 2016 which was put in evidence before me he said:-

> *"Of the 43 cases (in which I considered there to be a significant discrepancy) 31 of these are in CT scanning, 4 in plain radiography, 1 in MRI and 7 in ultrasound, 2 of which are in Doppler ultrasound.*
>
> *Given that Dr. Bhatia probably reported a lot of work the finding of 4 plain radiographic and 1 MRI with significant discrepancies is perhaps not unreasonable. However, I do have concern over the 31 cases of discrepancy with respect to CT scanning. These cases include failure to recognise cancer recurrence, missing a large chest mass, failure to see a liver abscess, non recognition of an acute stroke, several cases of significant haematoma and active bleeding within the abdomen and pelvis, missed pulmonary emboli, understating of cancer scans and missed fractures.*
>
> *It is clear that Dr. Bhatia does not understand the principles of Doppler ultrasound. His reports in this regard are of no help at all to any referring clinicians. It would be fair to say that many radiologists do not understand Doppler ultrasound, however, he should not have reported these examinations in that case."*

6. In the light of the number of findings made against Dr. Bhatia and the seriousness of the errors as outlined by the expert, it is surprising that the FTPC did not recommend that his name be erased from the Medical Register. Rather it recommended a censure and the attachment of conditions to the retention of his name on the Register.

7. The report of the FTPC was, in accordance with the statutory provisions, sent forward for consideration by the Council. At a hearing on 15th December, 2017 the Council decided that Dr. Bhatia's registration should be cancelled. Such a decision has no effect unless it is confirmed by this court. Dr. Bhatia did not appeal that decision of the Council and accordingly on 14th March, 2018 it commenced proceedings in this court for confirmation of its decision pursuant to s.76 of the Medical Practitioners Act 2007 (the Act). That was the order which I made on 9th April, 2018.

8. On that occasion I expressed grave concern about a number of matters which had emerged from the evidence placed before me.

9. First, there was the very large number of failings on the part of Dr. Bhatia during a period of just three months.

10. Second, although appointed as a locum consultant radiologist, Dr. Bhatia was not registered in the Specialist Division of the Medical Register maintained by the Council. Not merely that but he was not qualified to be registered in that Division. He had not passed his Fellowship examinations which would qualify him so to do.

11. Third, Dr. Bhatia had been employed in Ireland for some years in a number of hospitals as a locum consultant radiologist.

12. Fourth, the evidence of the Clinical Director of the hospital was that it did not have any involvement in the recruitment process which led to Dr. Bhatia's appointment. Indeed, the originating letter from Cavan Hospital to the Council of 8th December, 2014 made it clear that it was only during the period of Dr. Bhatia's employment there that the hospital authorities (the clinical director and general manager) found out that he was not registered in the Specialist Division for radiologists and that he was not considered eligible for such registration by the College of Radiology.

13. As this was not the only instance of the appointment of a doctor to a consultant post who was not registered in the Specialist Division of the Medical Register I asked for the assistance of the Council so that I might be fully apprised of how this situation had

come about. I also sought the Council's views on the topic and details of any action which it had taken to address the issue. I made that request in the context of the Act which makes clear from its long title that its purpose is the "*better protecting and informing of the public in its dealings with medical practitioners*" and where under s.6 of the Act the object of the Council is expressly stated to be to protect the public by promoting and better ensuring high standards of professional conduct and professional education, training and competence amongst registered medical practitioners.

14. I am very grateful to the Chief Executive of the Council for the timely way in which he put before me in sworn testimony a comprehensive picture concerning these issues.

15. I regret to say that a consideration of this material reveals a disquieting situation where the Health Service Executive (HSE), in breach of its own rules, has been consistently appointing consultants who are not registered on the Specialist Division of the Medical Register in a wide variety of medical specialties and in many hospitals throughout the country. This has jeopardised and continues to jeopardise patients' safety and the present case is a very good example of that.

