

**Appendix 1 - Compliance Unit Briefing Note (Issue 3)****HSE Compliance Unit Briefing Note****1. BACKGROUND AND CONTEXT****1.1. Introduction**

The HSE is charged, in accordance with legislation, to use the resources provided to it on an annual basis by the Government in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public. In this connection, in terms of the delivery of services, the HSE is mandated to manage and deliver, or arrange to be delivered on its behalf, health and personal social services to this end. These services are by their nature varied and complex. In some instances the HSE itself delivers these services directly, however, in other circumstances, the HSE relies upon Non-statutory Providers (Providers) to deliver these services on its behalf. Sections 38 and 39 of the Health Act 2004 legally underpin the provision of services by Providers on behalf of the HSE (S38), or the provision of services similar or ancillary to a service that the HSE may provide (S39). In 2016 the HSE released circa €3.4 billion to Voluntary Providers under this legislation to thirty nine Section 38 Providers (€2.6b) and circa 2,000 Section 39 Providers (€826m).

**1.2. Governance Arrangements**

The HSE has a formal Governance Framework (the Framework) in place which incorporates national standardised documentation, and guidance documents, that enable the HSE to contractually underpin the grant-funding provided to all Providers. This Framework seeks to ensure the standard and consistent application of good governance principles, which are robust and effective, to ensure that both the HSE and the Providers meet their respective obligations.

The governance documentation comprising Service Arrangements (SA) (funding greater than €250K), Grant Aid Agreements (GA) (funding less than €250K), and related guidance documents, are utilised by the HSE Acute and Non-Acute Divisions and by Hospital Groups (HGs) and Community Healthcare Organisations (CHOs), as appropriate, when contracting with Providers. In addition an Annual Compliance Statement is completed by all Section 38 and those Section 39 Providers which are funded over €3m annually.

**1.3. Role of the HSE Compliance Unit**

The HSE Compliance Unit was established in late 2014 to provide programmatic oversight of the Framework as it applies to Section 38 and Section 39 Providers. Its main functions are as follows, to:

- Maintain oversight of the SA/GA process including annual review and development.
- Develop and update other documentation relating to the Framework and Annual Compliance Statement (ACS) processes.
- Manage the ACS process.
- Co-ordinate governance issues within the HSE regarding Providers.
- Interface with key stakeholders involved in the Framework.
- Provide support and advice to CHO and HG staff in their governance work with Providers.
- Take initiatives to enhance and improve the Framework where gaps are identified.

While the HSE's Compliance Unit is the custodian of the Framework and the related documentation, it should be understood that the National Divisions, the CEOs of the HGs and, in particular, the Chief Officers in the CHOs have been legally delegated with the

responsibility for the funding that is released to these Providers. In this context therefore it is the Service Managers across the operational system that are responsible for ensuring that the requirements of the Framework in terms of putting SAs and GAs in place, and thereafter monitoring the services that are provided by these Providers.

The below table sets down the key information in relation to the number of funded Voluntary Providers:

2016 Year	Providers	2016 Funding	Number of Part 1 Arrangements	No Part 2 Schedules
<u>Category Breakdown</u>	Total	Total	Total	Total
S38 - Service Arrangement	39	2,607,872,664	39	96
S39 - Service Arrangement	310	713,630,049	310	1,367
<b>Total Service Arrangements Voluntary</b>	<b>349</b>	<b>3,321,502,713</b>	<b>349</b>	<b>1,463</b>
S39 - Grant Aid Agreement	1,707	56,052,722	1,707	2,025
Total S39 Voluntary	2,017	769,682,771	2,017	3,392
<b>Total Voluntary Sector</b>	<b>2,056</b>	<b>3,377,555,435</b>	<b>2,056</b>	<b>3,488</b>

Data from SPG System as at 06.03.2017

## 2. KEY ELEMENTS OF THE FRAMEWORK

### 2.1. Service Arrangements and Grant Aid Agreements

As outlined above, the key documents used to contractually underpin the relationship with these Providers are the national standard SA and the GA.

Providers in receipt of, in excess of, €250,000 annually are required to sign SAs. The SA comprises two Parts: Part 1 sets out the detailed terms and conditions which attach to the release of the funding to Providers and Part 2 (the Schedules) sets out inter alia the annual amount of funding to be released and the quantum of services to be provided for that funding. (In some instances, there may be a number of sets of Schedules per individual Provider.) Part 1 generally covers a four-year period, however, the Schedules are renewed annually by local Service Managers with each Provider to reflect the funding for the year in question and the quantum of services to be provided for same. Providers in receipt of less than €250,000 are required to sign a GA which also sets out the terms and conditions which attach to the release of the funding to these Providers. These GAs are entered into on an annual basis.

