

Irish Dental Union submission to the HSE re Draft GP Contract for Provision of General Practitioner Services to Children aged under 6 years

19 February 2014.

Introduction

The Irish Dental Union is a registered trade union, whose membership comprises, amongst others, registered dentists contracted to provide dental care and treatment to eligible patients covered by the Dental Treatment Services Scheme (DTSS) operated by the HSE and the Dental Treatment Benefit Scheme (DTBS) operated by the Department of Social Protection.

The Union does not represent medical practitioners whom the HSE engages traditionally for the provision of medical care and treatment and whose sole recognized representative body is the Irish Medical Organisation (IMO), likewise a registered trade union.

We do not intend to therefore to comment on the provisions of the draft contract as published on January 31st, and to which the correspondence of February 7th from Mr John Hennessy, HSE National Director, Primary Care refers, other than to state our views on the denial of collective bargaining rights to the IMO apparent in this exercise.

The Irish Dental Union fully supports the IMO in its insistence on vindication of its right to engage in collective bargaining on the contractual terms, including remuneration on offer, applying to any scheme developed by the state and which assumes the provision of professional services by medical doctors.

Again without commenting on the specifics of the medical contract, it is important to state our objection to the notion that fees could be amended by the Minister for Health from time to time following consultation (clause 21 refers).

Given that legislation^[i] was introduced to have the Minister review fees in circumstances where the public finances were in crisis and where it was stated such legislation would be repealed as soon as possible, it is not acceptable or appropriate to propose contractual terms as set out in clause 21.

The terms of this clause suggest that doctors, dentists and others will have different rules applied to them than colleagues who are covered by national pay agreements and are entitled to have their unions represent them in collective bargaining with the state.

We assert the same right to negotiate on behalf of dentists as we have traditionally done for many decades in regard to the DTSS, DTBS and similar schemes (we do not claim representation rights in regard to the proposal to provide free GP care for children under six as we do not understand it to suggest the provision of dental care and treatment).

Competition Legislation

The IDU contends that there is no impediment to continue with the long established tradition of collective bargaining between Government departments and agencies on the one hand and trade unions representing the medical, dental and other professions on the other hand.

Our claim for dentists to enjoy the protections afforded to trade union members reflects our belief that our members are entitled to such rights as are set out in a number of international conventions (e.g. Freedom of Association and Protection of the Right to Organise Convention no. 87 and the Right to Organise and Collective Bargaining Convention no. 98) to which Ireland is party and which were ratified and remained in existence over many years^[ii].

The European Charter on Human Rights contains important protections for collective bargaining and so also does the Charter of Fundamental Rights of the European Union.

Mr. Paul Gallagher SC, Attorney General to the previous administration when the HSE first raised doubts about the entitlement of trade unions representing professionals such as doctors, dentists and pharmacists to engage in collective bargaining, asserted recently^[iii] (January 24th 2012) that the European Court of Justice has found that the state itself or state bodies when providing and organising medical services on the basis of solidarity are not in general undertakings for the purposes of competition law.^[iv]

Mr. Gallagher also states that Article 102(2) exempts undertakings entrusted with the operation of services of general economic interest from the application of competition rules.

Thirdly, he cites the recognition that the primary goal is not competition and the internal market but the provision of health services as a third source for the curtailment of competition law in healthcare.

In regard to the position of the Competition Authority as it relates to medical general practitioners and the 2008 proposal by Government to withdraw medical cards to over 70s, he states his belief that “the Competition Authority’s position is wrong as a matter of law and that this stance has created significant uncertainty on the part of the representative bodies with regard to what they can and cannot do and has created significant difficulties for Government in implementing necessary changes.”

He continues: “The Government is not an undertaking and therefore was not subject to the Competition Act. GPs were all charging the same fees to the Government for the medical card services and therefore the idea that they were somehow combining on price by entering into negotiations is difficult to understand.”

Health reforms and the dental profession

In regard to health reforms and engagement with the dental profession, discussion on long overdue reforms of publicly funded dental services has been stalled because of a belief on the part of the HSE that such discussions would contravene the Competition Act, 2002. The Irish Dental Union, however, has been advised by its own Senior Counsel that no such concerns should prevent talks continuing.

