

**Health Service Executive**

**Annual Compliance  
Statement 2019**

**and  
Board and Corporate Governance Requirements**

**Section 38 Providers**

**Name of Provider: XXX**

**May 2020**

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## Overview

In 2019 the HSE (the Executive) provided funding of €4.4bn approximately to circa 1,950 agencies for the delivery of a range of health and personal social services, of which approximately €3.2bn was provided to thirty eight specific agencies, known as Section 38 Agencies (hereafter referred to as the “Provider”), primarily in the Acute Hospitals and Disability Services sectors.

To underpin the funding received, Providers are required to enter into a formal Service Arrangement with the Executive. The Service Arrangement is the contract between the Executive and each individual Provider and comprises the general terms and conditions of the Service Arrangement and a number of Schedules prepared on an annual basis that specify the services to be delivered, budget, staffing, quality and safety requirements, monitoring requirements, etc. Under the Service Arrangement, Providers are obliged to give certain undertakings in relation to compliance with a range of standards and statutory requirements.

Given the level of investment by the State in services provided by the non-statutory sector, each Provider Board must, in accordance with the Service Arrangement:

- Submit a formal **Annual Compliance Statement** as set out in Part 1 of this document, and
- Adopt and implement **core governance standards** as set out in Part 2 of this document.

Submission of the Annual Compliance Statement will form part of the consideration of ongoing funding for each Provider.

## Annual Compliance Statement - Implementation

The Service Arrangement between the Executive and the Provider sets out in advance each year the nature of the relationship between both organisations. The submission of an Annual Compliance Statement is an additional requirement to the Service Arrangement process.

- **Each Provider is required to furnish the Executive with an Annual Compliance Statement.**
- **The Compliance Statement must be completed by the Board of the Provider, having reviewed the compliance of their organisation over the course of the previous year with specific requirements set out in the Service Arrangement.**
- **The Statement needs to be approved by the Board of the Provider, signed by the Chairperson and one other Director on behalf of the Board, and be submitted to the Executive before the end of May each year.**
- **If, during the course of a year, any significant instance of non-compliance is identified, this should be immediately notified to the Executive by the Chairperson of the Provider’s Board.**

As this is the seventh year of the compliance process, it would be expected that where areas of non-compliance were previously identified in the process to date, and where plans were to have been put in place to deal with same, these areas would have been dealt with before the end of 2019.

It is recognised, however, that some organisations may not be fully compliant with all of the core governance standards set out in Part 2 of this document. In these circumstances, the Executive adopts the ‘**comply or explain**’ approach. Where Providers are not in full compliance, they will be given the opportunity, within realistic timeframes, to put in place a plan to ensure that they conform to good practice.

In preparation for the completion of the Annual Compliance Statement, the Board of each Provider should conduct an audit of its governance arrangements against the governance requirements set out in Part 2 of this document. A report on this audit of governance arrangements should be prepared by the Board **before the end of May 2020**. This report should set out clearly the plan to bring the Provider into compliance **by 31<sup>st</sup> December 2020**. A copy of this report and plan should be available to the Executive upon request. Areas of non-compliance, and a summary of the actions being taken to address these issues, must be set out in the Annual Compliance Statement.

A report on progress in implementing these actions should also be considered by the Board of the Provider on a quarterly basis and these reports should be available for inspection by the Executive where required. The Executive retains the right to require Providers to amend their correction plans if it deems the actions to be insufficient or inappropriate. The Executive commenced a review of the level of compliance with these core governance arrangements across Section 38 Providers in 2016.

# Health Service Executive

## Part 1

### Annual Compliance Statement for the year 2019

Name of Provider: **XXXXXXXXXX**

# Annual Compliance Statement by the Directors of Section 38 Providers

## Section A: Board Compliance Statement

The Board of [*Provider to insert name of Provider*] having made enquiries of and sought and considered formal written assurances from the [*Provider to insert title of post holder*] hereby confirms its compliance or non-compliance with respect to each of the declarations set out below.

