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*Number 31 of 2019*

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**CervicalCheck Tribunal Act 2019**

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**CERVICALCHECK TRIBUNAL ACT 2019**

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ACTS REFERRED TO

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Civil Liability Act 1961 (No. 41)  
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Freedom of Information Act 2014 (No. 30)  
Interpretation Act 2005 (No. 23)  
Statute of Limitations (Amendment) Act 1991 (No. 18)  
Statute of Limitations 1957 (No. 6)



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Number 31 of 2019

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## **CERVICALCHECK TRIBUNAL ACT 2019**

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An Act to provide for the implementation of the Report on an Alternative System for Dealing with Claims Arising from CervicalCheck, in respect of the hearing and determination, outside of the court process, of claims arising from acts or omissions arising from CervicalCheck and, for those purposes, to make provision for the establishment of a body, to be known in the Irish language, as *An Binse um CervicalCheck* or, in the English language, as the CervicalCheck Tribunal; to make provision for the Tribunal, with the consent of the parties concerned, to hear and determine a certain limited number of claims made to it outside of the court process; to provide that a determination of the Tribunal shall be subject to confirmation by the High Court and subject to a right of appeal to the High Court; to make provision, in the public interest of restoring trust in CervicalCheck, for the making available to certain persons of facilities for the purposes of documenting experiences, facilitating discussion and providing information to such persons in respect of CervicalCheck; and to provide for related matters. [23rd July, 2019]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

##### **Short title and commencement**

1. (1) This Act may be cited as the CervicalCheck Tribunal Act 2019.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

##### **Definitions**

2. In this Act—
  - “Act of 1961” means the Civil Liability Act 1961;
  - “appropriate person” means—

(a) a relevant woman, or

(b) where a relevant woman has died, a dependant of the relevant woman concerned;

“CervicalCheck” means the national cervical screening programme initiated in 2008 by the National Cancer Screening Service Board and, since the dissolution of the Board on 1 April 2010, provided by the Executive;

“CervicalCheck cytology” means the cytology laboratory services retained by the Executive for the purposes of CervicalCheck;

“CervicalCheck non-disclosure *ex-gratia* scheme” means the scheme administered under that title by the Minister in furtherance of a decision of the Government of 11 March 2019;

“Chairperson” has the meaning assigned to it by *section 6*;

“claim” means a claim made in accordance with *section 11*;

“claimant” means a person who makes a claim in accordance with *section 11*;

“dependant” has the meaning assigned to it by Part IV of the Act of 1961;

“establishment day” shall be construed in accordance with *section 4*;

“Executive” means the Health Service Executive;

“Facilitator” has the meaning assigned to it by *section 31*;

“Minister” means the Minister for Health;

“notice of acceptance” has the meaning assigned to it by *section 17*;

“prescribed” means prescribed by Rules;

“relevant parties” means, in relation to a claim—

(a) the claimant,

(b) the Executive, and

(c) the cytology laboratory services retained by the Executive for the purposes of CervicalCheck;

“relevant woman” means—

(a) a woman—

(i) identified as part of the Review of Cervical Screening as having CervicalCheck cytology review findings that were discordant with those of the original cytology examination in relation to the woman concerned, or

(ii) whose cytology slides were sought, by the Review of Cervical Screening, to be re-examined as part of its review but where one or more of those slides could not be re-examined as part of that review by reason of circumstances beyond the control of the woman concerned,

or

- (b) a woman who received a diagnosis of cervical cancer—
- (i) who had a screening history through CervicalCheck,
  - (ii) whose diagnosis of cervical cancer was notified to CervicalCheck,
  - (iii) whose cytology slides were re-examined as part of the retrospective CervicalCheck cytology clinical audit, and
  - (iv) whose cytology review findings, following the re-examination in accordance with *subparagraph (iii)*, were discordant with those of the original cytology examination in relation to the woman concerned;

“restoration of trust meeting” has the meaning assigned to it by *section 32*;

“retrospective CervicalCheck cytology clinical audit” means the lookback clinical audit of cytology slides in relation to 1,482 women carried out by CervicalCheck between 2008 and prior to 5 May 2018;

“Review of Cervical Screening” means the review commissioned by the Minister and conducted by a Clinical Expert Review Panel under the auspices of the Royal College of Obstetricians and Gynaecologists of the results of screening tests of all women who have developed cervical cancer since 2008 who participated in CervicalCheck;

“Rules” means rules made under *section 26*;

“Tribunal” has the meaning assigned to it by *section 5*;

“waiver” means, in relation to claimant, a waiver by the claimant of any right of action which the claimant may otherwise have had or maintained against any other relevant party or parties to the claim concerned in respect of the circumstances of the claim before the Tribunal.

