

A NEW SYSTEMIC FUNDING MODEL



**The voluntary and
community sector
in the 2020s**

May 2021



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Executive summary

This is a 2021 Fórsa update of the 2015 IMPACT report *Caring - at what cost? Rebuilding and refinancing the voluntary and community sector*, by Chris McInerney and Cian Finn. It is based on a fresh survey of Fórsa members and voluntary organisations funded by section 39 of the Health Act, to which, due to the similarity of their situation, homeless services funded by section 10 of the Housing Act were added. The issue of parity of their workers with those in the public sector is set in the broader context of the voluntary sector in social care, homelessness and further afield.

The period from 2015 saw progress toward the restoration of pay for the workforce of §39 voluntary organisations, but the underlying problematic of lack of parity remained. Advances were made in redefining the relationship of voluntary organisations and the state: the report of the Independent Review Group (2018); the Health Dialogue Forum (2019); and the introduction of the Health Service Executive concept of 'tight and loose' to resolve issues of autonomy and accountability (2020).

All Fórsa members considered the issue of parity to be important or very important. There was a widespread sense of exasperation, desperation, frustration, anxiety, resignation and anger. Members had experienced a significant increase in workload and there was a distinct level of non-attachment to their job. Parity offers the prospect of primary gains (pay, restoration, job security and pension) and secondary gains (leave, working time, maternity, health, safety) and work-life balance. There would be knock-on gains for their organisations in recruitment, retention, reduced costs, improved services and better planning. Conversely, the consequences of failure to achieve parity were demoralization, declining job performance, stress and burnout, staff leaving, uncertainty and in-work poverty.

Most but not all §39 and §10 organisations were aware of the issue of disparity, more so the larger organisations: it was a live issue about which they spoke to their funders. Lack of parity was a serious challenge to them too, principally for retention - they referred to 'talent flight', up to 33% annually - and their diminishing ability to attract new staff. Several spoke of how some staff stayed out of loyalty even when they had good economic reasons to leave. Voluntary organisations identified the benefits of parity as recruitment, retention, morale, experienced staff staying longer and their ability to improve their service.

The research identified a distinct labour market of §39 and §10 organisations on the one hand; and of §38, HSE, other statutory bodies (Tusla, local authorities) and the private sector (e.g. homeless services) on the other, with the former - involuntarily - a career stepping stone to the latter. The research found that the current situation was not costless: a disaffected §39 and §10 workforce, higher recruitment and retention costs for voluntary organisations, a declining quality of service. Although government, concerned with the cost of parity, might delegitimize the issue, it was already imposing high costs on health and social care services.

The research reached conclusions about a new systemic funding model. This should comprise parity, progressive employment guidelines, multi-annual funding, full-cost recovery, single-standard governance, their application to procurement and tendering simplified reporting, consideration of an inspectorate and a rectification of historic underinvestment. Fórsa was invited to promote a broad-based collaborative coalition of members, trade unions, voluntary organisations and civil society that would address parity in its broader context.

1

What is §39?

In 2015, IMPACT published *Caring - at what cost? Rebuilding and refinancing the voluntary and community sector*, by Chris McInerney and Cian Finn. This 2021 report builds on and brings up to date the story, situation and future of what are called section (§) 39 bodies, voluntary and community organisations which receive funding from the Health Service Executive (HSE) to carry out their caring role. They are called '§39 organisations' after §39 of the Health Act, 2004 which authorises such funding. Behind the technicalities, though, are bigger questions as to how the Irish state in general and the health service in particular fund them to deliver an essential public service and the situation of the many people who work therein. This first chapter outlines the history of §39 (1.1); the complication of §38 (1.2) and the broader context (1.3) before conclusions are drawn (1.4).

1.1 §39 - the history

As far back as 1953, the government authorised the health authorities to fund bodies to provide 'similar or ancillary services' to those which they themselves provided. Called 'section 65' of the Health Act, 1953, §65 enabled the health authorities, from 1970 the health boards, to provide grants for voluntary and community services providing health, social and related services. These grants ranged from the large to the small and went to a broad range of groups. When the health boards were abolished and replaced by the Health Service Executive (HSE), §65 was slightly re-worded as §39 of the Health Act, 2004:

'(1) The Executive may, subject to any directions given by the minister under section 10 and on such terms and conditions as it sees it to impose, give assistance to any person or body that provides or proposes to provide a service similar or ancillary to a service that the Executive may provide.'

While §65 was widely and flexibly used, funding multiple types and fields of services, it was also problematical.¹ The system was unusually informal. Voluntary and community organisations approached officials whom they knew in health boards, verbally or in writing, asking for grants, which were typically awarded at year's end when the spending of the board's overall budget became clear. Generally, there were no designated §65 officials, application forms, guidelines, criteria, service agreements, contracts or reporting systems, although audited accounts were retrospectively normally requested. Grants were annual, which inhibited medium or long-term planning. On the health board side, the system was valued for its flexibility, but on the voluntary and community side was criticized for its end-of-year uncertainty; lack of transparency; and who-you-know basis. In practice, grants changed little from year to year and might rise in line with inflation, but in times of financial restraint, the system was often closed for several years to new §65 applicants, whatever the urgency of the need they sought to meet. A bigger criticism was that with eight, later eleven health boards, the same organisation providing a nationally consistent service might be relatively generously treated by one health board, but miserly by another. Whilst the Chief Executive Officer of the health board was legally responsible for §65 grants, he might also personally closely supervise the allocations. Whilst this had the advantage of hands-on knowledge, it was also vulnerable to the charge of favouritism. As for the situation of the workforce, each organisation set its own pay rates and conditions, although some used public sector reference points (e.g. social work scale). This history is important, because it is the culture inherited by §39.