The Government’s decision to “pursue appropriate amendments to Section 4 of the Competition Act 2002 to enable the representative body of GPs, the IMO, to represent its members in negotiations with the HSE and the Department of Health and Children in respect of the services provided to the public health service” (Government statement of October 21st 2008) was subsequently confirmed in the Public Service Pay Agreements which followed.

The Government also stated that it was “satisfied that the scope of the engagement by General Practitioners in the delivery of primary healthcare, and the significance of primary healthcare for the overall efficacy of the public health system, makes a more direct form of engagement with the representatives of General Practitioners both necessary and desirable. Accordingly, it is the intention of the Government to pursue appropriate amendments to Section 4 of the Competition Act 2002 to enable the representative body of GP’s, the IMO, to represent it’s members in negotiations with the HSE and the Department of Health and Children in respect of the services provided to the public health service in a manner consistent with the public interest. This will not affect in any way the status of the IMO or other representative organisations in respect of medical services other than those delivered by agreement with the public health service. The legal provision to be made will be subject to consistency with EU competition rules.”

The Irish Dental Union believes that the same principle of partnership ought to apply to enable direct engagement with the Irish Dental Union, as the representative of general practitioners in dentistry, which the Government sees as “both necessary and desirable” in improving primary care “for the overall efficacy of the public health system.”

We believe that the Irish Dental Union should have its role recognised in the same way as the IMO when amendments to the Competition Act are considered.

The Department of Health has confirmed that it will extend the same legislative changes as are to apply to the IMO to the Irish Dental Union.

Competition (Amendment) Bill, 2012

We refer your attention also to the Competition (Amendment) Bill, 2012 which seeks to delimit the application of the Competition Act 2002 to trade unions and trade union members and to certain agreements negotiated with public bodies.

The Bill was moved by the chief whip of the Labour Party, Mr Emmet Stagg TD and met no opposition from the current Government when it was moved at first stage on June 19th 2012. The Bill allows for collective negotiation and bargaining in relation to the terms and conditions of a scheme whereby services are provided to the public by members of a trade, profession or vocation and paid for out of public funds.

It is important to recall the memorandum accompanying the Bill which states that:

The very same grounds that justified trade unions receiving recognition and immunity for employees over a century ago are still relevant and available to justify organising and collective bargaining by self-employed persons

The reality is that collective negotiation on behalf of trade associations of self-employed individuals is very much a standard feature of industrial relations practice. It is also a standard feature of the procurement of professional services by the Government, for health and other public welfare programmes.

Conclusion

We believe that the Department of Health and HSE should set aside this draft contract and engage in proper and meaningful negotiation on all aspects of a proposed contract, including the remuneration to apply, with the Irish Medical Organisation which is the recognised trade union for medical GPs.

In the same way as we believe that the Irish Dental Union is entitled to represent its members in negotiations with the HSE and other state agencies, we believe that the IMO is entitled to engage in collective bargaining with the HSE on this contract. Members of both the IMO and IDU are entitled to the protections afforded by collective bargaining and contained in international conventions to which Ireland is signatory and to the terms of the ECHR and the Charter of Fundamental Rights of the European Union.

We do not accept that there is any impediment to collective bargaining contained in the application of competition law and we remind you also of the provisions agreed in October 2008 and reflected in subsequent public service agreements to remove any uncertainty about the entitlement of the IMO to represent its self-employed members in negotiations relating to the provision of medical care by self-employed doctors (and by extension we suggest to the provision of dental care by dentists).

We refer also to the the Competition (Amendment) Bill, 2012 which seeks to delimit the application of the Competition Act 2002 to trade unions and trade union members and to certain agreements negotiated with public bodies, a Bill which has not been opposed by the current Government.

The interests of the public are best served by ending the stubborn persistence by the Department of Health and HSE in seeking to deny the right to collective bargaining to members of the IMO, the IDU and other registered trade unions.

ENDS

[i] Financial Emergency Measures in the Public Interest Acts 2009

[ii] ICTU submission to the Review of the Competition Act 2002, December 2007.

[iii] Paul Gallagher SC address to CEO Health Forum on Competition in Healthcare, University College Dublin, January 26th 2012.

[iv] AG2R Preyvence v Beaudout Perea et Fils Sarl ECJ 3rd March 2011 and Hemat vs The Medical Council 2010 3IR 615; Medical Ambulance vs HSE, unreported Cooke J March 8th 2011.