In terms of completion rates of these documents, in early 2016 the HSE's Leadership team took a decision that all SAs and GAs had to be completed and signed by Providers before the end of February each year. Where a Provider has not signed the appropriate documentation by that time, it was decided that 20% of the funding involved would be withheld (not cut) until such a time as the documents in question were signed. This policy has resulted in documentation being completed in a far more timely manner than prior to this. The top 250 voluntary providers account for €3.478 bn (2017) which is 98% of the total funding for voluntary providers. Of these, 94% of this funding is accounted for by signed Schedules.

## **2.2. Annual Compliance Statements**

The Annual Compliance Statement (ACS) process was introduced in 2014 and it entails a requirement for Section 38 Providers to self-certify annually in respect of the governance procedures that obtain at Board and Executive level within their respective organisations. This has proven generally to be an effective mechanism with the Section 38 Providers in terms of having an overall positive impact in the compliance context. It has also resulted in some Boards undertaking additional projects and initiatives to enhance their Board's governance. It should be noted that this process has recently been introduced for 52 larger Section 39 Providers i.e. those who receive in excess of €3 million annually in respect of the year 2016. This process will provide additional important assurances for the HSE in relation to governance and the control environment in highest-funded Section 39 Providers. In an overall context 91 (39 + 52) of the top-funded Providers will submit an ACS which represents about €3.1 bn (87.5%) of the funding released annually to all Service Providers. Additionally, work is ongoing to extend an ACS type process to all remaining Section 39 Service Providers in the near future to further enhance assurance in this regard.

## **2.3. Service Provider Governance (SPG) On-Line System**

The SPG online information management system introduced in 2014 provides an online tool for all staff involved in the management and administration of the non-statutory sector.

Currently it provides:-

- National database of key information with online access of all Service Providers and Grantees and their respective funding arrangements, linked to all HSE personnel with management and administrative responsibilities;
- Fully automated Grant Aid Agreement document production (Over 1,700 Providers);
- Fully automated Change Control document production for all Providers;
- Introduction of national standard best practice controls assurance processes;
- Provision of all compliance reporting requirements.

SPG is being developed on a phased basis with the final plan being the full automation of the governance process including documentation and controls assurances processes.

Developments to be in place by the end of 2017 include the widening of the Key Performance Indicators to include the receipt and review of the Agencies Annual Financial Statements and Performance Meetings planned and held. This will enable compliance reporting to be widened to these critical assurance areas.

## **3. RECENT DEVELOPMENTS**

### **3.1. External Reviews of Governance in Section 38 Providers**

Independent of the ACS process, outlined at 2.3 above, it was decided that a review of governance at Board and Executive level in Section 38 Providers, to be conducted by external consultants, would be undertaken. The purpose of these Reviews is to establish the level/standard of governance in place in these organisations and to provide external assurance that the governance practices and procedures accord with those set out in their respective ACSs that have been submitted by the Providers over a three-year period (2013 to 2015). All Section 38 Providers will be reviewed by the end of 2017. These Reviews involve an examination of key governance processes and documents, including obtaining confirmation that there are internal financial controls and that formal written financial procedures are in place in these organisations. Thirty one of these Reviews are currently underway and any learning gleaned from this project will be reflected in terms of further enhancement of the Framework, as appropriate. The outputs from these external Reviews will contribute to the further development of a more robust control environment and the first set of reports are expected to be finalised shortly.

In addition, we believe that there is a need for a rolling review programme to be carried out by external contractors (based on our expectation that additional staff will not be available). These Reviews would draw from, and build on, the work being done in the current external review process. A five-year cycle is envisaged with eight Providers being reviewed each year. We might also include the top 12 Section 39 Providers as together this would cover over 80% of total funding of €3.4 billion released to the Voluntary Providers.

### **3.2. Inspection Capability – HSE Compliance Unit**

The HSE Compliance Unit will, within current resources, establish an inspection/review capability in 2017 which will add an additional dimension in terms of ensuring that the Framework is being properly implemented across the HSE. This inspection review process has commenced and the intention is that an examination of the relevant and appropriate documentation in relation to a selected number of Providers in CHOs and Divisions will be undertaken. The purpose of each inspection/review will be to, firstly, ensure that all of the relevant contractual documentation is in place and, secondly, to ensure that the contract management through review meetings with Providers are taking place and that the provision of safe services, of the appropriate quality, are being monitored. These inspections/reviews will also look to generally confirm, in so far as a review of this nature can, that value for money is being achieved in respect of these Providers. This process has commenced.

