



Interim Administrator
 Central Remedial Clinic
 Vernon Avenue
 Clontarf
 Dublin 3

Feidhmeannacht na Seirbhíse Sláinte
 Health Service Executive

14th January 2014

Mr. Tony O'Brien
 Director General
 Health Service Executive
 Dr. Steevens' Hospital
 Dublin 8

Re: 2012 Appropriation Accounts of the Comptroller & Auditor General: Vote 39: Health Service Executive – Section 38 Agencies' Remuneration

Dear Mr. O'Brien,

As you will be aware, as the Interim Administrator I am working through a range of operational, governance and legacy issues at the Central Remedial Clinic (CRC).

It is anticipated that much of the related work and audits will be completed by the end of the first quarter of this year, at which time issues requiring further attention of the CRC/HSE will have been identified. However, at this stage, it is necessary to brief you on a significant *remuneration* issue which has now been identified.

The issue of *remuneration* continued to be a live issue for the Board of Governors of the CRC in early 2013. The Chairman formally announced to the Board, at a special meeting in February 2013, that the Chief Executive, Mr. Paul Kiely wished to resign in June 2013. The Board accepted Mr. Kiely's resignation and approved, notwithstanding the focus on remuneration, a retirement package. The Chairman, in outlining the details of this package, intimated that the proposed package 'was considerably less beneficial to Mr. Kiely' when compared with the terms of the HSE's Early Retirement Scheme. It was, also, agreed by the Board that the terms of Mr. Kiely's settlement would be confidential and that a legally binding confidentiality agreement would be put in place.

Mr. Kiely received in his final salary payment from the CRC in June 2013, the following amounts in addition to his basic salary:

€200,000	Tax Free
€273,336	<u>Taxable</u>
€473,336	<u>Total</u>

In addition, an amount of €268,689 was paid to Mercers to ensure that Mr. Kiely's pension/lump sum benefits would not be less than if Mr. Kiely had continued to remain on as Chief Executive until November 2016. At about the time of this final payment, an amount of €700,000 (in two instalments of €450,000 and €250,000) was paid by the Friends and Supporters of the CRC that was described in the draft internal accounts as a donation. The minutes of the Friends and Supporters does not record an approval for this 'donation' (which represents almost half its annual income) by the Board of Directors. The payments to Mr. Kiely could not have been made by the CRC if the €700,000 had not been received from the Friends and Supporters.

The above arrangements raise a number of serious matters:

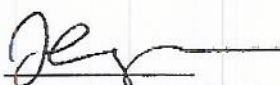
- The CRC's Memorandum of Association allows its income, whencesoever derived, to be applied for payment of reasonable and proper remuneration of any officer in return for services actually rendered. Payment of ex gratia amounts of the magnitude paid in the above case would not appear to be in line with the Memorandum.
- The benefits derived from the package paid, coupled with the benefits to be derived from the payment of further benefits under the terms of Mr. Kiely's defined benefit pension scheme membership, could not be regarded as being 'considerably less beneficial' to Mr. Kiely than the HSE Early Retirement Scheme
- The cost of the package to the CRC/Friends and Supporters of the CRC is substantially greater than an option of allowing Mr. Kiely to retire on the basis of pension benefits accrued to date of retirement. However, early retirement with payment of benefits was not an option under the terms of the pension scheme. It should be noted that pension and lump sum benefits would be paid out of the pension fund and not by the employer. The CRC contributes to the pension fund on a current basis.
- Payment calculations in relation to benefits are based on a remuneration, of which, approximately half, has not been adjusted for public sector pay cuts.

In relation to confidentiality it is difficult to envisage how payments amounting to €700,000 by the Friends and Supporters to the CRC which is clearly linked to the payment made to Mr. Kiely could, or indeed should, not be disclosed in the accounts of the Friends and Supporters of the CRC and the CRC. It should also be noted that the minutes of the Board of Governors meetings (which record the Board approval of the package) are subject to disclosure under FOI.

I have not, as yet, had sight of the detailed advices (from EY and Mercers) provided to the Board/Remuneration Committee in support of the granting of the package/payments, and these may cast further light on the Board's rationale for sanctioning the package. However, on the basis of the available documentation, the arrangements are considerably at variance from the understanding the PAC may have gained from evidence given at the hearing attended by representatives of the CRC Board of Governors. The onus is on the HSE, as its accounts are the subject of the examination by the PAC, to ensure that complete information, in so far as is possible, is available to the PAC.

At this stage it is necessary for the CRC to satisfy itself that the payments made/benefits conferred are reasonable and proper (in the context of its Memorandum of Association) and that any amounts paid were correctly calculated and authorised. In the event of there being a loss to the CRC (or the Friends and Supporters of the CRC), steps will require to be taken to make good that loss and deal with other consequential issues.

Yours sincerely,



John Cregan
Interim Administrator