16. I turn to a consideration of the testimony of the Chief Executive of the Council.

The Council
17. The Council was established by the Act. Part 6 of the Act confers powers on it to establish a Register of Medical Practitioners. The Register includes a General Division and a Specialist Division. The Specialist Division comprises practitioners who were on the Register of Medical Specialists under the Medical Practitioners Act 1978 and also practitioners who have since applied for registration and who possess the necessary specialist qualifications and specialist experience.

18. The evidence is that the Council works closely with the post graduate training bodies so as to ensure that all applicants for registration on the Specialist Division receive appropriate scrutiny in respect of their specialist qualifications, training and experience.

19. Consultants must be registered in the Specialist Division of the Register. The requirement that consultants be so registered is a requirement of the HSE and not of the Council. It is a requirement that the Council unequivocally endorses. The Council is of the view that the Act does not confer on it any powers to prohibit practitioners not on the Specialist Division from assuming consultant posts. The sensible and appropriate requirement that a consultant be registered in the Specialist Division is one which was created by the HSE. It has supposedly policed that requirement since it introduced it 10 years ago.

Comhairle na nOispidéal
20. The Health Act of 1970 provided for the establishment of Comhairle na nOispidéal. Its functions included the regulation of the number and type of appointments of consultants and the specification of qualifications for consultant appointments. Those functions were transferred to the HSE in 2005. In March 2008 the HSE amended the qualifications specified for consultant posts so that thenceforth registration on the Specialist Division of the Medical Register was required. The Consultant Contract of 2008 reflects this requirement.

21. The evidence demonstrates that this requirement of the HSE has been breached by it on numerous occasions thus giving rise to the current thoroughly unsatisfactory situation.

Pre 2008 Consultants
22. The evidence is that there is still a significant number of practitioners holding permanent or temporary consultant posts who commenced work prior to 2008 and who are not on the Specialist Division of the Register. The Council has been engaging with the HSE and has expressed its concern in this regard as recently as March of this year. These practitioners are not taking the necessary steps to apply to be registered on the Specialist Division of the Register. A copy of the Council's correspondence of 8th March, 2018 was placed before me. To date it has not been responded to by the person in the HSE to whom it was addressed though a letter of 20th April, 2018 to which I will refer later seeks to address some of the concerns.

Post 2008 appointees
23. The requirement that medical consultants be registered in the Specialist Division applies not only to permanent appointees. HSE HR circular 014/2009 provides that:-

> *"New appointments to temporary or locum consultant posts require that the appointee be registered on the Specialist Division of the Register of Medical Practitioners maintained by the Medical Council".*

24. That circular attached a document entitled "*Procedure for the Recruitment and Selection of Locum and Temporary Consultants*" which under the heading "eligibility" provided that:-

> *"Candidates must therefore present evidence from the IMC (the Council) that they are eligible for inclusion on the relevant medical specialist register if they are not so already registered. This must be confirmed with the hiring service/recruitment service with the IMC prior to appointment". (My emphasis)*

25. The first of two paragraphs numbered 6.5 in that document provides:

> *"The successful candidate must furnish the HSE with their Irish Medical Council (IMC) registration certificate and proof of registration in the relevant register of medical specialists where relevant.*
>
> *The hiring service will also verify registration with the IMC by checking (for example, by downloading from the IMC website) the candidate's information. The attachment of any restrictions attached to the candidate's registration will be assessed by HR/recruitment unit in conjunction with the interview board and details of the assessment of restrictions should be retained on the candidate's file."*

26. There was also exhibited before me HSE circular 009/2012 which provided for an exception to the requirement that consultant appointees be registered in the Specialist Division but this was confined to practitioners in their final year of higher specialist training for a maximum of three months in certain defined circumstances.

The present case
27. It is clear that the rule that a temporary or locum consultant be registered in the specialist Division of the Register was not adhered to when Dr. Bhatia was recruited to Cavan General Hospital in 2014. It is also clear that the exception created by the 2012 circular was of no application.

28. The Clinical Director of Cavan General Hospital in his evidence to the FTPC made clear that the hospital did not have any involvement in the recruitment process but rather an agency called "Global Medics" was. Dr. Bhatia was not on nor even capable of being registered on the Specialist Division of the Register but that only became known in Cavan Hospital after he had taken up employment there.