1 Faughnan, Pauline: *A healthy voluntary sector - rhetoric or reality?* from Joseph Robins (ed): *Reflections on health - commemorating 50 years of the Department of Health*. Dublin Department of Health, 1997. p242.

This system was an important feature of the social model in Ireland. Lacking both a National Health Service or a social care sector of the type developed in Britain or Europe, Ireland was much more dependant on voluntary and community organisations. For example, 90% of intellectual disability and 60% of physical disability services are so provided.² Other estimates have been given for the disability and social care field.³ In 1994, in *Shaping a healthier future*, the Department of Health responded to concerns about informality by proposing that service agreements be introduced for larger organisations.⁴ These were renamed Service Level Agreements (SLAs), with grant-aid agreements for smaller grants (€250,000 was indicated as the threshold). Not only did the obligations on voluntary organisations accelerate, but over time, SLAs were applied ever lower down the financial range, a sample SLA now having 62 pages of conditions.⁵ There are now 885 §39 bodies with annual funding over €600m.⁶

A smaller group also emerged in the field of homeless services. Organisations working with homeless people received – and still receive – §39 funding for their work in providing health and social services. These organisations argued that homelessness was fundamentally a problem of lack of housing, a view eventually accepted by government in the form of the Housing Act, 1988. This permitted local housing authorities to provide, under section 10 of that Act, financial support for voluntary organisations to carry out their accommodation-related functions. With the rise in family homelessness in the 2010s, §10 funding rose from €45m in 2014 to €218m in 2021, about 75 organisations being beneficiaries.⁷ As was the case with §39 organisations, most organisations set their own employment conditions.

For completeness, it is important to include what has been described as a ‘secondary labour market’ within §39 organisations, namely Community Employment (CE), introduced 1994.⁸ This is budgeted in 2021 at €362m for 32,000 places providing €225.50 per participant for 19.5hr weekly. Although designed as an activation measure for unemployed people, CE fulfills an important role in the delivery of services by voluntary and community organisations. Its secondary nature, analogous to §39, is reflected in the situation of hundreds of CE supervisors. In 2008, the Labour Court recommended access to a pension scheme for CE supervisors but this has still not been implemented, with Fórsa and SIPTU supporting a continuing campaign.

2 European Association of Service Providers for Persons with Disabilities: *Ireland - factsheet on financing of care services for PWDs*. Author, 2020.

3 Irish Congress of Trade Unions: *Submission to the joint Oireachtas committee on health*. Dublin, author, 2018.

4 Department of Health: *Shaping a healthier future*. Dublin, author, 1994.

5 For the origins of this process, see Acheson, N et al: *Two paths, one purpose - voluntary action in Ireland, north and south*. Dublin, Institute of Public Administration, 2004.

6 The figure for the number of organisations is provided by Benefacts, which provides the foremost, annual analysis of voluntary and community organisations, matching HSE data against returns to the Companies Office and Charities Regulator. Much higher figures for the number of §39 organisations have been quoted (typically 1,800 to 2,300) but cannot be confirmed across these datasets. The baseline amount of funding was provided in McInerney, Chris Finn, Cian: *Caring at what cost?* Dublin, IMPACT, 2014 (table 2). The HSE does not provide separate accounts for funding of §38 and §39 agencies, but grants to outside agencies totalled €4.7bn in 2019 (*HSE: Annual report, 2019*). The lack of clarity of these figures is of itself noteworthy.

7 O’Sullivan, Eoin & Musafiri, Thadee: *Focus on homelessness - public expenditure on services for households experiencing homelessness*. Dublin, Focus Ireland, 2020; Mazars: *Independent review of homeless services*. Department of the Environment, Community and Local Government, Dublin, 2015; The Wheel: *Analysis of 2021 budget*. Dublin, 2020.

8 Powell, Fred & Guerin, Donal: *Civil society and social policy*. Dublin, A&A Farmer, 1997. For a description of the role of Community Employment in the delivery of social care, see National Forum of Family Resource Centres: *Costing the value of Family Resource Centres*. Author, 2018.

1.2 Complication: §38

To complicate things, the Health Act, 2004 included a remarkably similar §38 as follows:

(1) The Executive may, subject to its available resources and any directions issued by the minister under section 10, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health or personal social service by that person on behalf of the Executive.

This likewise went back to the 1953 Act. Despite their similarity, there was a big difference between §38-funded and §39 funded organisations, with different institutional origins and current circumstances. Historically, §38 bodies were large national or individual service providers, including prominent hospitals, large-scale intellectual and physical disability providers, many of them religious, centrally funded by the Department of Health. The other difference was that they operated and still work under public service conditions.