### 1. Governance

- 1.1 The governance arrangements, including Board arrangements and responsibilities, are in compliance with the HSE Code of Governance and the Core Standards for Governance (set out in Part 2 of this document).
- 1.2 A declaration has been made to the Executive in Section D of this document regarding the Provider's relationship with any related companies, including subsidiary / quasi-sub subsidiary, parent companies and organisations. This includes, but is not limited to, organisations with shared Directors<sup>1</sup>, organisations that use the name of the principal Provider or other types of related or subsidiary organisations, including fund raising organisations.

*[Note: Please complete the Declaration Form in Section D of this document.]*

### 2. Internal Code of Governance

- 2.1 An internal written Code of Governance is in place and includes a system of internal controls to ensure compliance with the Service Arrangement with the Executive and with all applicable laws and regulations as required under the Service Arrangement.

### 3. Risk Management

- 3.1 A formal risk management system is in place to identify corporate risks for escalation to and review by the Board where appropriate.

### 4. Remuneration

- 4.1 All remuneration (including perquisites) paid to employees is in accordance with public health sector pay policy including Circular 11/2013 *Compliance with Health Sector Pay Policy*, Circular 11/2015 *Salary rates for future CEO appointments to Section 38 agencies* and the Department of Health Consolidated Payscales and pension arrangements.

*[Note: Please provide details of any variation to public health sector pay policy in Section C (i).]*

- 4.2 All salaries are paid through the organisation's payroll.
- 4.3 Other sources of funding are not being used to supplement employee remuneration (including perquisites) that exceed Department of Health Consolidated Payscales and pension arrangements.
- 4.4 The information provided in the Annual Return to HSE Superannuation Section is correct and the Board is satisfied that any discrepancies between the prior year closing balance of the numbers of pensioners and the current (ACS) year opening balance of numbers of pensioners have been fully reconciled and notified to HSE Superannuation Section.
- 4.5 Private pension schemes do not exist for any employees.
- 4.6 Compensation payments have not been made to any employees.

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<sup>1</sup> 'Directors' refers to the Directors, Trustees or Board Members of the Provider

## 5. Finance

- 5.1 The Annual Financial Statements of the Provider for the period covered by this Compliance Statement have been audited and have, along with the external auditor's certificate, the external auditor's management letter and any Management Response and/or Representations letter issued to the external auditors, been supplied to the HSE Named Contact, as per the Service Arrangement, for examination by them.
- 5.2 The Provider has submitted its Annual Financial Monitoring Return to the HSE Named Contact, as per the Service Arrangement.
- 5.3 The Provider has complied with the Department of Public Expenditure and Reform Circular 13/2014.
- 5.4 The Provider's Auditors have been made aware of the requirements of the Executive under the Service Arrangement and in particular the requirement to comply with public pay policy.
- 5.5 An adequate financial control system is in place which includes written financial procedures.
- 5.6 The number and type of bank accounts and credit card facilities are known to the Board and there is a formal Board process in place for the opening and closure of all bank accounts and credit card facilities. The Board are aware of all signatures to the organisation's bank accounts and credit cards and are satisfied that bank accounts and credit card accounts are being used appropriately.
- 5.7 The Provider has brought to the attention of the Executive all relevant matters ***equivalent*** to those referred to as additional reporting requirements under section 1.9 of the *Code of Practice for the Governance of State Bodies – Business and Financial Reporting Requirements*.

## 6. Capital Assets

- 6.1 The Provider confirms that where a capital asset is funded / part-funded by the Executive, the State's interest has been protected by the Provider through entering into a Grant Agreement prepared by the Executive which sets out the terms and conditions detailing the basis upon which the Executive has provided and the Grantee has accepted the Capital Grant including the security required by the Executive, to protect the State's interest in the asset.

## 7. Taxation

- 7.1 The Provider maintains current Tax Clearance.

## 8. Procurement

- 8.1 The Provider is compliant with public procurement law, regulations and guidelines as set out in Part 1 of the Service Arrangement and with the *Code of Practice for the Governance of State Bodies*.
- 8.2 The Provider has engaged with HSE Health Business Services (HBS) Procurement to progress the development of a corporate procurement plan and has used HBS and Office of Government Procurement (OGP) contracts and frameworks, as appropriate.
- 8.3 The Board has a management system in place which identifies any contracts in excess of €25,000 which were not subjected to the appropriate competitive procurement process in 2019.

