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Please ask for: Mr. O'Reilly

30 June 2014.

Mr. Ted McEnery,
Clerk to the Committee,
Committee of Public Accounts,
Leinster House,
Dublin 2.**By email and post.****email: ted.mcenery@oir.ie****email: pac@oireachtas.ie**

Re	Our Client	:	Brian Conlan.
	Matter	:	<ol style="list-style-type: none"> 1. Report of Interim Administrator Appointed by Health Service Executive ("HSE") to the Central Remedial Clinic ("CRC"). 2. Public Accounts Committee ("PAC") Hearing 3rd July 2014.
	Third Party	:	"PAC" / "HSE."

Dear Sirs,

We are instructed by our aforementioned client and have been passed a copy of your correspondence of 19th February 2014 and 26th June 2014 addressed to him for attention and reply.

In the first instance please note we have written to the Director General of HSE concerning a number of serious factual inaccuracies contained in the report referred to in your correspondence of 26th June last. Those inaccuracies will be addressed further herein.

We refer to the third paragraph of your correspondence of the 26th June last. We note you state that *"[i]t is the requirement of the committee that the former board members who had a central involvement in the issues highlighted in the report of the Interim Administrator would now attend the committee..."*. In the first instance we note that the report referred to herein runs to 68 pages with a further 81 pages of appendices, yet no effort has been made in your correspondence to our client to

specify with any clarity what "issues" in the report your Committee wish to examine him on. Our client has no idea what these issues are. He is also quite sure that he can be of no assistance regarding the central issue the Committee seems intent on pursuing as referred to by its members in previous sittings given his extremely limited role in the management of the CRC at the relevant dates.

Our client's reservations about appearing are further compounded by the fact that he voluntarily appeared without legal representation before PAC on the 16th January 2014 wherein he was subjected to questions based on blatant factual inaccuracies which were put to him before the committee and on the public record. In particular a letter from the Interim Administrator appointed by the HSE to the CRC dated the 14th January 2014 addressed to the Director General of the HSE was brandished before our client without any notice and he was subjected to aggressive, unfair and biased cross examination by certain committee members in respect of that correspondence. There are factual assertions in that correspondence which are incorrect and said correspondence is contained unamended in the appendices to the Interim Administrators report. Our client's confidence in the methodology adopted to compile this report and the motivations behind it is further undermined by his perusal of the report which continues to contain a number of factual inaccuracies relating to him and his role within the CRC. For the sake of completeness we set out the inaccuracies as follows:

- At page 26 of the report in section 5.2 it is stated that our client was a board member as at 1st January 2013. This is not correct. Our client retired as Chief Executive Officer of the Mater Hospital on the 31 December 2012 and, therefore, his *ex officio* membership of the CRC Board terminated at that date.
- At page 26 of the report in section 5.2 at paragraph 5 thereof, it is stated that the CRC Board met in February, April, May, June, September and November 2013. It fails to list a special board meeting that took place on the 25th March 2013.
- At page 47 of the report and the second paragraph thereof, it is not correct to state that our client retired from the CRC board "only to allow his name to be considered for the position of CEO". Our client, in fact, did not retire from the CRC board to apply for the new CEO role. The board advertised the position internally and our client along with three other candidates interviewed for the position. The process was overseen by an external consultancy firm and a selection committee of board members of which our client was not a member. Our client applied for the position on 6th May 2013, was interviewed on 23rd May 2013 and received a letter of appointment on 29th May 2013. At a meeting on 10th June 2013, our client resigned his position as an ordinary board member and was appointed as CEO. None of this important factual information is contained in the report.
- At page 61 of the report it is asserted that during 2013 our client replaced Mr. Paul Kiely on the board of Central Remedial Clinic Medical Devices Ltd and as company secretary. This is not correct. Our client was never formally appointed as a director or as company secretary of the aforesaid company.