The department long sought to divest itself of their direct responsibility and the 1994 health strategy, *Shaping a healthier future*, finally decided their transfer to the health boards. Voluntary organisations resisted this decision, especially fearing a transfer to capricious §65 funding. In 1995, a compromise was agreed whereby they were safeguarded by their own section which became §38.⁹ There are currently 44 such §38 organisations with a baseline annual funding in the order of €2-3bn annually.¹⁰ They employ 42,912 staff out of the health service total of 117,857.¹¹ Again, this arrangement reflected Irish exceptionalism whereby services provided by the state in Britain and continental Europe are provided here by voluntary and religious bodies. The Secretary General of the Department of Public Expenditure and Reform (DPER) explained the difference as being that §38 arrangements involved organisations funded to provide a *defined* level of service on behalf of the HSE, while under §39, the HSE grant-aided a wide range of organisations for *ancillary* purposes.¹² This is an oblique, technical distinction which understates the historical, institutional context and the principal difference between them, namely the conditions of the workforce. As the Department of Health and Children explained:

The employees of agencies that are funded under §38 of the Health Act 2004 are classified as public servants. They are subject to the standard salary scales for the health sector as well as having access, in the main, to a public service pension scheme. The employees are included in public service employment numbers. The employees of agencies that receive grant-aid from the HSE under §39 are not public servants and are not specifically subject to the pay scales approved for public servants. The employees of such organisations are not included in public service employment numbers.¹³

The government's own Value-For-Money (VFM) review of health services confirmed that pay is generally higher in §38 organisations, or, conversely, lower in §39.¹⁴ In addition, some §38 agencies are also members of one or other of the Public Service Pension Schemes, such as the LGSS (Local Government Superannuation Scheme) or the NHASS (Nominated Health Agencies Superannuation Scheme) and do not have the direct overhead of an employer pension contribution. Public and Employer liability is covered by the state, unlike with §39 bodies. The VFM review found that the assumption that the potential flexibility enjoyed by §39 agencies resulted in lower costs was not correct (p106).

9 For a more detailed exposition, see O'Ferrall, Fergus: *Citizenship and public service - voluntary and statutory relationships in Irish healthcare*. Dublin, Adelaide Hospital Society, 2000; and Acheson, N op cit.

10 McInerney, Chris Finn, Cian, op cit, table 2.

11 Health Service Executive: *Annual report, 2019*. Dublin, author, 2020.

12 <http://www.per.gov.ie/public-accounts-committee-2014/>.

13 McInerney, Chris Finn, Cian, op cit, p14.

14 Department of Health: *Value-for-money policy review of disability services*. Dublin, author, 2012, p59.

In effect, historical and institutional circumstances led to a distinction between §38 and §39 whereby there were more favourable, public service employment conditions for §38 staff, who were entitled to public service salaries, pensions, conditions and liability cover; while by contrast, the §39 workforce did not have these entitlements, nor were any improvements in public sector conditions automatically applied. By contrast, if the conditions of §38 public sector workers disimproved, they were expected to share in them. Moreover, §39 organisations were increasingly subject to the growing weight of §38 obligations (e.g. SLAs) and they are now expected of all.¹⁵ §39 organisations were expected to raise some of the own funds themselves, typically 10-20%.¹⁶

1.3 The broader context

Differences between Ireland and its British and European comparators have already been referenced. Across Europe, different models exist for the relative roles of the state and voluntary and community organisations. The spectrum ranges from those where health, social and social care services are or were largely state-provided or directed (most evident in the countries of eastern and central Europe) to those where they are largely provided by voluntary and community organisations (that part of the spectrum where Ireland may be found).¹⁷

§38, §39 and §10 operate in the particular context of how Ireland has defined the role of its voluntary sector. Although it is frequently claimed that Ireland has a large, indeed thriving voluntary and community sector, this is the case only if we include those large-scale services provided elsewhere by the state, such as primary health, social care and education services. Furthermore, some American classification systems (e.g. Johns Hopkins) are inappropriately applied to the sector in Ireland, with the unintended but misleading consequence of artificially inflating its size.¹⁸ To put figures on this, Ireland has 10,514 charities, a word assumed to be synonymous with the voluntary and community sector, but this includes educational bodies (e.g. schools, universities), hospitals and religions.¹⁹ 163,000 people work in non-profits, of whom 65,300 are paid at public rates, one indication of the public sector element therein. Their income is €13.8bn, of which €5.9bn is from state funding, but 71% goes to the top 1%, another such indicator of its inclusion of large institutional providers.²⁰ The only study to strip out those functions that are carried out in other European countries by the state gives a much smaller voluntary sector and community sector, about 23% of the official, published figures (about €3.3bn), but one comparable to other European states.²¹ The actual density of the voluntary and community sector in Ireland – the number of organisations per person – is about half that of Northern Ireland, likely a function of this state’s much less developed health and social care services.²²

15 Department of Health, *Ibid.*

16 European Association of Service Providers, *op cit.*

17 See National Council for Voluntary Organisations: *Networking in Europe*. London, 1995 (second edition); Directory of Social Change and Community Development Foundation: *Networking in eastern and central Europe*. London, 1994.

18 For a recent uncritical re-statement of these figures, see Department of Rural and Community Development: *Sustainable, inclusive and empowered communities - five year strategy to support the voluntary and community sector in Ireland 2019-2024*. Dublin, Government of Ireland, 2019, p4.

19 Charities Regulator: *Annual report, 2019*. Dublin, author, 2020.

20 Benefacts: *Ireland’s third sector*. Dublin, author, 2020.

21 Acheson, N *et al*, *op cit.*

22 For a recent assessment of this difference, see John FitzGerald, John and Morgenroth, Edgar: *Northern Ireland economy: problems and prospects*. Dublin, Trinity Economic Papers, Working Paper No. 0619, July 2019.