### **Expenses**

3. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

## PART 2

### CERVICALCHECK TRIBUNAL

#### CHAPTER 1

##### *Establishment, Functions, etc.*

### **Establishment day**

4. The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

**Establishment of Tribunal**

5. (1) There shall stand established on the establishment day a body, which shall be known, in the Irish language, as An Binse um CervicalCheck or, in the English language, as the CervicalCheck Tribunal (in this Act referred to as the “Tribunal”), to perform the functions conferred on it by this Act.
- (2) The Tribunal may sit in divisions of itself.
- (3) The Tribunal shall, subject to this Act—
- (a) be independent in the performance of its functions, and
  - (b) regulate its own procedures.

**Membership of Tribunal**

6. (1) Subject to *subsection (2)*, the Tribunal shall consist of a chairperson (in this Act referred to as the “Chairperson”) and not less than 2 ordinary members, each of whom shall be appointed by the Minister.
- (2) The Minister may, if he or she considers it necessary, appoint additional persons to be ordinary members of the Tribunal.
- (3) The Chairperson shall hold or have held judicial office in the Superior Courts.
- (4) Each ordinary member of the Tribunal shall—
- (a) hold or have held judicial office in the Superior Courts, or
  - (b) be a practising barrister or solicitor of not less than 10 years practice.
- (5) Each member of the Tribunal, other than a member who is the holder of a judicial office in the Superior Courts, shall be paid such remuneration (if any) as may be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.
- (6) Each member of the Tribunal shall be subject to such terms and conditions and be paid such allowances for expenses as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.
- (7) If the Chairperson is for any reason unable to continue to act as Chairperson, the Minister may designate another member of the Tribunal as Chairperson.
- (8) Without prejudice to the generality of *subsection (2)*, if a member of the Tribunal is for any reason unable to continue to act as an ordinary member of the Tribunal, the Minister may appoint a person to be an ordinary member of the Tribunal in that member’s place.
- (9) In this section, “judicial office in the Superior Courts” means the office of judge of the High Court, the office of judge of the Court of Appeal or the office of judge of the Supreme Court.

**Functions of Tribunal**

7. (1) The Tribunal shall, in addition to the other functions conferred on it by this Act—
- (a) hear and determine claims,
  - (b) subject to *section 31(4)*, facilitate restoration of trust meetings, and
  - (c) report, and make such recommendations as it deems appropriate, on any matter relating to the work of the Tribunal.
- (2) Notwithstanding the generality of *subsection (1)*, the Tribunal may provide such recommendations as it considers appropriate on any matter relating to the work of the Tribunal to the Minister, whether or not it has received a request in that behalf from the Minister.
- (3) The Tribunal shall have all such powers as are necessary or expedient for the performance of its functions.
- (4) The Chairperson may delegate any of the Tribunal's functions (other than a function specified in *subsection (1)(a)*) to any member of the staff of the Tribunal duly authorised in that behalf by the Chairperson and that member of staff shall be accountable to the Chairperson for the functions so delegated.
- (5) The Chairperson may revoke a delegation made in accordance with *subsection (4)*.

**Staff of Tribunal**

8. (1) The Tribunal may, with the consent of the Minister, given with the approval of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of staff of the Tribunal as it may determine.
- (2) The terms and conditions of service of a member of staff of the Tribunal and the grade at which he or she serves shall be such as may be determined by the Tribunal with the consent of the Minister and the Minister for Public Expenditure and Reform.
- (3) The members of staff of the Tribunal shall perform their functions under the direction and control of the Chairperson.

**Experts and research**

9. (1) Subject to *subsection (2)*, the Tribunal may, if it considers that it requires the advice or assistance of experts (including legal experts) in respect of any matter—
- (a) appoint such and so many persons having expertise in relation to that matter as it thinks fit, and
  - (b) determine the terms and conditions of appointment of such persons.
- (2) Before making an appointment or a determination under *subsection (1)*, the Tribunal shall obtain the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

- (3) Where the Tribunal appoints a person under *subsection (1)* for the purposes of assisting or advising the Tribunal in respect of the hearing and determination by it of a claim, a party to the claim shall be entitled to examine the person so appointed.
- (4) The Tribunal may, for the purpose of the performance of its functions, subject to the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, conduct, or commission the conduct of, research.

