

IMO



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Mr Alex White TD
Minister of State for Primary Care
Department of Health
Hawkins House
Dublin 2

Dear Minister

I refer to your letter of 26 March 2014. I note and welcome your confirmation that the Department does not dispute the IMO's registration as a trade union as regards having been granted a negotiation licence. With respect we do not however accept your assertion that "the negotiation licence is of limited relevance in this context". The licence was granted precisely because the State – correctly – adopted the position that IMO and its predecessors were in fact and law negotiating in respect of wages and conditions of employment. This was particularly the case following the inception of the GMS, since when GPs have always been regarded as being analogous to employees for the purposes of negotiation on publicly funded contracts and the IMO, as the holder of the negotiating licence has been recognised as the body representing them. This is confirmed in both the GMS and the Doctor Visit Only Card Contracts. Indeed the IMO is the only body holding a negotiating licence on behalf of general practitioners.

Your letter states that established competition law principles must apply to any engagement with GPs and indicates that while you are prepared to negotiate with us on the scope and content of the proposed contract the ultimate setting fees must remain a matter for the Minister for Health. As you are aware the IMO has always asserted that it is fully entitled to negotiate on all aspects of a new contract and the IMO contends that the position of the Competition Authority is incorrect in this regard. The IMO has negotiated with the State for many years on all aspects of GP services. It has done so in a manner that has ensured the successful delivery to patients of such services.

You will also recall that the position of the Authority has been criticised by the former Attorney General Mr Paul Gallagher S.C. at a conference entitled Competition in Healthcare in January 2012, in which he stated that the "*Competition Authority's position is wrong as a matter of law and that this stance has created significant uncertainty ...*" and that it's position has created difficulties for Government in engaging with representative bodies. We note your acceptance that there is a clear relationship between the scope and content of the contract on the one hand and fees on the other.

The process proposed indicates that the Department of Health/HSE will engage with the IMO concerning the scope and content of the draft contract, however the fee structure will be addressed in a further process in advance of which a proposal for such structure will be tabled by the Department of Health/HSE.

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DOCHTÚIRÍ na hÉIREANN

Quite apart from the fact that two separate processes are unnecessary as a matter of law and unworkable in practice there are a number of aspects of your proposals that remain unclear.

1. It is unclear whether the further process is to run parallel to negotiations on the scope/content of the contract or whether it is to take place following the negotiations on the contract.
2. It is unclear what is the process envisaged and when will the IMO be advised of the proposals which are to be tabled by the Department of Health/HSE.
3. It is also unclear whether the proposals are being tabled for discussion with the IMO or are being implemented by the Department of Health/HSE without discussion and whether the consultation process on fees is to be by means of an independent body or, as in the case of FEMPI, through the Department of Health.

We would also point out that the proposals to date in connection with the Under Sixes Contract appear to seek to incorporate a process which is similar to the Financial Emergency Measures in the Public Interest Act consultation process into the contractual terms. This would allow the Minister vary the fees fixed subject only to obtaining the consent of the Minister for Public Expenditure and Reform. The singling out of the GPs to be subject to a FEMPI type arrangement going forward is clearly unacceptable. It also raises significant issues where the FEMPI Legislation was found to be Constitutional in circumstances of acknowledged National Emergency and clearly any attempt to incorporate a FEMPI type process in either contractual terms or new Legislation at this stage would be an issue of the greatest significance in which our members must reserve all of their rights including their Constitutional rights

Finally we note your statements both in the Dail and through the media that you have invited the IMO into full negotiations. Whilst your letter refers to negotiations with the Department and the HSE, nevertheless these cannot be full negotiations if the IMO is being precluded from negotiating all aspects including resourcing and fees. This is at the heart of the current case with the Competition Authority in which detailed witness statements have now been served on behalf of the IMO and a full Defence and Counterclaim filed.

Finally we repeat our invitation to participate in a discussion on a New GMS Contract at the IMO National GP Meeting which will take place at the IMO AGM and hope you will be in a position to attend.

Yours sincerely



Susan Clyne
Chief Operating Officer