Ireland has struggled to provide a framework – political, legislative, financial – in which voluntary and community organisations might operate. A commitment to define that relationship was not given until 1976, some 54 years after the state’s formation, even though such issues had been addressed in neighbouring jurisdictions many decades earlier. It took the state a further 24 years to present a white paper, *Supporting voluntary activity* (2000).²³ This at last created a framework: multi-annual funding; voluntary activity units in each government department, through which there could be dialogue; policy fora to discuss and resolve issues; independence; and good practice guidelines. However, the white paper was effectively repudiated by the next government (2002): there was no multi-annual funding, the promised voluntary activity units and fora were not set up; and the good practice guidelines, although written, were never published. With the failure of the white paper, an opportunity was lost whereby problems such as the funding relationship, including §§38-9, could be addressed and a place of dialogue established. Not only that, but there was compelling documentation of funding being conditional on voluntary organisations not speaking out or offering social commentary.²⁴

The situation for voluntary and community organisations deteriorated markedly after the 2008 financial crisis. The government moved to reduce the size of the community sector by abolishing the Community Development Programme, which had 180 projects; and local development, which was privatized. One of the principal interlocutors between the state and the voluntary and community sector, the Combat Poverty Agency, was abruptly closed. Funding for voluntary and community organisations fell sharply, bottoming out in 2015. The most recent analysis published by The Wheel shows that whereas overall government spending is now 35% above the pre-crisis level, the two main funding lines for the voluntary and community sector had flatlined 32% and 46% below 2008 levels respectively, with no prospect for improvement.²⁵ This is true of individuals sectors such as youth organisations, where funding is still 28% below. Such much reduced funding appears to have hardened into permanence. It is estimated that employment in the voluntary and community sector fell from 53,098 to 36,638, down 31%, unprecedented in Europe since 1948.

Moreover, this took place at a time of radically increased pressure on the services of voluntary and community organisations as a result of the immiseration consequential to the austerity programme. The proportion below the poverty line rose from 14.1% to 17.2%, as services reported rising levels of psycho-social stress, addictions, food poverty and homelessness. For staff, reduced funding meant pay freezes, indefinitely deferred increments, pay cuts, unclaimed overtime and foregone Time Off In Lieu (TOIL), staff paying their own work costs (e.g. travel) and the redirection of staff into community fund-raising in an already crowded and depleted pool. Some services were closed or charged, anathema to voluntary organisations working with the disadvantaged.²⁶ Turnover and departures of staff would have been higher, were it not for their sense of obligation to their social commitments and the lack of other opportunities. The challenge of attempting to meet increased demand for services on diminished resources returned in 2020 with the corona virus. Voluntary organisations again had to stretch their still-depleted resources to provide new services, or redirect their services to those most vulnerable in the 2020-1 lockdown.²⁷

A significant change in the voluntary-statutory relationship in the past twenty years was the gradual but uneven introduction of what is variously termed, according to their form, public procurement, privatization, marketization and commissioning. Hitherto, §39 grants were the outcome of a two-sided negotiation between the voluntary organisation and the state (in this case the HSE) and under this model, a voluntary organisation defined and persuaded the state of the need for a particular service and, accordingly, the state funded it, subject to annual review, or even withdrawal of funding if unsatisfactory. Under this new model, the state defined the need for a service and held a competition for its provision. The bidders might be a voluntary organisation, a combination of voluntary organisations, or even commercial organisations. Although such procedures tended to be followed for new services (e.g. homeless resettlement), they could also be applied to existing services. One predictable consequence was that applicants or tenderers would drive costs down to a bare minimum – indeed they may be informed that the lowest bidder will be preferred. This might be beneficial from the point of view of keeping the costs of the service down but at a certain point risked impacting on quality of service. New or insurgent voluntary organisations (in the field-specific language, ‘invaders’ or ‘challengers’) were reported to offer ‘improbably low’ quotations for service in order to ‘get their feet under the door’ in this ever-more competitive world.

23 Department of Social Welfare: *Supporting voluntary activity*. Dublin, Government publications, 2000.

24 Advocacy Initiative: *Are we paying for that?* Dublin, author, 2013.

25 The Wheel: *Analysis of 2021 budget*. Dublin, author, 2020.

26 National Forum of Family Resource Centres: *Cuts in the Family Resource Centres in Ireland 2008-2012*. Author, 2012.

27 National Forum of Family resource Centres: *Our story*. Dublin, author, 2020; for a local perspective, see St Michael’s Family Resource Centres, *Newsletter*.