#### **Tribunal may retain legal counsel and solicitor**

- 10.** (1) The Tribunal may if it considers it necessary for the performance of its functions—
- (a) appoint its own counsel or solicitor, and
  - (b) determine the terms and conditions of appointment of such persons.
- (2) Before making an appointment or a determination under *subsection (1)*, the Tribunal shall obtain the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

### CHAPTER 2

#### *Making claim to Tribunal*

#### **Claims before Tribunal**

- 11.** (1) Subject to *section 12* and *subsection (2)*, an appropriate person may, in the prescribed form and manner, make a claim for compensation to the Tribunal—
- (a) seeking damages for negligence, breach of duty, breach of statutory duty or breach of contract arising from any act or omission concerning CervicalCheck, or
  - (b) seeking damages for the alleged negligence or breach of duty arising from an alleged failure to inform the relevant woman concerned or, where she has died, a dependant of the relevant woman concerned of the results of the retrospective CervicalCheck cytology clinical audit.
- (2) Where a person has received an award (other than an award under the CervicalCheck non-disclosure *ex-gratia* scheme) from any court or settlement in respect of any action arising out of any circumstances which could give rise to a claim before the Tribunal, the person shall not be entitled to make a claim to, or be heard by, the Tribunal.

#### **Reckoning of time for purpose of Statute of Limitations, etc.**

- 12.** (1) Subject to *subsection (2)*, a claim shall be made—
- (a) in the case of a claim in respect of which, as part of the Review of Cervical Screening, the relevant woman or, where she has died, a dependant of the relevant woman concerned, was notified in writing that the cytology review findings in relation to the woman were discordant with those of the original cytology examination in relation to the woman—

- (i) within 6 months of the date of notification, or
  - (ii) within 9 months of the establishment day,
- whichever is the later, or
- (b) in any other case, within 9 months of the establishment day.
- (2) A person may not make a claim where—
- (a) the person was entitled to institute proceedings in respect of a relevant claim, and
  - (b) the limitation period in respect of instituting those proceedings has expired.
- (3) In reckoning any period of time for the purpose of any applicable limitation periods in relation to a relevant claim—
- (a) the period beginning on the date of the making of a claim and ending 6 months from the date on which the Tribunal notifies in writing (in this section referred to as the “date of Tribunal notification”) the claimant that one or more of the relevant parties have failed to agree in writing to the claim being determined by the Tribunal and accordingly that the Tribunal is not in a position to hear and determine the claim, or
  - (b) the period beginning on the date of the making of a claim and ending 6 months from the date on which the Tribunal notifies in writing (in this section also referred to as the “date of Tribunal notification”) the claimant that one or more of the relevant parties have notified the Tribunal that there is no longer consent to the claim being determined by the Tribunal and accordingly the Tribunal is not in a position to continue to hear and determine the claim,

shall be disregarded.

- (4) In this section—

“date of making of a claim” means the date on which an application under *section 11*, made in the prescribed form and manner, is received by the Tribunal;

“date of notification” means the date on which a notification referred to in *subsection (1)(a)* is issued by the Executive;

“date of Tribunal notification” means the date on which the Tribunal issues, in the prescribed form and manner, a notification under *subsection (3)(a)* or *subsection (3)(b)*, as the case may be;

“limitation periods” includes any limitation period under the Statute of Limitations 1957, section 9(2) of the Act of 1961 and the Statute of Limitations (Amendment) Act 1991;

“relevant claim” means a civil action by a person—

- (a) seeking damages for negligence, breach of duty, breach of statutory duty or breach of contract arising from any act or omission concerning CervicalCheck, or
- (b) seeking damages for the alleged negligence or breach of duty arising from an alleged failure to inform the relevant woman concerned or, where she has died, a

dependant of the relevant woman concerned of the results of the retrospective CervicalCheck cytology clinical audit.

#### **Agreement of parties required to enable Tribunal to hear claims**

13. The Tribunal shall hear and determine only claims in respect of which there is agreement in writing from each of the relevant parties to submit the claim concerned to the Tribunal for determination by the Tribunal.

### CHAPTER 3

#### *Claims before Tribunal, procedures, etc.*

#### **Manner of determination of issues**

14. Subject to the provisions of this Act and such Rules (if any) in relation to conduct of claims as may be prescribed by the Tribunal under *section 26*, the Tribunal shall hear and determine claims (including any such other necessary interim, interlocutory or matters ancillary arising in those claims) in the same manner as the High Court hears and determines claims for personal injuries arising from the alleged negligence, breach of duty, breach of statutory duty or breach of contract.

#### **Third party procedures**

15. (1) Without prejudice to the generality of *section 14*, where a respondent wishes to join a third party to a claim, the Tribunal may grant such application in the same manner as such applications are determined by the High Court.
- (2) Where the third party referred to in *subsection (1)* consents to having all issues arising in the claim determined by the Tribunal, the claim will proceed before the Tribunal.
- (3) Where the third party referred to in *subsection (1)* does not consent to having all issues arising in the claim so determined by the Tribunal, the Tribunal—
- (a) shall not continue to hear and determine the claim, and
  - (b) shall, in the prescribed form and manner, notify the parties concerned of that fact.