29. The general manager of the hospital also gave evidence to the FTPC that the hospital was unable to obtain a consultant radiologist registered on the Specialist Division of the Register. Her evidence accords with other cases that have come before the FTPC where no applicants for consultant posts are registered in the Specialist Division. This is particularly so in respect of regional hospitals.

30. The HSE's own regulations were not complied with when Dr. Bhatia was recruited in 2014 but, worryingly, are unlikely to have been complied with in the other locum posts that he held in HSE hospitals before that time such as in Kerry General Hospital in 2011/2012.

Numbers
31. In August 2016 the Council published a document entitled "*The Medical Workforce Intelligence Report*" a copy of which was exhibited before me. Table 23 of that report identified that 8.1% of hospital consultants were registered in the General rather than the Specialist Division of the Register. That would equate to approximately 580 practitioners. That sum is substantially in excess of figures produced by the HSE. The Council accepts that its figure is inflated by including, for example, practitioners who are practising in private hospitals or overseas.

32. In July 2017 a parliamentary question on the topic was asked and was responded to by the HSE. It indicated that 65 consultants appointed since 2008 were not registered in the Specialist Division. There were also 58 "pre 2008" consultants who had not yet gained entry to that Division.

33. The answer to the parliamentary question also confirmed that the HSE had published a report in February 2017 entitled "*Successful Consultant Recruitment, Appointment and Retention",* which report*, inter alia,* recorded that "*significant risk issues arise from poor compliance by health service employers with national requirements regarding the creation and approval of non-permanent consultant posts*". The report cited as an "action for implementation" that the HSE was required to act "*as a matter of urgency to enforce existing regulatory requirements and that sanctions are implemented for non-compliance with qualifications, to include funding*".

34. It is to be noted that this publication came 9 years after the HSE quite properly required that consultants be registered on the Specialist Division of the Register.

35. Another HSE HR circular (021/2017) dated 17th July, 2017 was published in respect of qualifications required for consultant posts. It provided:-

> *"You will be aware of certain issues which have arisen in the past in relation to both the recruitment and the practice of a small number of individuals. In some instances these have been the subject of comment and reports undertaken by HIQA and others. The HSE is determined that any risks arising from the process of recruitment of medical consultants, be it to permanent, temporary or locum posts are mitigated and eliminated to the maximum extent."*

36. It goes without saying that the most effective way of mitigating the danger to the public that is created by appointing non specialists as consultants is not to appoint them in the first place.

37. That circular (021/2017) provided that immediate steps were required to be taken by the hospitals to identify if there were practitioners operating in consultant posts who were not adequately qualified. Risk mitigation plans were said to be in place for each such consultant and an early contract end date for those consultants was to be identified. In respect of consultants engaged prior to March 2008 who did not hold Specialist Division Registration, hospitals were to liaise with "National Doctors Training and Planning" to support those consultants in achieving same.

38. As will become clear the position has got worse rather than better since this circular was published.

HIQA involvement
39. On 30th August, 2017 the Council received a letter from the Health Information and Quality Authority (HIQA) on the topic "*Medical Doctors, Employed as Consultants by the HSE, despite not being registered on the appropriate Medical Council's Specialist Register*". The letter read:

> *"Information has been brought to the attention of HIQA which suggests that the HSE has itself identified that there are currently 65 medical doctors appointed since March 2008, who are employed by the HSE as consultants, despite the fact that they are not registered on the appropriate Medical Council's Specialist Register. This is not in compliance with the national standards for safer, better healthcare. Moreover we understand that it is also in breach of relevant legislation.*
>
> *In light of this information, I am writing to inform you that HIQA have contacted the HSE to seek assurance that measures will be enacted to ensure compliance with national standards, in line with our legal remit in the healthcare setting.*
>
> *In the interest of ensuring that HIQA has a correct and full understanding of this situation, I am writing to you to seek clarity as to the role, function and regulatory remit of the Medical Council with respect to this specialist register, as it is of relevance to the matter outlined above. Therefore I would be grateful if you could provide through return correspondence, an outline of the Medical Council's remit in this regard."*