## 9. Other Matters

- 9.1 Any issues of serious concern in relation to governance, or other relevant matters, that warranted immediate attention by the Provider during the period covered by this Compliance Statement were promptly brought to the attention of the HSE Named Contact, as per the requirements of the Service Arrangement.

## Section B: Board Declaration of Compliance / Compliance with Exceptions

For the full year from 1 January 2019 to 31 December 2019 we the Directors / Board Members / Trustees [Provider to delete as necessary] of [Provider to insert name of Section 38 Provider], confirm that, having reviewed the compliance requirements set out above, [Provider to insert name of Section 38 Provider]:

(Provider to please tick one of the below statements, as appropriate.)

<p><i>Is in compliance with the requirements of the Executive set out in this Declaration (Section A, sub-sections 1-9) and, to the best of our knowledge and belief, there have been no significant breaches between the end of the reporting period and the date of this certification.</i></p>	
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<p><i>Is in compliance with the requirements of the Executive set out in this Declaration (Section A, sub-sections 1-9) with the exception of the areas identified in Section C on the following page(s) which require corrective action in order to achieve full compliance.</i></p>	
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Where we, the Directors / Board Members / Trustees [Provider to delete as necessary] of [Provider to insert name of Section 38 Provider], have stated that [Provider to insert name of Section 38 Provider] is not in compliance with the requirements as set out above, the actions set out overleaf have been agreed by the Board to achieve compliance, together with the timeframes within which this will be done.

Strong due diligence procedures were exercised by the Board to satisfy itself in relation to the completeness and accuracy of this Compliance Statement. In this regard, having made enquiries of, and sought and considered formal written assurances from, the [Provider to insert title of post holder], this Compliance Statement (comprising Part 1 and Part 2 - submitted herewith) was approved by the Board and signed by the Chairperson and one Director of [Provider to insert Name of Section 38 Provider] at its meeting dated [Provider to insert date].

<p><b>Chairperson:</b></p>	<p>Signed: _____ Printed (Block Capitals): _____</p>
<p><b>Other Director:</b></p>	<p>Signed: _____ Printed (Block Capitals): _____</p>
<p><b>Name of Provider:</b></p>	
<p><b>Date:</b></p>	

## Section C: Provider Plan for Achieving Compliance

### C (i) Non Compliance with public pay policy<sup>2</sup>

Post not in compliance	Date Salary/Allowance(s) commenced	Value of current total remuneration <i>i.e. list current salary and individual allowance(s)</i> €	Corrective actions being taken to ensure compliance	Date for compliance

### C (ii) Non Compliance in other areas

Area of non compliance	Corrective actions being taken to attain compliance	Due date

<sup>2</sup> The Executive retains the right to require Providers to amend their correction plans if it deems the actions to be insufficient or inappropriate.



**C (iii) Other issues identified by the Board**

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## Section D: Board Declaration re related companies including subsidiary, quasi-subsubsidiary, parent companies and organisations.

Please provide details below of the Provider’s relationship with related companies including subsidiary, quasi-subsubsidiary, parent companies and organisations. This includes, but is not limited to, organisations with shared Directors<sup>3</sup>, organisations that use the name of the principal Provider, or other types of related or subsidiary organisations, including fund raising organisations.

This Section D must be completed by the Provider. Please indicate a “Nil” return, if applicable.

Name of Company / Organisation	Relationship with S38 Provider	Principal business of the related Company / Organisation	Name of Shared Directors / Trustees	Detail the exact nature of the relationship of the S38 Provider with the named Company / Organisation. <i>(Example may be to give details of any income and/or expenditure transfers between the S38 Provider and the named Company / Organisation)</i>
1.				
2.				
3.				
4.				
5.				