### **3.3. Monitoring of the Receipt and Review of Annual Audited Financial Statements.**

The HSE require Agencies in receipt of over €150K to have their Annual Financial Statements (AFS) audited and they are required to submit these audited financial statements to the HSE as soon as possible after year end, and have stipulate from 2017 that this should be before the 31<sup>st</sup> May each year. The Service Arrangement outlines particular disclosure requirements to be included in the AFS which underpin the requirements of DPER Circular 13/2014 Management of and Accountability for Grants from Exchequer Funds.

Under the Governance Framework the Annual Financial Statements together with the Annual Financial Monitoring Return (AFMR *refer to 3.4*) from 31.12.2016 provided, are required to be reviewed by HSE Finance Managers. The report and work of the external auditor is reviewed and relied on by the HSE as external assurance, in the monitoring of corporate and financial government within Agencies.

The Compliance Unit undertook an exercise to evaluate compliance with the AFS receipt process for 2014, and for the receipt and review process for 2015, and as outlined in 2.4 above will automate this monitoring process within the SPG system for the 2016 AFS cycle, and on an ongoing basis.

All agencies required to submit audited AFS for 2014 and 2015 have done so, the AFS review process for 2015 is ongoing and, in this context, reviews have been completed in respect of over 90% of funding. We expect that the remaining reviews will be completed by the end of the summer.

### **3.4 Introduction of the Annual Financial Monitoring Return**

The HSE Compliance Unit has developed and introduced an Annual Financial Monitoring Return (AFMR) which requires Providers to provide detailed financial information in a specific format which directly link to their audited Annual Financial Statements (AFS), in addition to a signed assurance statement from both the Chief Finance Officer and the Chief Executive Officer on compliance with key elements of financial governance. This process will facilitate a more effective reporting relationship between Providers and the HSE and provide Service Managers with a standard view of key financial information to inform grant decisions. These AFMRs will be returned with the AFSs for year end 31.12.2016 by the end of May 2017. The availability of the financial information in this format will greatly enhance

the HSE's ability to conduct an in-depth examination of the HSE funding and related expenditure as included in the AFSs of Providers, and their compliance with key financial governance requirements.

## **4. OTHER ISSUES**

### **4.1. Monitoring of Service Provision**

The HSE currently funds 39 Section 38 Providers and over 2,000 Section 39 Voluntary Providers at a cost of approximately €3.4 billion annually.

SAs and GAs are the mechanism that we use to contractually underpin the release of this funding to Providers. The Framework details the requirement for performance review meetings at regular intervals at which delivery of services as set down in the SA and GA Schedules, as appropriate, is reviewed. These reviews are undertaken by way of scheduled meetings between the local service managers in the CHO / HG, as appropriate, and the Providers concerned. We need to hold these meetings to monitor both the quantity and quality of the service being provided, and the controls/management/ governance of the Provider in question.

In this context, on average 43% of each CHO's funding is released to Voluntary Providers annually. The highest amount released annually is in CHO 9 which releases €300 million, the lowest is €51 million in CHO 1. Overall, approximately €3.4 billion is released to Voluntary Providers by the HSE annually; €2.6 billion of this goes to Section 38 Providers, of which €1.75 billion of same goes to the Acute Hospitals.

In this context it should be understood that the service managers who manage the Providers at local level are engaged on an ongoing basis in pressing operational matters such as finding residential places for service users in emergency circumstances, managing HSE services. The HSE is proposing therefore to establish a Contract Management Support Unit (CMSU) in each of the nine CHOs to assist service managers in managing and documenting all aspects of the relationship with Section 38 and 39 Providers. In this regard a national working group, which has representation from the HSE Compliance Unit, has been developing this concept, which is nearing completion. It should be noted that the establishment of these CMSUs will result in a resource requirement and this will be a key element of the working group's deliberations. However, it is our view that the establishment and resourcing of such a unit in each CHO will assist in ensuring the proper level of oversight in all funded Providers.

### **4.2. Financial Controls – Section 38 and Section 39 Providers**

Recently circulated Internal Audit reports of Section 38 and Section 39 Providers have indicated issues in relation to financial controls and administration in some of those Providers where audits have taken place. Some of the key recurring themes in this context are the number of bank accounts; use of credit cards; governance and controls; cash handling; lack of segregation of duties and use of employees' private cars. The HSE Compliance Unit has prepared and issued a memo to Board Chairs, CEOs and our own operational staff at Hospital Group and CHO level identifying the recurring issues of concern raised by IA and C&AG and to request that they examine these matters in the context of their own organisations. Each Board will be required to engage formally with their executive so as to ensure that any such deficiencies in their internal controls are identified and addressed.

These issues will also be considered in the context of the 2016 ACS process which is underway. Boards will be requested to confirm that they have arranged to have the memo examined in the context of their internal financial controls.