#### **Account to be taken of *ex-gratia* payments**

16. Where, in respect of a claim before the Tribunal, the CervicalCheck non-disclosure *ex-gratia* scheme had previously determined that an *ex-gratia* payment should be made in respect of the claim, the Tribunal, in considering whether an award should be made in respect of the claim, or in what amount, shall take into account any sum paid or payable in respect of the circumstances giving rise to the claim under the CervicalCheck non-disclosure *ex-gratia* scheme.

#### **Awards of Tribunal – applicable principles, etc.**

17. (1) An award may be made by the Tribunal to a claimant.

- (2) An award of the Tribunal shall be made on the same basis and calculated by reference to—
- (a) the same principles which govern the measure of damages in the law of tort, breach of statutory duty, breach of contract, and
  - (b) the same enactments,
- as would be applicable to an assessment of damages, were proceedings to be brought in the High Court in relation to the claim concerned.
- (3) Where the Tribunal makes an award to a claimant, the claimant shall have a period of 21 days, or such greater period as the Tribunal may for good and sufficient reasons determine, from the making of the award to accept or reject the award or to appeal the award under *section 27*.
- (4) Where a claimant in respect of whom an award has been made neither accepts or rejects the award nor appeals the award under *section 27*, within a period of 21 days or such greater period determined by the Tribunal under *subsection (3)*, the claimant shall be deemed to have rejected the award.
- (5) Subject to *sections 27* and *28*, where a claimant wishes to accept an award, such acceptance shall be made in the prescribed form and manner (in this Act referred to as a “notice of acceptance”) and shall be accompanied by a waiver.
- (6) Without prejudice to the generality of *subsection (2)*, the rules contained in the Civil Liability Acts 1961 to 2017 governing—
- (a) concurrent fault, including liability of concurrent wrongdoers, contribution between concurrent wrongdoers and contributory negligence,
  - (b) the reasonable compensation to the dependants of a relevant woman for mental distress resulting from her death, and
  - (c) exclusion of awards of damages to the dependants of a relevant woman in respect of mental distress caused to the relevant woman prior to her death,
- shall be applied by the Tribunal in respect of the determination of claims and the making of awards in the same manner as would be applicable in an assessment of damages were proceedings to be brought in the High Court in relation to the claim.

### **Legal representation**

- 18.** Parties appearing before the Tribunal shall be entitled to be legally represented.

### **Costs**

- 19.** (1) The Tribunal may award costs in relation to a claim.
- (2) Costs, the subject of an award referred to in *subsection (1)*, may be taxed in the same manner as costs the subject of an award made by the High Court.

**Hearings generally to be otherwise than in public**

- 20.** (1) Subject to *subsection (2)*, the Tribunal shall conduct its hearings otherwise than in public.
- (2) Where a claimant requests the Tribunal to hold a hearing or part of a hearing in public and the Tribunal agrees that it would be appropriate to do so, the Tribunal shall conduct the hearing or part of the hearing concerned in public.

**Form and manner in which evidence may be given**

- 21.** (1) Subject to *subsection (4)*, the Tribunal may receive evidence given—
- (a) orally before the Tribunal,
  - (b) by affidavit, or
  - (c) as otherwise directed by the Tribunal or allowed by its Rules and procedures, including by means of a live video link, a video recording, a sound recording or any other mode of transmission.
- (2) A witness who attends before the Tribunal to give evidence may be required to give evidence on oath or affirmation.
- (3) Any member of the Tribunal or any member of staff of the Tribunal duly authorised by the Tribunal to do so may administer any oaths or take any affirmations necessary for the purposes of the Tribunal's functions.
- (4) A witness who gives evidence otherwise than by attending in person before the Tribunal or by means of a live video link shall provide the Tribunal with a sworn statement in a form acceptable to the Tribunal indicating that—
- (a) the evidence was given by him or her,
  - (b) the evidence was given voluntarily, and
  - (c) to the best of his or her knowledge, the content is true and accurate.