<sup>3</sup> ‘Directors’ refers to the Directors, Trustees or Board Members of the Provider

## Part 2

### **Board and Corporate Governance Requirements**

## The Service Arrangement and Governance

The Service Arrangement between the Executive and each Provider requires that:

- The Provider shall co-operate fully with the Executive by implementing policies and procedures consistent with the Framework for the Corporate & Financial Governance of the Executive (published by the Executive pursuant to Section 35 of the Health Act 2004) in areas which include internal audits, risk management, public procurement, financial reporting, quality of service and other matters which may be reasonably deemed appropriate by the Executive and to meet the standards of behaviour as set out in the Code of Standards of Behaviour within the Framework for the Corporate and Financial Governance of the Executive.
- The Provider shall ensure that it has effective internal codes of governance in place, including an adequate system of internal controls to ensure compliance with laws and regulations and the Provider shall use (among other relevant publications) the *Code of Practice for the Governance of State Bodies* publication as a guide in drawing up such codes of governance.
- Where an issue of serious concern in relation to governance is identified, it shall be notified in writing to the Executive promptly together with a proposal for dealing with the issue and a timetable within which the issue will be addressed.
- The Provider will co-operate with reviews of governance arrangements.

## Corporate Governance

### Corporate Governance

Corporate governance comprises the systems and procedures by which enterprises are directed and managed. State bodies must serve the interests of the taxpayer, pursue value for money in their endeavours (including managing risk appropriately), and act transparently as public entities.

While it is recognised that many Provider agencies have appropriate governance arrangements in place, the Executive is setting out below what it considers to be the core set of governance standards required to be met by each Provider.

It is also acknowledged that while these core standards must be in place, a number of Providers will have been established on a statutory basis or by Charter and that these Providers may have additional governance requirements that must also be fulfilled.

The Executive expects that Providers would adopt best practice Corporate Governance standards and that they would have regard to the provisions in the Charities Act and the Companies Acts.

### Implementation Period

As this is the seventh year of the compliance process, it would be expected that where areas of non-compliance were previously identified in the process to date, and where plans were to have been put in place to deal with same, these areas would have been dealt with before the end of 2019.

It is recognised, however, that some Providers may not be fully compliant with all of these core standards. Each Provider will be required to put in place a plan with realistic timeframes to ensure that they conform to good practice and are fully compliant by 31<sup>st</sup> December 2020 at the latest. Areas of non-compliance, and the plan to address these issues, must be set out in the Annual Compliance Statement.

## Core Standards for Governance

### The Board

#### The Provider Board

The Board of the Provider is responsible for overseeing the proper management of the organisation. In particular it has a collective responsibility for:

- Acting in the best interests of the body they oversee and for the users of their services and their staff;
- Ensuring that appropriate clinical and professional governance arrangements are in place;
- Leading and directing the organisation's activities;
- Providing strategic guidance;
- Monitoring the activities and effectiveness of the CEO and management team;
- Ensuring effective systems are in place for identifying and managing risk;
- Ensuring the adequacy of internal financial controls; and
- Accounting accurately to the State as the primary funder of its activities.

Members of the Board should act on an informed basis, in good faith, with due diligence and care, and in the best interests of the organisation to ensure that public monies are applied for the purpose they have been provided.

In relation to the Board of Directors for each Provider, the following are good practice requirements which must be adhered to as part of the funding arrangement with each Provider. Some of these requirements are also set out in the HIQA Report into Tallaght Hospital.<sup>4</sup>

#### Appointment of Directors / Board Members

The membership of the Board should reflect diversity in terms of gender, skills and areas of competency. The size of the Board, therefore, should be large enough to take account of the full range of members' duties and responsibilities but small enough to enable the Board to perform effectively. Nonetheless, the Board should be of an appropriate size to reflect the scale of the Provider's activities.

**Furthermore, the following classes of persons are not eligible to be a Director or Board Member of a Provider:**

- a) A person who is a spouse or civil partner, parent, sibling or child of a Director,
- b) or a child of the spouse or civil partner of a Director,
- c) or a spouse, civil partner, parent, sibling or child of an employee at senior management level,
- d) or an employee (unless provided for in legislation).

Unless otherwise set out in Statute, the membership term for each Board Member / Director should not generally exceed 3 years (excluding any part year between co-option and election to the Board). On completion of a term of office, a member is eligible for re-appointment but may not serve more than 3 consecutive terms (i.e. a maximum of 9 years). This resignation of Board Members / Directors should occur on a phased basis to ensure the continuity of governance.

***The Executive reserves the right to appoint a named individual to work with the Board and Directors to assist in resolving any identified governance or performance issues relating to the running of the Provider agency.***

The Board should:

- Have clearly documented procedures in place for the identification, selection and appointment of Directors / Board Members.
- Have a succession plan in place for the Board membership to ensure continuation of the effectiveness of the Board.