The principal consequence, though, for §39 organisations was a ‘race to the bottom’ in the pay and conditions of their workers so as to win these contests. The most recent study on this process warned of its consequences in the form of lower wages, temporary contracts and employment conditional on the achievement of externally set-targets.²⁸ Some organisations in Northern Ireland attempted to use ‘social clauses’, intended to be an integral part of commissioning processes, to protect their conditions, but this was not evident here. Reflecting Ireland’s idiosyncratic direction of policy travel, the pathfinder document informing the commissioning process drew on Britain and distant Australia and New Zealand, rather than nearby European Union countries which whom we share common health and social objectives.²⁹

A final change in the context has been, for charities, an ever more demanding regulatory régime. Voluntary organisations long argued the for benefits of transparency, accountability and public confidence through an effective but proportionate system of regulation and a Charities Regulator was introduced in 2014. There was a significant growth in other forms of regulation in the form of the Health Information and Quality Authority, privacy, data protection (e.g. General Data Protection Regulation), sectoral standards (e.g. for homeless services, National Quality Standards Framework (NQSF)), Garda vetting, health and safety regulations, Regulation of Lobbying Act and so on. Whilst such regulation may in principle be both acceptable and desirable, voluntary organisations were expected to carry out the tasks of compliance at their own expense, moreover at a time when their resources fell. The state has been slow to accept the principle of full cost recovery (i.e. that the state should meet the costs of the compliance on which it insists). In 2019, the new strategy for the voluntary and community sector finally accepted the need for ‘an appropriate cost-recovery model for public-funded programmes... including costs of compliance and relevant overhead and administration costs’, but listed it as a ‘long-term’ objective.³⁰

1.4 Conclusions

The main instruments for funding voluntary and community organisations in Ireland in the field of health and social services are §§38 and 39 of the Health Act, 2004. Historically, the Department of Health funded large hospital, health and disability service providers directly, applying favourable public service conditions and these are now the 44 §38 organisations funded by the HSE. Separately, health boards funded a broad range of large, medium and small voluntary organisations to provide multiple health and social care functions. These are now the 885 §39 organisations. They are supplemented by the smaller group of §10 organisations providing homeless services. Each sets its own pay and conditions, which due to their less certain financial circumstances are less favourable than those of the §38 organisations and the HSE itself. §39 staff, while not benefitting from public employment conditions, are nevertheless expected to share in any reduction of such conditions as may apply during periods of austerity.

This situation, which arises from a set of historical and institutional circumstances, is a function of the particular way in which voluntary and community organisations have developed. Ireland is an outlier on the European spectrum of how many key health, social care and educational services are delivered, whereas in Britain and Europe these are more likely to be a state function. Ireland has experienced great difficulty in defining the relationship between the voluntary sector and the state, taking 54 years to announce a policy and 24 years to publish it, only for it to be repudiated within two years. As a result, the relationship is neither defined nor stable, funding patterns are unsystematized and there are few points of dialogue between the two parties, so this is not a costless failure. The failure to address §§10-38-39 reflects, in miniature, the discomfort, even inability, of the state in trying to come to terms with this relationship.

In the course of the austerity period, the government reduced funding for the voluntary and community sector by between 35% and 45%, its staffing by 31%, with funding lines now permanently flatlined at much lower levels. During this time, pressure on services and staff rose enormously, organisations and their personnel being expected to provide more with less, a situation exacerbated by the virus in 2020-1. In recent years, a fresh threat appeared in the form of race-to-the-bottom tendering. These circumstances create a difficult, challenging backdrop for those working for §39 organisations.

28 Murphy, Mary; Irwin, Ann; & Maher, Michelle: *The social marketization of civil society*. Maynooth, Maynooth University, 2020.

29 Colgan, Anne; Sheehan, Aisling; & Burke, Katie: *Commissioning in human, social and community services - a rapid evidence review*. Dublin, Centre for Effective Services, 2015.

30 Government of Ireland: *Sustainable, inclusive and empowered communities - a five-year strategy to support the voluntary and community sector in Ireland, 2019-2024*. Dublin, author, 2019.



2

Progress since *Caring at what cost?*

This chapter follows the principal landmarks on the issue of parity since the publication of *Caring at what cost?* It is divided into progress (2.1) and the Independent Review Group and the Health Dialogue Forum (2.2); before conclusions are made (2.3)

2.1 Progress

The principal focus of the workforce in §39 organisations in the past decade was the restoration of pre-financial crisis pay and conditions, which for the time being pushed the parity issue into the background. Fórsa participated in the four industrial relations frameworks of the period, the Public Service Agreement 2010-2014 (Croke Park); the Public Service Stability Agreement 2013-2016 (Haddington Road/Lansdowne Road); the Public Service Stability Agreement, 2018-2020; and most recently, *Building momentum: a new public sector agreement, for 2021-2*³¹. This proved to be a protracted process, first for the 'top 50' §39 organisations, then 250, with landmark decisions in October 2018 and December 2020. *Building momentum* included a four-stage pay restoration process in 250 §39 organisations to begin on 1st January 2021.³² It includes a Public Service Agreement Group to address unresolved issues. In practical terms, staff in the 50 organisations return to 2008 pay rates on 1st October 2021. In the meantime, though, public sector rates are set to move ahead, reopening the difference between them. An additional complication - indeed grievance - is that restoration has not applied to workers outside this process (e.g. those under grant aid agreements).

The broader issue of parity in the workforce between §39 and §38 organisations remained and was raised in the HSE scrutiny by the Oireachtas (2014), the Public Accounts Committee (2017) and the full Dáil (2019). It was also raised in a number of research reports and broached in government documents. These are reviewed here.

