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**By Email Only:** [garvanjames@gmail.com](mailto:garvanjames@gmail.com)

**Our Ref:** MA/YOR/11526/1

**Your Ref:**

**Date:** 20 December 2024

**Re: Dispute with HSE**

Dear Garvan

I refer to our Teams call earlier today. What follows is a brief summary of the main points discussed in that call.

I note that no contact has been received from the HSE since we were last in touch.

We discussed the possible routes forward for the HSE from here.

The first is for the HSE to sue the contractor (Bronze Trail Limited) in respect of the sums which the HSE says are owed to it in respect of historic overclaiming. The HSE can go back six years in that regard. It's not clear at this time the full extent of what the HSE says is owed back to it. However, because the contractor is Bronze Trail Limited, there is a question mark over the commerciality of the HSE initiating proceedings in circumstances where you tell me that there is no money in Bronze Trail Limited. In other words, it may not make any financial sense for the HSE to prosecute a civil claim for money damages against Bronze Trail Limited if any judgment that it would obtain would be worthless financially.

The second option for the HSE is a complaint to the PSI. I note that you have corresponded with the PSI and as of July of this year your registration has been voluntarily cancelled. I note that you do not intend to practice as a pharmacist again.

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There is also the prospect of criminal proceedings. We know from previous correspondence that the HSE has notified An Garda Siochana in respect of the alleged overclaiming. We also know that a number of pharmacists have been the subject of criminal proceedings at the instigation of the DPP in recent years in relation to overclaiming under the Community Drugs Schemes. A number of these prosecutions have secured convictions against pharmacists. As time progresses, the prospect of criminal proceedings occurring recedes. That being said, you are not outside the timeframe within which criminal proceedings might be initiated against you if there is compelling evidence of fraudulent overclaiming. There is no time limit for a criminal prosecution on indictment.

You asked me whether there is any benefit to responding to the letter from the witness statement of Michelle Owens provided with the letter from Bernard Glouster dated 12 July 2024. I said that in circumstances where you are no longer registered with the PSI and you don't have a contract with the HSE I am not sure that there would be a benefit to responding at this point. It's hard to see how it could improve any damages claim you might make against the HSE.

We discussed the possibility of suing the HSE for the withheld fees due to Bronze Trail Limited. I said that it would be possible to initiate legal proceedings in the High Court and that they would cost at least €100,000 plus VAT to prosecute. Similar levels of fees would be incurred by the HSE in defending the proceedings. The successful party would likely have to bear the majority of the losing party's costs. I also advised that we (Hayes) would require that the case be funded on an ongoing basis with monthly invoices being raised and discharged within our 30 day credit terms.

I advised that if you initiate legal proceedings against the HSE it is likely to precipitate a counterclaim within those proceedings from the HSE against Bronze Trail Limited on the basis that the HSE might as well advance that claim because it would be incurring legal costs in defending the proceedings initiated by you in any event.

We briefly discussed the fact that sometimes directors can be made personally liable for the debts of a company if the view is taken that a director has been sufficiently negligent in conducting the affairs of a company. I said I am not in a position to advise on that as I don't know enough about the company's affairs.

You asked me to provide a rough schedule of monies which would be required to be funded in prosecuting a claim against the HSE. Very broadly, the claim would probably take about a year to work its way through the process to a hearing and Bronze Trail Limited would need to fund the legal costs on an ongoing basis starting with a €20,000 payment on account before work begins. For some months the invoice would be a small figure where there is either not much activity or we are waiting on a response from the HSE. In other months there could be heavy activity meaning larger invoices. In very broad terms you should be budgeting for an expenditure of approximately €8000 - €10,000 per month during the life of the proceedings. These figures are exclusive of VAT. I can't rule out the possibility that the proceedings may be more expensive than this loose estimate. There is potential for it to be very document heavy on the HSE side which may escalate the costs somewhat.

If you are to proceed with the litigation, we will need to brief a barrister to draft the proceedings. It may ultimately be necessary to engage both Junior and Senior Counsel for the hearing of the claim. Prior to initiating legal proceedings, we would also need to write a final pre-action letter to the HSE/Phillip Lee stating that unless payment in full is received within a stipulated period then proceedings (which have been drafted) will immediately follow.

I have suggested that we reconvene in the New Year for the purposes of deciding whether you wish to proceed with High Court proceedings against the HSE at that point. I will also discuss the matter internally with my partners.

Best wishes for Christmas.

Yours sincerely

A handwritten signature in black ink, reading "Matthew Austin", written on a light blue rectangular background.

**Matthew Austin**

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