<sup>4</sup> Report of the investigation into the quality, safety and governance of the care provided by the Adelaide and Meath Hospital, Dublin incorporating the National Children's Hospital (AMNCH) for patients who require acute admission.

- Unless set out otherwise in Statute, have a membership of no less than 7 members and ordinarily no more than 12.
- Maintain a record of Board membership and tenure.
- Clearly document procedures for the disqualification of Members / Directors.
- Put in place a structured induction programme for new members.

Unless provided for in legislation, no employee of the Provider should serve as a member of the Board.

### **Responsibilities of the Board and its Directors / Board Members**

The Board is responsible for compliance with all statutory obligations applicable to the body that may be set out in the legislation governing the establishment of the body or in other relevant legislation or as set out in the Service Arrangement between the Executive and the Provider. The Board should satisfy itself that all such obligations are identified and made known to it.

The Board should have effective internal Codes of Governance in place, including an adequate system of internal controls to ensure compliance with laws and regulations, and should use the following documents (among other relevant publications) as a guide in drawing up such Codes of Governance:

- The HSE Code of Governance
- The Code of Practice for the Governance of State Bodies.
- The Governance Code – A Code of Practice for Good Governance of Community, Voluntary and Charitable Organisations in Ireland.
- The Charities Governance Code

The Board should review annually the effectiveness of the Provider's system of internal controls, including financial, operational and compliance controls and risk management. This must include the number and use of bank accounts and credit card accounts.

The Board should put in place procedures whereby employees may raise concerns, in confidence, about possible irregularities in financial reporting or other matters and for ensuring meaningful follow-up of matters raised in this way.

The Directors should ensure that the business is a going concern with supporting assumptions or qualifications as necessary.

The Directors are collectively responsible for the business of the organisation and are the trustees of its assets. Directors / Board Members must, therefore, act with due care and diligence.

### **Reserved Functions of the Board**

The Board should assure itself that it has clearly documented the range of responsibilities that it reserves to itself. At a minimum, these should include:

- Putting in place a clear scheme of delegation of accountability from the Board to the CEO;
- Approval of strategic and annual service plans;
- Approval of annual budgets;
- Approval of significant procurement contracts, acquisitions, disposals and retirement of assets of the Provider or its subsidiaries. The Board should specify clear quantitative thresholds for contracts above which Board approval is required and should approve the terms of major contracts;
- Approval of risk management policies;
- Oversight of senior management remuneration and compliance with public pay policy and the Department of Health Consolidated Payscales for the health sector;
- Ensuring the Provider complies with health sector pay policy;
- Approval of annual reports and audited financial statements. (There is a requirement to publish the audited annual financial statements on the Provider's website);
- Approval of the Annual Compliance Statement prior to submission to the Executive; and
- Appointment of the Chief Executive and assessment of the performance of, and succession planning for, the Chief Executive.

## **Chairperson's Role and Duties**

Unless otherwise provided for by Statute, the Members of the Provider body, or the Board, should elect the Chairperson. The appointment should be for a period not exceeding 3 years in line with the duration of the term of office of Directors. At the end of 3 years, the Chairperson can be re-appointed for a maximum of a further 3 years.

The Chairperson must oversee the orderly operation of the Board and ensure that there is appropriate interaction between the Provider and the Executive as its primary funder.

The roles of Chairperson and Chief Executive Officer should not be exercised by the same person.

## **Conducting the business of the Board**

The Board should meet regularly, with proper records of meetings and decisions taken at meetings maintained and signed by the Chairperson, after being adopted at the subsequent meeting of the Board.

The collective responsibility and authority of the Board should be safeguarded. All Board Members must be afforded the opportunity to fully contribute to Board deliberations while excessive influence on Board decision-making by one or more individual members should be guarded against.

The Board should be supplied with information which is of a suitable quality to enable Board Members to satisfactorily discharge their duties. In this regard, the Board should:

- Develop and adopt formal Standing Orders for its meetings covering issues such as the management of meetings, the Quorum and Voting Rights, the requirements for attendance at Board meetings, disclosure of interests, establishment of committees, etc.
- Have in place a procedure for recording the concerns of Directors that cannot be resolved.
- Ensure that the names of each Board Member are set out in the Annual Report of the Provider and that the attendances of each Board Member at Board meetings are reported in the Annual Report.