First, §39 issues were raised in the course of regular scrutiny by the Oireachtas of the HSE.³³ The HSE underlined the importance of §39 organisations abiding by the pay restrictions of the public sector and explained how it had begun a process to verify and validate the remuneration templates of its large organisations. Barry O'Brien (HSE) stated:

We have included in our service level arrangement a requirement which deals with their overall approach to pay. I have written to all of them pointing out they need to have full and due regard for government pay policy. This fully encompasses the need for pay to reflect the size, scale and complexity of the organisation, the number of employees, the level of service, the complexity of the clients and the fact there are benchmarks in regard to §38 agencies and on the statutory side which would provide a good basis as to the rate of pay that should be paid to senior people. When we engage with §39 agencies on budgetary allocations and the annual service plans, we take the approach that while these are not public servants or members of public service pension arrangements, they should apply the terms of the public service agreement, initially the Croke Park agreement but now the Haddington Road agreement. We

31 Work Relations Commission: *Building momentum: a new public sector agreement*. Dublin, author, 2020.

32 Miley, Ingrid: *Section 39 employees to receive pay rises next month*. RTE News, 10th December 2020.

33 Oireachtas joint committee on health, 22nd July 2014.

have asked all the §39 agencies to ensure the nurse they employ works the additional hour and a half that all the nurses in §38 agencies and the statutory sector work to provide the same value for money. Therefore, our approach is that there is capacity to achieve savings out of the pay bill, without any impact on service delivery or overall quality of service. We have taken a consistent, even-handed approach with all the §39 agencies in seeking this. We have made it very clear that we do not see it as the first port of call that there must be a service reduction to deliver the required cash saving, when there is the exact same capacity as the §38 agencies to achieve it under the Haddington Road agreement provisions (minor editing for brevity).

In other words, §39 staff must participate in the reduction of conditions, like those in public sector bodies, but not necessarily in their *improvement*. The Irish Congress of Trade Unions (ICTU) later made proposals to this Oireachtas committee to argue the case for parity.³⁴

Second, in 2017, the HSE continued to defend the application of public sector cuts to §39 workers while denying their accessibility to public sector conditions or benefits.³⁵ At the Public Accounts Committee (PAC), Tony O'Brien, CEO of the HSE, stated that arising from the financial crisis in 2009-2010, cuts were made to the overall funding of organisations. In the case of §38 employees, there was a requirement to strictly impose the FEMPI pay cuts. In the case of §39 agencies, their budgets were cut and they were required to have regard to the effect on public pay policy of the FEMPI cuts but how they applied the cuts was a matter for them. It is also true that in many instances they applied the FEMPI cuts. Steven Mulrany, HSE chief financial officer and deputy director general, said that there was not a uniform approach applied across the §39 sector and, therefore, its resolution was unlikely to be uniform. Tony O'Brien added that for §39 organisations to become 'public sector agencies', that would 'limit their freedoms and would also have significant public policy implications'.

Third, in 2019, the situation of §39 workers was debated in the Dáil on foot of a motion which proposed that the Department of the Taoiseach engage with the not-for-profit sector in a forum to develop a plan for the future provision of services and specifically to end, without delay, the unequal pay terms that existed between §38 and §39 organisations.³⁶ Those proposing and supporting the motion argued for parity on the basis of the similarities of service provided; the government taking advantage of their dedication; of a financial relationship that created great uncertainty among the organisations; of recruitment and retention issues as a result of inferior conditions; and on the basis of natural justice. The government, for its part, explained that the government had now established a dialogue forum (>2.2, below).

Indirect references to the issue may be found in government policy statements. The *Programme for Government, 2020*, gave a commitment to address challenges in recruitment and retention and conditions within the broader labour market, respecting the important role played by public servants (p24); specifically to establish, in the Department for the Taoiseach, a unit for social dialogue; and to strengthen the National Economic Dialogue and the Labour Employment Economic Forum (p122).³⁷ The process of briefing incoming ministers referred to opportunities arising from the work of the Industrial Relations Unit of the Department of Health, whose objective is to 'develop and implement pay policy in a manner that supports the implementation of health policy, is consistent with the financial parameters set for the health service and maintains industrial relations harmony'.³⁸

Turning to research reports, in 2018, Rehab reviewed the situation of §39 disability agencies.³⁹ This found that inferior conditions in §39 agencies meant that they were losing staff to §38 agencies and those directly provided by the HSE itself, 'employee attrition' (p39). It identified as a key issue the failure of the state to pay the full cost of delivery of disability services, especially for §39 services (p52). Excessive pressure on NGOs was cited: during one stand-off over costs, the HSE gave §39 agencies an ultimatum to sign their SLAs by a particular date, or funding would be withheld (p53).

The situation of §§38-39 organisations in the disability field was reviewed by the European Association of Service Providers for Persons with Disabilities (2020).⁴⁰ This found evidence of strain on these organisations and their workforces:

34 Irish Congress of Trade Unions, *op cit*.

35 Dáil Éireann, Public Accounts Committee (PAC), 26th October 2017.

36 Dáil Éireann, *Debates*, 17th December 2019, 496.

37 Programme for Government - our shared future. 2020 (no publisher).

38 Department of Health: *Minister briefing, 2020*. Dublin, author. McInerney, Chris: *Who cares? Building a relationship between between the not-for-profit sector and the state?* Dublin, Rehab, 2018.