**Powers relating to witnesses and documents**

- 22.** (1) For the purposes of performing its functions under this Act, the Tribunal may do any or all of the following:
- (a) direct in writing any person to attend before the Tribunal on a date and at a place and time specified in the direction and there to give evidence and to produce any document that is in the person's possession or power and is specified in the direction;
  - (b) direct a witness to answer questions that it believes to be relevant to a claim;
  - (c) examine a witness on oath or affirmation or by use of a statutory declaration or written interrogatories;
  - (d) examine or cross examine any witness to the extent the Tribunal thinks proper in order to elicit information relevant to a claim;

- (e) direct a witness to produce to the Tribunal any document that is in his or her possession or power and is specified in the direction;
  - (f) direct in writing any person to—
    - (i) provide the Tribunal with a list, verified by affidavit, disclosing all documents in the person's possession or power relating to a claim, and
    - (ii) specify in the affidavit any of the listed documents that the person objects to producing to the Tribunal and the basis for the objection;
  - (g) direct in writing any person to send to the Tribunal any document that is in the person's possession or power and is specified in the direction;
  - (h) subject to such Rules as may be prescribed under *section 26*, issue a commission or request to examine witnesses abroad;
  - (i) give any other directions that appear to the Tribunal to be reasonable.
- (2) The powers of the Tribunal under *subsection (1)* may be exercised by any member of the Tribunal.
- (3) The rules of court relating to the discovery of documents in proceedings in the High Court apply with any necessary modifications in relation to the disclosure of documents under *subsection (1)(f)*.
- (4) Where a person fails or refuses to comply with a direction given by the Tribunal under this section, the High Court, on application by the Tribunal for an order requiring the person to comply with the direction, may—
- (a) order the person to comply with the direction, and
  - (b) make any other order the court considers necessary and just to enable the direction to have full force and effect.
- (5) An application to the High Court under *subsection (4)* shall be heard otherwise than in public.
- (6) The failure of a person to comply with an order under *subsection (4)*—
- (a) may be punished as a contempt even though it could be punished as an offence under *section 38*, and
  - (b) may be punished as an offence under *section 38*, even though it could be punished as a contempt,
- but the person is not liable to be punished twice.

### **Privileges and immunities of witnesses**

- 23.** A person who gives evidence to the Tribunal or who produces or sends documents to the Tribunal as directed by the Tribunal—
- (a) has the same immunities and privileges in respect of that evidence or those documents, and

(b) is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

#### **General power of Tribunal to seek directions of High Court**

24. (1) The Tribunal may, where it considers it appropriate to do so, apply to the High Court for directions relating to the performance of the functions of the Tribunal or for the approval of the court of an act proposed to be done by the Tribunal for the purposes of such performance.
- (2) The High Court shall determine an application under *subsection (1)* by giving such directions and making such orders as it considers appropriate.
- (3) The High Court may, on application, hear an application under *subsection (1)* otherwise than in public having regard to—
- (a) the subject matter in relation to which the directions are sought,
  - (b) any other matter relating to the nature of the evidence to be given at the hearing of the application.

#### **Pre-claim protocols, case management, directions, etc.**

25. (1) Subject to this Act, the Tribunal may, in the interests amongst other things, of—
- (a) promoting timely communication between persons who are considering making a claim and those whom such persons consider may be liable in relation to that claim,
  - (b) facilitating the early identification of the relevant parties in relation to the claim,
  - (c) facilitating the early identification of the issues in dispute in respect of a possible claim,
  - (d) facilitating the hearing and determination of claims in a manner which is just and expeditious,
- determine and adopt procedures governing requirements that shall be complied with before claims are brought (in this section referred to as “pre-claim protocols”).
- (2) In the interests of the hearing and determination of claims in a manner which is just and expeditious, the Chairperson may issue directions (in this section referred to as “practice directions”) in relation to the conduct of claims made to the Tribunal.
- (3) A pre-claim protocol or practice direction may—
- (a) relate to claims or classes of claims, and
  - (b) make provision for such incidental, supplementary and consequential matters, including in respect of a failure to comply with any matter provided for in a pre-claim protocol or practice direction, as the case may be, as appear to the Tribunal, or in the case of a practice direction, the Chairperson, to be necessary or expedient for the purposes of the protocol or direction, as the case may be.

- (4) A pre-claim protocol and practice direction shall be published in such manner as the Chairperson may direct.
- (5) This section is without prejudice to any powers of the Tribunal to make Rules.

### Rules

26. (1) The Tribunal may make rules (in this Act referred to as “Rules”) to regulate the practice and procedure of the Tribunal and the conduct of claims before the Tribunal.
- (2) Without prejudice to the generality of *subsection (1)*, Rules may—
  - (a) prescribe forms and notices including but not limited to the following:
    - (i) an application under *section 11*;
    - (ii) a Tribunal notification under *section 12*;
    - (iii) a notification under *section 15(3)(b)*;
    - (iv) a notice of acceptance;
    - (v) a notice of appeal under *section 27*;
    - (vi) an application for confirmation of a determination under *section 28*,
  - (b) prescribe time limits to apply in respect of any of the forms or notices prescribed under this section,
  - (c) apply, with such modifications as may be necessary, any provision of the Rules of the Superior Courts to the practice and procedure of the Tribunal or the conduct of a claim before the Tribunal as the Tribunal considers appropriate, or
  - (d) provide for such other matters in relation to the practice and procedure of the Tribunal as the Tribunal considers necessary or expedient for the performance of its functions.
- (3) The Tribunal shall publish Rules in such manner as it considers appropriate.