## **Evaluating the effectiveness the Board**

The Chairperson should on an annual basis, and together with the Board, undertake a formal review of the Board's performance for the previous year. This process should be supported by an external evaluation which should take place at least every 3 years.

## **Committees of the Board**

### **Establishing committees**

The Board is also responsible for overseeing and challenging the work of the CEO and Management Team, ensuring that systems of internal controls are in place, including financial controls, and that risk is managed, and for overseeing the remuneration of the employees of the organisation.

To do this the Board is required to establish an appropriate committee structure. At a minimum, these must include committees that will deal with Audit, Remuneration, Risk, and Quality and Safety.

Unless alternative provisions for the selection of members to the Board are set out in Statute, the Board should also establish a Nominations Committee.

The Terms of Reference for each committee should be specified in writing, approved by the Board, and reviewed annually.

Membership of each committee should comprise non-executive and independent members.

## Audit

An Audit Committee should be established to assist the Board in fulfilling its duties by providing an independent and objective review of:

- The accuracy of financial data;
- The financial reporting process;
- The process relating to the organisation's management of financial risks, prevention of corruption and waste and the system of internal control; and
- Internal and external audit processes.

The Board should ensure that:

- An Audit Committee has been established;
- At least one of its members has strong financial expertise and qualifications;
- The Chair of the Audit Committee must be either independent of the Provider or a non-executive member of the Board. He/She should not be an employee of the organisation; and
- The remaining members of the Audit Committee must all be non-executive members.

## Remuneration

The Board should ensure that a committee is established that will deal with remuneration and which will assist in ensuring that the remuneration policies and practices of the organisation comply with the particular requirements of public pay policy and any specific directions or instructions of the Executive. The Board should ensure that at least one of its members has strong relevant human resource expertise.

## Risk

The Board should ensure that a committee is established that will provide an independent and objective review in relation to non-financial risks. In particular, it should:

- Ensure that a risk management policy is prepared and approved by the Board;
- Review processes related to the identification, measurement, assessment and management of risk in the organisation;
- Promote a risk management and quality improvement culture throughout the organisation; and
- Set the risk tolerance of the Provider for its key risk areas.

## Quality & Safety

The Board should ensure that a Quality & Safety Committee is established to provide assurance that there are appropriate and effective systems in place to cover all aspects of Quality & Safety. The Committee should oversee quality and safety on behalf of the Board.

## Nominations

The Board should satisfy itself that, where appropriate, plans are in place for the orderly succession of appointments to the Board so as to maintain an appropriate balance of skills and experience within the Provider agency and on the Board and to ensure progressive refreshing of the Board. In this regard, the Board should have a committee to deal with Nominations. This committee should be responsible for:

- Developing and recommending to the Board formal, rigorous and transparent procedures for the identification, selection and appointment of Board members;
- Reviewing and monitoring the membership needs of Board and its committees; and
- Ensuring that the search for board candidates is conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the Board, including gender and skill mix.



## Code of Conduct

The Board is required to produce a Code of Conduct for Directors and staff. It should identify the relevant provisions regarding conduct/conflicts of interest in the governing legislation of the body. The Code should also set out procedures for addressing conflicts of interest.

The Board should ensure that:

- It has a written Code of Conduct for its Directors and employees;
- This Code of Conduct has been approved by the Board;
- Each member of the Board, and each person holding a Designated Position of employment, and any other employees (as applicable) covered by the legislation, has confirmed his/her compliance with provisions equivalent to those set out in the Ethics in Public Office Act, 1995, and the Standards in Public Office Act, 2001;
- The Code is published on the organisation's website and has been circulated to all Directors, management and employees;
- All staff of the organisation are made aware of the provisions of and procedures regarding Protected Disclosures of Information; and
- In a Board resolution, formal procedures are laid down whereby Directors, in the furtherance of their duties, may take independent professional advice, if necessary, at the reasonable expense of the Provider. Such procedures should also be set out in the Code of Conduct for Directors.

A copy of the HSE's Code of Standards and Behaviour is available at:

<http://www.hse.ie/eng/staff/Resources/Codeofstandards.pdf>