40. The Council responded to this request by email of the following morning. It read, insofar as it is relevant:-

> *"The matter of doctors not on the specialty register hired as consultants by the HSE is also a matter of concern to the Medical Council. However, we are limited in what we can do by the provisions of the Medical Practitioners Act 2007.*
>
> *The Act does not define "consultant". A consultant is simply an HR designation of the employer. Accordingly, the only legal requirement for an employee in hiring a doctor as a consultant (or any other grade) is that the doctor be on the register of the Medical Council.*

The specialty register affords the registrant the ability to hold themselves out as a specialist in that area of practice. So, for example, a doctor who is on the 'Surgery' register may hold themselves out as a specialist of surgery. However, there is nothing in the Act preventing the HSE from employing as a consultant in surgery a doctor who is not on the 'Surgery's' specialist register. So in the case of the just mentioned doctor who is a consultant in surgery and not on the corresponding specialty register, this is legally permissible provided such doctor does not purport to be a specialist.

Of course, this is not a good situation. Effectively, there is a lacuna in the Act.

The HSE's own internal guidelines state that it will only hire consultants who are on the specialty register except in certain limited and time-bound circumstances. Accordingly, in many of these cases, the HSE is acting contrary to its own guidelines."

41. This *lacuna* in the Act is clearly being used by the HSE to appoint persons as consultants who are not specialists – a distinction unlikely to be known by the average patient who quite reasonably would equate one with the other but with potentially disastrous consequences.

Irish Hospital Consultants Association (IHCA)
42. On 13th October, 2017 the President of the IHCA wrote to the President of the Council. The letter bears repetition in full.

43. It read:-

"I am writing to you to express the Association's concern at the appointment of non-specialist doctors to temporary and permanent hospital consultants' posts. Appointing inadequately qualified doctors to specialist consultant posts breaches the most basic of contemporary international and national professional standards in healthcare.

The practice of appointing doctors who are not on the specialist register to work as specialist consultants in our health services should never have been contemplated in the first instance. The Association is concerned that this practice has become extensive as it is now affecting posts in at least 15 specialties, throughout 20 acute hospitals and 10 mental health service areas, based on most recent information received from the HSE. The specialties impacted include obstetrics/gynaecology, general surgery, anaesthesia, several medical specialties, urology, orthopaedic surgery, radiology, emergency medicine, paediatrics and all four psychiatry specialties. These appointments compromise the safety of care that is provided to patients in our hospitals and mental health services. It is not acceptable that doctors who do not have the essential specialist training, skills and expertise are purporting to treat patients as specialist consultants in our acute health services. The crisis in the recruitment and retention of consultants cannot be resolved at the expense of patient safety. The patients deserve better.

I attach the HSE reply to a PQ dated 28th July for your information, confirming that 65 non specialist doctors had been appointed to specialist hospital consultant posts since March 2008. I also attach the more recent 2 October HSE reply to the Association's FOI request. It confirms that 81 non-specialists are currently filling specialist hospital consultant posts and that they have been appointed after March 2008. This includes 54 temporary and indefinite duration contracts issued by the HSE and hospital employers and 27 agency consultant contracts of one month or longer.

These developments are in breach of the HSE's own basic standards for specialist consultant appointments and also breach the terms of the 2008 consultant contract. A hospital consultant is assumed by the public to be an expert and highly trained and qualified in his or her specialty. A consultant is therefore considered by the public to be a specialist in his or her specialty. It is inappropriate that public health service employers are appointing non-specialist doctors to specialist consultant posts, thereby misrepresenting these non-specialist doctors to the public as being specialist, when in fact they are not on the Medical Council Specialist Register. The Medical Practitioners Act 2007 and the Medical Council require that doctors by law have to register with the Medical Council in order to practise, and doctors can only practise independently as specialists if they have specialist registration. Therefore, the appointment of doctors who are not on the specialist register to specialist consultant posts is effectively breaching those basic requirements.

Indeed we are concerned also that non specialist doctors who apply for a specialist consultant position may be misrepresenting their qualifications, to both employers and public, and may as a result be in breach of the Act and the Medical Council requirements.