### CHAPTER 4

#### *Appeals, confirmations, etc.*

### Appeals

27. (1) An appeal shall lie from a determination of the Tribunal to the High Court.
- (2) An appeal under this section shall be made—
  - (a) not later than 21 days or such greater period as the Tribunal may, for good and sufficient reason determine, from the date of the making of the determination the subject of the appeal, and
  - (b) in the prescribed form and manner.

- (3) An appeal shall lie from a decision of the High Court in respect of an appeal under this section to the Court of Appeal on a point of law only.
- (4) Subject to *subsection (6)*, the High Court or the Court of Appeal, as the case may be, when making available to the public its determination in respect of an appeal brought under this section, shall exclude any information that identifies or that could reasonably lead to the identification of any of the parties, the subject matter of the appeal concerned.
- (5) Subject to *subsection (6)*, an appeal under this section shall be heard otherwise than in public.
- (6) Where a claimant requests the High Court or the Court of Appeal to hear an appeal, or a part of an appeal, in public and the High Court or the Court of Appeal, as the case may be, agrees that it would be appropriate to do so, the High Court or the Court of Appeal shall hear the appeal or part of the appeal concerned, as the case may be, in public.

### **Confirmation and publication of determinations**

#### **28. (1) Where—**

- (a) a claimant in respect of whom an award has been made accepts the award, and
- (b) no other party to that claim, within the period specified in *section 27(2)(a)*, appeals to the High Court from the determination of the Tribunal,

the Tribunal shall, as soon as practicable after the expiration of that period, by motion on notice to the parties to the claim, make an application in a summary manner to the High Court for confirmation of the determination.

- (2) Without prejudice to the generality of *subsection (1)*, an application under that subsection shall be made in the prescribed form and manner, contain a notice of acceptance and shall be accompanied by a waiver in respect of the determination the subject of the application concerned.
- (3) The High Court shall, on the hearing of an application under *subsection (1)* confirm the determination unless the court considers that it is not in the interests of justice to do so.
- (4) Where at the date of the hearing of an application under *subsection (1)*, there are proceedings pending in the High Court in respect of a claim, the subject matter of which, in whole or in part, relates to a claim to the Tribunal, the subject of the application concerned, the High Court shall, in respect of those proceedings, provide by order for the discontinuance of the proceedings concerned and may make such order as to the costs of those proceedings as it thinks fit.
- (5) Where a determination has been confirmed by the High Court under *subsection (2)* the Tribunal shall, subject to *subsection (6)*, publish the determination in such form and manner as it considers appropriate.
- (6) Subject to *section 20(2)*, the Tribunal when making available to the public its determination shall exclude any information that identifies or that could reasonably

lead to the identification of any of the parties, the subject matter of the determination concerned.

- (7) *Subsection (4)* is in addition to, and not in substitution for, any power of the High Court to discontinue proceedings before it.

### **Enforcement of awards of Tribunal**

29. Subject to confirmation by the High Court under *section 28*, any award made by the Tribunal shall be of the same force and effect as a judgment of the High Court and may be enforced by the High Court, and proceedings taken on it, in the same manner in all respects as if it were a judgment of that court.

## CHAPTER 5

### *Restoration of trust*

#### **Application of Chapter 5**

30. (1) An appropriate person may make a request to the Facilitator under *section 32* irrespective of whether the person has made, or intends to make, a claim.
- (2) Nothing in this Chapter shall operate to—
- (a) require an appropriate person to make a claim, or
  - (b) prejudice an appropriate person's right to make a claim.

#### **Facilitator of meetings to restore trust**

31. (1) There shall be a person appointed to carry on and control generally the administration and business of restoration of trust meetings (in this Act referred to as the "Facilitator").
- (2) The Facilitator shall be appointed by the Minister, with the consent of the Minister for Public Expenditure and Reform, and shall hold office on such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform.
- (3) If the Facilitator is for any reason unable to continue to act as Facilitator, the Minister may appoint another person to be the Facilitator in that person's place.
- (4) The Facilitator shall, subject to this Act, be independent in the performance of his or her functions under this Chapter, and shall in particular, be independent of the Tribunal and its functions under *section 7(1)(a)*.