40 European Association of Service Providers for Persons with Disabilities, *Op cit*.

- From the start of the Covid 19 pandemic, §39 organisations saw increased demand on their services, while with the cancellation of events they lost most of their ability to engage in public fundraising. Specifically, they had to close their charity shops, one of their main sources of fundraising. Many reached critical levels in their cash reserves.
- Their ability to provide services came under strain, leading to longer waiting lists or people provided with services that were available, rather than what they needed;
- Lower pay and conditions in §39 organisations made it more difficult for them to retain their staff;
- §39 organisations were badly affected by rising insurance charges, which in the case of §38 organisations are covered by the state's Claims Agency;
- The funding of some §39 organisations had still not returned to pre-financial crisis levels, for example day care providers.

That same year, the *Irish Times* quoted an unpublished internal HSE report as saying that the present funding model for §§38-9 organisations was not sustainable; they were struggling financially with an accumulated deficit of €30m; had weakened financial resilience; were overburdened with the requirements of compliance; and would need an additional €82bn by 2025.⁴¹

In summary, following *Caring at what cost?*, the issue of parity has continued to be active in the Oireachtas, government policy and in the research discourse. If anything, as the later reports indicate, the situation of §39 agencies become more difficult. An important context to the restoration campaign is that it was not only pay that was cut, but a range of other benefits (e.g. maternity, concession days), which contributed to a sense of grievance. Ten years was a very long time to have to address the issue.

2.2 The Independent Review Group, the Health Dialogue Forum and the new concept of 'tight and loose'

In August 2017, the Minister for Health established a working group to examine the relationship between the voluntary sector and the state, chaired by former European Secretary General Catherine Day to report within a year. This duly concluded in 2018, being given the abbreviated title of 'Independent Review Group' (IRG).⁴² It identified a 'strained relationship' between the state and the voluntary and community sector; disproportionate compliance requirements; and its 'avalanche of deficits'. Her report proposed a charter to govern their relationships; 3- to 5-year multi-annual budgets; a simplification of SLAs; and a forum for dialogue.

At first sight, her report was not of immediate relevance, for although the situation and pay restoration of §39 workers were raised by stakeholders and recognized as a problem issue, the committee took the view that it was not within its mandate, even though a close reading of the terms of reference shows that it was not actually ruled out. However, from the point of view of the §§38-39 organisations, her key recommendation was for there to be an agreed list of essential services with full-cost delivery. The Department of Health and HSE should map all voluntary organisations providing non-acute services under §§38-9 and their capacity to provide a range of necessary services in the coming years. The Day report implied, though did not state explicitly, that 'essential' services would be provided on the same terms as the public sector. In effect, many §39 type organisations would move into a §38 situation, leaving a much smaller §39 of small, non-essential services, presumably smaller and more peripheral by nature.

41 Wall, Martin: *HSE says provision of disability services by voluntary bodies not sustainable*. Irish Times, 3rd August 2020.

42 Day, Catherine; Grimson, Jane & Madden, Deirdre: *Report of the Independent Review Group established to examine the role of voluntary organisations in publicly funded health and personal social services*. Dublin, Department of Health, 2018.

The proposed Dialogue Forum was duly established and met twice, 2nd December 2019 and 24th January 2020. It is presently the principal location for the discussion of the future development of relationships between the state on the one hand and the voluntary and community sector on the other. According to the Department, its aim is to 'build a stronger working relationship between the state and the voluntary healthcare sector for the benefit of patients and service users and to facilitate regular dialogue with the voluntary sector on future policy and strategic developments'.⁴³ It has 28 members, drawn from the voluntary and statutory side in health services.⁴⁴ The Dialogue Forum has not met as a full group since January 2020, but a planning group of eight to nine people continued to meet throughout 2020 and into 2021. The forum does not have a defined end point but is intended to promote dialogue across levels, sectors and issues. Its aims are to defuse tensions, promote awareness by each side of the situation of the the other and lead to practical solutions for a better way forward. Section 39 issues have been raised therein, but informally. Its work is divided into three pillars:

- Building a stronger working relationship;
- Strategy, reform and policy initiatives including Sláintecare; and
- Supporting good governance.

The forum commissioned the National Economic and Social Council (NESC) to prepare a 'context setting paper' which was presented in draft at the second meeting *Building a collaborative relationship between the state and voluntary organisations*. It is a process-focussed place, the intention of which is to build the trust and clarity that will pave the way for a much improved relationship.

Although the forum provides a place for on-going dialogue, one hitherto chronically lacking (1.3), it also presents several problems. In the first instance, its role in addressing the §§38-9 issue is unclear, the IRG report not having pressed this issue this directly. The Minister of State, during the parliamentary debate on §§38-39 reported earlier, referred deputies to the forum as part of the government's response to the problem, clearly implying that it was within its remit. Even still, the issue is not formally listed in the forum's terms of reference. Second, neither the report nor the forum embraced the situation of §10 organisations in homeless services, which appears to be an omission. Third, membership of the forum does not include the Irish Congress of Trade Unions (ICTU) nor any individual unions representing the §§38-39 workforce (Fórsa, SIPTU). In May 2018, ICTU presented its own submission to the forum, clearly indicating its interest.⁴⁵ ICTU twice requested membership of the forum. The WRC decision on restoration at the end of 2020 restated ICTU's request to participation: 'the unions believe that this forum can contribute to the resolution of the longterm structural issues in the sector and their inclusion is consistent with the commitments in the programme for government to wider and deeper social dialogue'.⁴⁶

It is reported that the Minister for Health decided against such membership on the basis that the forum would not be dealing with industrial relations issues. On the other hand, quite a number of the voluntary organisations present are employers in their own right and represent not only voluntary sector interests but employer interests, making the forum onesided. How this may be reconciled with the principle of social partnership is not clear. Informally, it is understood that a minority of voluntary organisations would not welcome trade union participation, believing that it would cause 'trouble', an ironic position to take granted that the purpose of the forum is dialogue and the resolution of difficulties.