There is a growing risk that temporary appointees, who do not have the required specialist training and qualifications, will become entitled to 'contracts of indefinite duration' (CID) after four years in post. Based on earlier HSE replies to Dáil Health Committee members questions, it was confirmed that 10 consultant posts have already been filled on a permanent basis, since March 2008, through contracts of indefinite duration, by doctors who were not on the Medical Council Specialist Register. The detailed list attached to the HSE letter dated 2nd October includes 5 CID appointments which are now permanent.

Given the significance of these developments the Association is requesting the Medical Council to address these pressing matters. In addition, the Association would welcome a meeting with you, and your colleagues on the Council. The Association secretariat will contact your office to agree a mutually suitable date for a meeting."

44. I completely agree with the sentiments expressed in that letter. It is certainly not acceptable that doctors who do not have the essential specialist training skills and expertise should be permitted to purport to treat patients as specialist consultants. That is what has been happening and allowed to happen by the HSE. Problems in the recruitment and retention of consultants should not be resolved at the expense of patient safety as the present case amply demonstrates. Patients deserve better than this.

45. The one aspect of the letter which does not appear to be correct is the paragraph which contends that the Act requires that consultants (a non-statutory term) require to be registered on the Specialist Register. Such an obligation unfortunately does not arise pursuant to the statutory provisions but rather pursuant to the HSE's own requirements which are fully supported by the Council. This error of interpretation was apparently communicated to the IHCA at a meeting between officers of the Council and it in December 2017.

46. The affidavit evidence demonstrates that these issues were debated before the Joint Oireachtas Health Committee on 7th February, 2018 and it reproduces an exchange between the Vice Chair of that Committee and the Director General of the HSE.

Recent developments
47. Following the hearing before me on 9th April, 2018, the Chief Executive Officer of the Council wrote to the Director General of the HSE. He set out the background to the matter and sought a response in respect of five issues which he identified. They were:-

> (1) The failure to adhere to HSE procedures in the recruitment of Dr. Bhatia as a locum consultant;
>
> (2) The extent to which the 2017 report had increased compliance with the requirements of the HSE concerning recruitment of locum consultants. In that regard he sought confirmation of the number of practitioners who had been employed as locum consultants in the last twelve months who were not registered on the Specialist Division of the Register;
>
> (3) The extent to which the 65 consultant post holders referred to in the response to the parliamentary question were still employed by the HSE and, if so, the number that were still not registered in the Specialist Division and the measures taken in that regard;
>
> (4) The measures being pursued to address the 58 "pre 2008 permanent and temporary consultants" who have yet to secure registration on the Specialist Division of the Register; and
>
> (5) Comments were sought on the variance between the information in the public domain as reported through the Medical Council's "Workforce Intelligence Report" of April 2016 which showed 8.1% of consultants registered in the General rather than the Specialist Division and the HSE's figures.

The HSE responded to these queries on 20th April, 2018.

48. The HSE letter did not at all respond to the first query concerning the failure to adhere to HSE procedures and requirements in the recruitment of Dr. Bhatia as a locum consultant. It purported to answer the query in its letter under the heading "context". This is what the letter said:-

> *"In March 2008 the HSE amended the qualifications specified for consultant posts to require registration in the relevant specialist division of the Register of Medical Practitioners at the Medical Council. The Consultants Contract 2008 reflects this requirement, the details of which were contained in HSE HR Circular 021/2017 re: Qualifications required for consultant posts.*
>
> *The effect of this is that applicants who are not registered in the relevant specialist division cannot be appointed to a permanent consultant post in a HSE hospital or service or in a section 38 agency funded by the HSE.*
>
> *The rationale for the change was the imperative to ensure that consultants employed in the public health system have the appropriate training, skills, competences and qualifications to deliver care as assessed by the Medical Council which has the statutory role of protecting the public by promoting the highest professional standards amongst doctors practising in the State."*

49. As is clear nothing was said to explain the failure to adhere to HSE procedures in the recruitment of Dr. Bhatia.

50. The letter then went on to point out that as of 14th April, 2018 there were 127 consultants employed who were not registered in the relevant Specialist Division. Of that number 52, 1.7% of the consultant workforce, were in permanent employment and took up the post pre 2008. Forty nine of the 52 work in acute hospitals, one in the IBTS, and two in mental health services.