- At Appendix 27 of the report our client is listed as having been a member of the remuneration committee of the CRC board in 2013 and of being the CEO of the Friends and Supporters of CRC Ltd. Our client was never a member of the remuneration committee of the CRC board and was never CEO of the Friends and Supporters of CRC Ltd. This is yet another serious factual error.
- At Appendix 21 of the report, there is a letter written by the Interim Administrator to Mr. Tony O'Brien, the Director General of the HSE dated the 14th January 2014. Paragraph 3 of that correspondence contains a serious factual error. That letter alleges that the Chairman of the CRC 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. No such announcement was made at a meeting in February 2013. There was a special board meeting held on the 25th March 2013 which our client was not in attendance at. Our client believes the announcement was made at that meeting.

Our client wishes to put on record the following correct factual information in relation to his role and involvement in the CRC:

- Our client was appointed to the Board as an ordinary member on the 4th February 2013. He was approached and requested by the Board to join and he joined on a voluntary basis without remuneration.
- Up to that date, he had had no active or management role on the board of the CRC as his membership of the board up to the 31st December 2012 was on an *ex officio* basis and he played no hand, act or part in the management of the company.
- The central issue which PAC seems intent on pursuing is the remuneration and termination arrangements for former CEO, Mr. Paul Kiely. Our client was never a member of the remuneration committee of the CRC, despite the assertion made in the Interim Administrator's report. Our client was not in attendance at a board meeting of the CRC which approved said remuneration and termination arrangements.
- Upon Mr. Kiely's resignation, and on seeing the advertisement for a new Chief Executive Officer, our client applied for and was interviewed for the role as an internal candidate.
- Our client was interviewed for the position of CEO together with three other internal candidates and on the 29th May 2013 our client received a letter of appointment.
- On the 10th June 2013 our client resigned as an ordinary board member and his appointment as CEO was ratified by the board.
- Our client finished work as CEO of the CRC on the 13th November 2013 and resigned his position in December 2013.

- Our client has not had any function or role in the management of the CRC since 13th November 2013. Our client is not in possession of any original documents, files, minutes of meetings, or his personnel file or indeed any other information and all of this information is in possession of the current board of the CRC.

To summarise, we have advised our client that in our opinion there is a serious question mark as to whether PAC has any lawful jurisdiction to embark on an enquiry into the accounts, reports or executive remuneration of the CRC. We must advise that it is our opinion that PAC do not have lawful jurisdiction to review a number of matters contained in the report and in this regard we are aware through various media reports that your committee members have received legal advice and are well aware of the jurisdiction conferred on it by Standing Order 163 which governs the committee.

Even if your Committee does have such jurisdiction (which is not accepted), we have advised our client that we have serious concerns that his personal rights under the Constitution will be breached by the manner in which your Committee is purporting to carry out such an enquiry. In particular:

- It appears the enquiry will be based on a report that contains serious factual inaccuracies and our client will not be afforded any opportunity to test or challenge these inaccuracies during the public hearing.
- From observation of previous public sittings, it is clear that your Committee adopts a practice of aggressive adversarial examination of witnesses (to which our client has already been subjected to once without the benefit of legal representation) yet no notice or detail is given to our client as to what specific matters he is to be examined on. This is, in our opinion, potentially a breach of our client's Constitutional right to fair procedures and natural justice.
- From our observation of previous public sittings in respect of this enquiry and separate enquiries widely reported in the media, your members have made public accusations in the print and broadcast media about private citizens which in our opinion potentially breached those citizens' right to privacy. We have grave concerns that our client is at risk of being subjected to the same process of public character assassination.

Accordingly, given the concerns set out herein, our client neither refuses nor consents to the committee's requirement to attend on the 3rd July next. Before deciding whether to advise our client to attend or not, we respectfully suggest that a formal legal invitation is issued to him requiring him to attend clearly identifying in numerical order the specific issues by reference to the report which he will be examined on and confirming that no other issues will be raised apart from those outlined by you. We require confirmation that the factual errors and mis-statements contained in the report and highlighted in this correspondence have been corrected and will not be referred to by PAC members in the public hearings without correcting the errors. We also request confirmation of which other members of the CRC have

been invited to attend and which members are scheduled to give evidence on 3rd July next.

We await hearing from you.

Yours faithfully,

Giles J Kennedy & Co

Giles J. Kennedy & Co.,
Email: ian.oreilly@gilesjkennedy.com