#### **Meetings to restore trust**

32. (1) An appropriate person may make a request to the Facilitator to convene a meeting (in this Act referred to as a "restoration of trust meeting") for the purposes of

documenting experiences, facilitating discussion and providing information to the appropriate person in respect of the person's experience in relation to CervicalCheck.

- (2) A request under *subsection (1)* shall be made to the Facilitator in such form or manner as may be specified by the Facilitator and any such request shall specify the persons sought to participate in the restoration of trust meeting concerned.
- (3) The Facilitator shall, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, establish and maintain a panel of suitable persons to be moderators, appointed for such term and on such conditions as the Facilitator determines, for the purposes of convening restoration of trust meetings.
- (4) Where the Facilitator receives a request to him or her made in that behalf by an appropriate person to convene a restoration of trust meeting, the Facilitator shall appoint a moderator for the purpose of convening the meeting.
- (5) The Facilitator shall provide, or arrange for the provision of, such administrative services and information and advice as may be necessary to enable a moderator to discharge his or her functions under this Chapter.
- (6) Subject to this Chapter and such rules (if any) as may be specified by the Facilitator, a restoration of trust meeting convened by a moderator may regulate its own procedures, including the documenting and recording of such meetings.
- (7) Where some but not all of the persons specified by the appropriate person in his or her request to the Facilitator in *subsection (1)* consent to participate in a restoration of trust meeting, the meeting may, with the consent of the appropriate person who made the request, proceed with those persons who have consented to so participate in the meeting concerned.
- (8) An appropriate person may be accompanied by a person or persons of his or her choice when attending a restoration of trust meeting.
- (9) The moderator shall act as chairperson of the restoration of trust meeting.
- (10) A restoration of trust meeting may with the unanimous agreement of those participating in the meeting make recommendations to the Minister.
- (11) The Facilitator may, for the purposes of holding and maintaining the records of restoration of trust meetings, nominate one or more members of staff of the Tribunal to be the holder of the records, which records shall be confidential.

### **Restoration of trust meetings – not admissible in proceedings or claims before Tribunal**

- 33.** (1) No evidence shall be admissible in any court or the Tribunal of any information, statement or admission disclosed or made in the course of a restoration of trust meeting.
- (2) Information provided by a participant at a restoration of trust meeting shall not, notwithstanding—
- (a) any provision to the contrary in—
    - (i) a policy of professional indemnity insurance,

- (ii) any documentation that comprises an offer, or evidence, of an arrangement for indemnity between a medical defence organisation and a member of that organisation, or
  - (iii) a contract of insurance providing insurance cover for claims in respect of civil liability or clinical negligence actions,
- or
- (b) any other enactment or rule of law,
- invalidate or otherwise affect the cover provided by such policy or contract of insurance that is, or but for such information would be, available in respect of the restoration of trust meeting concerned or any matter alleged which arises (whether in whole or in part) from the issues, the subject matter of the request for the restoration of trust meeting.
- (3) Information provided to an appropriate person at a restoration of trust meeting shall not—
- (a) constitute an express or implied admission, by a participant of fault, professional misconduct, poor professional performance, unfitness to practise, or other failure or omission, in the determination of a complaint that is made in respect of the participant and which arises (whether in whole or in part) from the consequences of the issue, the subject matter of the request for the restoration of trust meeting, and
  - (b) notwithstanding any other enactment or rule of law, be admissible as evidence of fault, professional misconduct, poor professional performance or unfitness to practise.
- (4) This section is in addition to, and not in substitution for, any enactment or rule of law relating to the disclosure of information in respect of the provision of health services.
- (5) In this section—
- “Act of 2017” means the Civil Liability (Amendment) Act 2017;
- “clinical negligence”, “clinical negligence action” and “medical defence organisation” have the same meanings respectively as they have in section 10 of the Act of 2017;
- “health service” has the same meaning as it has in Part 4 of the Act of 2017;
- “professional indemnity insurance” means a policy of indemnity insurance to cover claims by or on behalf of an appropriate person in respect of any description of civil liability for injury, harm or death that is incurred in the provision of a health service (including the carrying on of the business of the provision of a health service).

## CHAPTER 6

*Reports of Tribunal, etc.***Recommendations of Tribunal**

34. (1) Where the Tribunal thinks fit to make recommendations under *section 7*, the Tribunal shall submit the recommendations to the Minister.
- (2) The Minister shall publish in such form as he or she thinks fit recommendations of the Tribunal made under *subsection (1)*.