51. Seventy five consultants in employment on 14th April, 2018 took up post since the introduction in 2008 of the requirement to be registered in the relevant specialist division. This is 2.5% of the consultant workforce. The letter pointed out these cannot be in permanent employment and are instead on a short term specific purpose contract basis (SPC), or on a short term locum basis or are engaged through an agency. The SPCs were said to be "*… used to fill permanent vacancies pending the filling of a new or replacement consultant post on a permanent basis after the necessary approval from the HSE's Consultants Appointments Advisory Committee*".

52. The letter went on to recount the selection process which has to be carried out by the Public Appointments Service for HSE posts. The letter then stated:-

> *"It can often be the case that appropriately qualified consultants registered in the relevant specialist division do not present as applicants for short term locum posts or for SPC posts pending the filling of a new or replacement permanent post. Service requirements have therefore led to the engagement of the consultants in this category. Fourteen consultants registered in the General Division have been engaged on a non-permanent basis with (sic) the last twelve months."*

53. Thus it can be seen that the position has actually worsened since the parliamentary question was asked in July 2017. At that stage there were 65 consultants appointed post 2008 not registered on the Specialist Division Register. Now there are 75.

54. The letter then went on to provide a tabular breakdown by hospital group and Community Health Organisation (CHO) of consultants in the General Division as a percentage of the total. I reproduce this table as an appendix to this judgment and comment on it later in this judgment.

55. The letter then went on to address what were described as "measures to address the issue". The first of these were described as "Risk Mitigation Measures". The letter read:-

> *"The National Clinical Advisor and Clinical Programme Group Lead for Mental Health has sought and received assurances from the Executive Clinical Directors in mental health services of risk mitigation measures to include oversight of the practice of post 2008 consultants not in the Specialist Division. Similarly, within acute services, hospital managers and clinical directors have put in place monitoring arrangements appropriate to the circumstances of the practice of post 2008 consultants not in the relevant specialist division."*

56. The second measure identified was an incentivisation of eligible pre 2008 consultants to apply for specialist registration. It read:-

"The Acute Services Division and the Mental Health Services Division are working to establish which of pre 2008 consultants would be eligible for registration in the relevant specialist division on the basis of their having completed higher specialist training. As a once off measure, the HSE will fund the Medical Council directly for the cost of the application process such that the consultant will not incur any personal expenditure."

57. The third measure identified was described as "up-skilling post 2008 consultants who have not completed higher specialist training". The letter read:-

"Colleagues in mental health are engaging with the Royal College of Psychiatrists to explore additional competence based training for consultants to allow them to apply for specialist registration. This approach will be a more complex issue in acute services, given the greater numbers of consultants involved, the greater number of specialties, the procedure based nature of training in some of those specialties, and the greater number of training bodies (royal colleges, etc.)."

58. The final measure identified is described as "Minimising the Timeline for filling new or replacement permanent consultant posts". The letter reads:-

"Clinical Directors in mental health services and acute services are seeking to clarify the position with each post 2008 consultant post currently filled, by definition, on a non permanent basis in order to establish where the post is on the continuum from approval at the CAAC for a new or replacement post, to advertisement, to short listing and interviewing at the Public Appointments Service, to post selection formalities undertaken by HBS Recruit prior to the offer of a contract. The aim is to identify any impediments at any stage of this process with a view to elimination of these or otherwise to minimise the impact on the timeline for filling new or replacement permanent consultant posts. A similar approach is suggested for the Acute Services Division. The hospital groups HRH Leads will work with the HSE National Doctors Training and Planning Doctors Integrated Management E-System (DIME) to access real time data contained within DIME to allow full compliance with consultant specialist registration requirements, and to ensure in the interim 100% compliance with the matching of approved posts on DIME to all occupied posts in the hospitals.

The matter is a key priority for the HSE and I will ensure a weekly progress report is shared with you setting out progress regarding this matter."

I find it difficult to understand what precisely this means.

59. This response from the HSE could hardly be considered an answer to the five questions posed in the letter of 16th April addressed to its Director General.

60. The one piece of information that emerges with crystal clarity is that at present there are 127 consultants employed by the HSE who are not registered on the Specialist Register of the Council. This is in clear breach of the HSE's own requirements in that regard. However, when one analyses the distribution of these non specialist registered consultants by hospital group and community health organisation one sees that they range from as low as 0% in some community health organisations to as high as 21.4% in one such organisation. Insofar as hospital groups are concerned it is from as low as 1.7% in the children's hospital group to as high as 7.3% in the South South West hospital group.

61. In its letter of 20th April, 2018 the HSE was at pains to underscore in heavy print the fact that the number of such consultants represented just 4.3% of the workforce with pre 2008 consultants amounting to 1.7% and post 2008 representing 2.5% of the consultant workforce. Whilst this may be a small percentage it amounts to 127 consultants and it is of no comfort to patients who come to be dealt with by such non specialist consultants that they constitute only a small percentage of the workforce. I certainly cannot imagine that the 40 plus patients who were so poorly served by Dr. Bhatia would derive any comfort from such a statistic.

62. From all of the evidence which was put before me it is possible to come to a number of conclusions.

Conclusions

63.

A) Dr. Bhatia was employed as a locum consultant radiologist at Cavan General Hospital between 3rd June, 2014 and 12th September, 2014.

B) He should not have been so employed. He was not registered in the Specialist Division of the Medical Register. Indeed, he could not have been so registered because he did not have the necessary qualifications.

C) His appointment was in breach of the HSE's own requirements first stipulated in 2008.

D) His performance at Cavan General Hospital was woefully substandard giving rise to the many findings against him and his name's erasure from the Medical Register.

E) Over the preceding years he worked in other HSE hospitals in a similar capacity in breach of the HSE requirements. There is no reason to believe that his performance there was any better than in Cavan General Hospital.

F) I have no information as to whether the patients adversely affected by Dr. Bhatia's care in Cavan Hospital were notified of that or what steps, if any, were taken to rectify what occurred.

G) I have no information as to whether any review was carried out by the HSE of patients dealt with by Dr. Bhatia in his other appointments to HSE hospitals in the preceding years.

H) Notwithstanding its own requirements, the HSE has been appointing consultants on a regular basis who are not on the Specialist Register. In fact, the position has got worse since July 2017 when there were 65 post 2008 consultants who were not registered in the Specialist Division. By April of this year that number had increased to 75.

I) There is little or no reason to believe that this practice will cease forthwith or in the immediate future. It is a practice which should never have commenced in the first instance. Doctors who are not in the Specialist Division of the Medical Register should not be acting as consultants. They do not have the essential training, skills and expertise to warrant them being so appointed. A hospital consultant is assumed to be a highly trained expert qualified in his or her specialty. That is

the general public understanding of the term. It will come as a shock, I am sure, to members of the public, particularly in the catchment areas concerned, that 127 consultants do not meet that description.

J) Difficulties in either recruitment or retention of consultants should not be resolved at the expense of patient safety and welfare by appointing inadequately trained doctors to consultant posts. The present case is a good example of the consequences of such a policy.

K) The table which I attach as an appendix to this judgment demonstrates the disparity in distribution of these substandard consultants. It is right that general practitioners and patients in the catchment areas of the hospital groups or community health organisations ought to know the statistical chance of cases being dealt with by a consultant who is not a specialist in the specialty concerned.

Directions

64. The revelations which have emerged in the evidence put before me are very disquieting. It cannot be right that a difficulty in recruiting doctors at consultant level is addressed even temporarily by appointing persons who are inadequately qualified for such posts. It is hard to imagine any other occupation where public safety is involved, from bus driving to gas fitting to piloting an aircraft, where a recruitment difficulty would be addressed by appointing inadequately qualified personnel to the post. Patients' lives, health and welfare are jeopardised by the HSE's approach. The present case speaks for itself in that regard.