**Annual Reports**

35. (1) The Tribunal shall not later than 6 months after the end of each financial year of the Tribunal prepare and submit a report to the Minister on its activities during that year.
- (2) A report under *subsection (1)* shall include—
- (a) information on the performance of the Tribunal's functions, including its functions under *Chapter 5*, during the period to which the report relates,
  - (b) particulars of its accounts, and
  - (c) such other information as the Tribunal thinks fit or the Minister may request.
- (3) The Minister shall publish in such form as he or she thinks fit reports of the Tribunal made under *subsection (1)*.
- (4) In preparing a report under this section, the Tribunal shall exclude from the report any information that identifies or that could reasonably lead to the identification of any of the persons who participated in restoration of trust meetings.

## CHAPTER 7

*Dissolution***Dissolution of Tribunal**

36. (1) The Minister may, after he or she has consulted with the Tribunal, by order dissolve the Tribunal—
- (a) on such date, or on the occurrence of such event, as is specified in the order, and
  - (b) subject to such conditions, if any, as are specified in the order.
- (2) The Minister may, by notice given to the Chairperson require the Chairperson to deposit the material to which this subsection applies to the Minister within the period specified in the notice.
- (3) The Chairperson shall comply with the requirements of a notice under *subsection (2)*.
- (4) *Subsection (2)* applies to all material which is evidence received by or lodged with, or a document created by or for, the Tribunal whatsoever (including any documents

which are incomplete or in draft form only and any documents created for the purposes of *Chapter 5*).

## PART 3

### MISCELLANEOUS

#### **Appeals to High Court – rules of court**

37. Without prejudice to section 24 of the Interpretation Act 2005, where an appeal from a determination of the Tribunal is made to the High Court under *section 27*, rules of court may make provision for the hearing and determination of those appeals in a timely and efficient manner.

#### **Offences**

38. (1) Where a person—
- (a) on being duly summoned as a witness before the Tribunal, without just cause or excuse, disobeys the summons,
  - (b) being in attendance as a witness before the Tribunal refuses to take an oath or to make an affirmation when legally required by the Tribunal to do so, or to produce any documents, including things in his or her power or control legally required by the Tribunal to be produced by the person, or to answer any question to which the Tribunal may legally require an answer,
  - (c) knowingly or recklessly gives evidence to the Tribunal which is material to a claim and which he or she knows to be false or does not believe to be true,
  - (d) fails, neglects or refuses to comply with the provisions of a direction made by the Tribunal,
  - (e) without reasonable cause, by act or omission, obstructs or hinders the Tribunal in the performance of its functions,
- the person shall be guilty of an offence.
- (2) A person guilty of an offence under *subsection (1)* shall be liable—
- (a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
  - (b) on conviction on indictment, to a fine not exceeding €300,000 or imprisonment for a term not exceeding 5 years or both.
- (3) Where an offence under *subsection (1)* is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person shall, as well as the body corporate, be guilty of an offence and may be

proceeded against and punished as if he or she were guilty of the first-mentioned offence.

- (4) Where the affairs of a body corporate are managed by its members, *subsection (3)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

### **Restrictions of rights and obligations under Data Protection Regulation**

**39.** (1) The rights and obligations provided for in Articles 12 to 22 (and Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22) and Article 34 of the Data Protection Regulation are, in so far as the rights and obligations relate to the processing of personal data by a relevant person, restricted to the extent necessary and proportionate to enable the person to perform his or her functions under *Part 2*.

- (2) The Tribunal shall establish procedures providing for the restriction of the Data Protection Regulation to the extent necessary and proportionate to enable the Tribunal to carry out its functions under *Part 2* and shall publish the procedures in such manner as it considers appropriate.

- (3) In this section—

“Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>1</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“personal data” has the same meaning as it has in Article 4 of the Data Protection Regulation;

“processing” has the same meaning as it has in Article 4 of the Data Protection Regulation;

“relevant person” means—

- (a) the Chairperson,
- (b) an ordinary member of the Tribunal,
- (c) a member of staff of the Tribunal,
- (d) a person appointed under *section 9(1)*,
- (e) a counsel or solicitor appointed under *section 10*,
- (f) the Facilitator,
- (g) a moderator appointed under *section 32*.

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<sup>1</sup> O.J. No. L 119, 4.5.2016, p.1

**Amendment of Freedom of Information Act 2014**

**40.** Section 42 of the Freedom of Information Act 2014 is amended by the insertion of the following paragraph after paragraph (e):

“(ea) a record held by the CervicalCheck Tribunal (in this paragraph referred to as ‘the Tribunal’) or, after the Tribunal has been dissolved, the Minister for Health, relating to the Tribunal, other than a record relating to the expenses of the Tribunal or other matters concerning the general administration of the Tribunal.”.