65. That such an approach has been adopted by the HSE in breach of its own requirements for the last 10 years is scandalous.

66. The HSE appears to be a law unto itself in this regard. Neither of the statutory bodies whom one might expect to intervene to bring this activity to an end appear to be in a position to do so. The Council has identified a *lacuna* in the Act which it says it will endeavour to have put right. But the introduction and passing of amending legislation is a slow business. HIQA is clearly concerned about the matter but does not appear to have been able to have it rectified. I have no information as to whether it has, or has contemplated, using its statutory powers or whether such statutory powers would be sufficient to bring this practice to an end.

67. The HSE itself does not appear to have any board of directors to which the Chief and other Executives are answerable.

68. The Council established under the Act has as its object the protection of the public by promoting and better ensuring high standards of professional conduct and professional education, training and competence among registered medical practitioners. This Court has a limited function in ensuring the protection of the public in that all of the disciplinary decisions of the Council of a serious nature are legally ineffective unless confirmed by this Court. It is in the context of being asked to exercise that statutory power that I became aware and concerned at what I encountered.

69. With a view to endeavouring to ensure that this situation is resolved speedily I give the following directions:-

(a) I direct the Registrar of the Court to send a copy of this judgment to both the Minister for Health and to the Secretary General of that Department. By so doing they cannot but be apprised of this serious situation and the views of the Court in respect of it.

(b) I direct the Registrar to send a copy of this judgment to the Attorney General for his consideration and with a view to the expediting of any legislative change thought by the Council to be necessary to address the position.

(c) I direct the Registrar to send a copy of this judgment to the Chief Executive of the HSE.

(d) I direct the Registrar to send a copy of this judgment to the Chief Executive of HIQA so that it may consider what steps, if any, are available to it to address the position.

(e) I direct a copy of the judgment to be sent to the Chief Executive of the State Claims Agency. That is the agency which will be responsible for defending any claims which may emanate from patients adversely affected by the doctor in suit or, indeed, any claims which may be made in respect of other similarly appointed doctors.

70. Finally, I should say that I make no criticism of the Council which regards itself as unable to do more than it has done in the absence of a change in legislation. I am not, however, convinced that even without such change that it is entirely powerless. It seems to me to be at least arguable that if it, as the body charged by statute with protecting the public as prescribed by s.6 of the Act, finds its statutory object being consistently frustrated by the behaviour of the HSE as described, then it can begin proceedings before this Court for appropriate relief to bring an end to this dangerous practice. The protection of the public must be and is the Council's primary object. If it decides in furtherance of that object to initiate proceedings I will take all necessary steps for an expedited hearing. I sincerely hope that it will not be necessary to adopt such a course and that the relevant authorities will bring an end to this lamentable situation forthwith. Patients and prospective patients are entitled to expect no less.

Appendix

Breakdown by Hospital Groups and Community Health Organisation (CHO)

	Consultants in General Division at 17th April, 2018	**Consultant complement at February 2018**	**Consultants in General Division as % of total**
CHO 1	**5**	**34**	**14.7**
CHO 2	**5**	**40**	**12.5**
CHO 3	**0**	**27**	**0**
CHO 4	**1**	**51**	**2**
CHO 5	**5**	**30**	**16.7**

CHO 6	**0**	**51**	**0**
CHO 7	**1**	**56**	**1.8**
CHO 8	**9**	**42**	**21.4**
CHO 9	**0**	**68**	**0**
CHO Total	**26**	**399**	**6.5 %**
Children's Hospital Group	**3**	**177**	**1.7**
RCSI HG	**10**	**408**	**2.5**
Saolta	**23**	**406**	**5.7**
South South West HG	**33**	**451**	**7.3**
Ireland East HG	**9**	**496**	**1.8**
Dublin Midlands HG	**16**	**429**	**3.7**
UL HG	**6**	**154**	**3.9**
Hospital Groups Total	**100**	**2521**	**4.0%**
IBTS	**1**		
Grand total	**127**	**2920**	**4.3%**
NB total consultant complement of 2977 wte includes consultants in Health & Wellbeing			