There is some skepticism about the future of the forum, even of the department's commitment to its agenda. Although voluntary organisations have pressed the department to maintain its momentum, the department has pleaded the overwhelming demands of the virus as the reason for it not meeting, even virtually. The former argue that the virus is all the more reason to advance the task in hand, but at present there is no prospect of its full resumption.

43 Department of Health: *Dialogue Forum*, accessed 2nd February 2021.

44 Department of Health, HSE, HIQA, Mental Health Commission, The Wheel, Mental Health Reform, Disability Federation of Ireland, the Not For Profit Association, the National Federation of Voluntary Service Providers, Voluntary Healthcare Forum, Voluntary Hospices Group and National Community Care Network.

45 Irish Congress of Trade Unions: *Submission to the independent review group established to examine the role of voluntary organisations in personal social services*. Dublin, author, May 2018.

46 Workplace Relations Commission: *Restoration of pay for workers in section 39 organisations*. 10th December 2020.



Nevertheless, the forum offers a way forward in defining an improved relationship between the voluntary sector and the state. Its direction of travel is toward full-cost funding of 'essential' services; and something less than that for less-than-essential services. It would be difficult, either in moral or practical terms, for the state to argue that full cost services should be provided at terms inferior to equally essential, full cost HSE services. It suggests that the terms 'section 38' and 'section 39' would be replaced by new definitions (as one person said, 'a section 38.5'). As an aside, the definition of what is 'essential' and what not, is to put it mildly, challenging. As one contributor put it, 'would a Traveller Community Development Project be considered essential? Certainly to Travellers it would be. Would a meals-on-wheels service be considered 'nice but not essential? Ask the older person who gets the service' Here, the IRG report pointed to the role of independent bodies in some European countries determining what was 'essential' and what not.

An important development is responsibility for disability issues and services in the newlyconstituted Department of Children, Equality, Disability, Integration and Youth. This may make possible an opening for this issue, for the Minister of State, Ann Rabbitte, has gone on record as saying that 'a lot of these organisations and the services they provide should be brought into public ownership and the people who work in these areas should be state employees because there are contractual employment issues, workers' rights issues and pay issues. They are described as analogous workers, doing the same job as people who work in the public health system but not getting the same pay because they work for §39 organisations. There is a lot to be done there.⁴⁷

In parallel to the Forum process, there have been indications that the HSE is prepared to consider a new approach to its oversight of voluntary organisations, clearly a major problem area. The IRG report identified aggressive approaches to compliance and micromanagement by the HSE as a particular issue which made voluntary organisations reluctant to be any closer to the state, something they would be if deemed 'essential' services with public sector conditions. From 2020, the HSE put forward the idea of a new relationship called 'tight and loose': tight in its requirements of standards, but loose in terms of giving organisations scope to demonstrate them in their own way. The term 'accountable autonomy' has also been used. If this were to be the case, §39 organisations could be more comfortable about being more 'tight' with the state.

2.3 Conclusions

This chapter showed how the issues raised in *Caring at what cost?* were first of all overshadowed by the battle for pay restoration, but that the parity issue continued to be raised in the Oireachtas - in the Health Committee, the Public Accounts Committee and the Dáil. The issue was raised indirectly in the *Programme for Government, 2020*, while a commitment to full cost recovery was made in *Sustainable, inclusive and empowered communities*. Issues concerning §39 agencies were the subject of reports by Rehab and the European Association of Service Providers for Persons with Disabilities. The Independent Review Group was an important development, for it raised core issues concerning §39 agencies and their relationship with the state, leading to the Health Dialogue Forum, which has begun its work, albeit in the absence of some key issues and participants.

Having said that, perhaps one of the most striking features of the §§38-39 debate on parity is its absence. Despite its importance, little or no reference is made to the issue in ministerial briefings, policy statements, nor public service agreements. It was not included in the terms of reference of the IRG, nor in those of the Health Dialogue Forum, although not ruled out. The Sláintecare report did not address the issue.⁴⁸ Nor did the Comptroller and Auditor General 2017 *Management and oversight of grants to public agencies*.⁴⁹ When the issue was raised - principally in the Oireachtas - ministers deflected criticism and were unwilling or unable to explain the lack of parity in the treatment of the two workforces. When in 2020, responsibility for the voluntary and community sector was allocated to the Department of Rural and Community Development, with a minister of state allocated special responsibility thereto as Minister of State at the

47 Dáil Éireann: *Debates*, 20th September 2020, vol 992, §2.

48 Houses of the Oireachtas Committee on the future of healthcare: *Sláintecare report*. Dublin, author, 2017.

49 Comptroller and Auditor General: *Management and oversight of grants to public agencies*. Dublin, author, 2017.

Department of Rural and Community Development with special responsibility for community development and charities, the brief made no reference to §§38-39 issues.⁵⁰ In November 2020, the department began a review of funding scheme for the Community and Voluntary Pillar organisations to facilitate their participation in social partnership, but likewise did not address §§38-39 issues. It is difficult to avoid the conclusion that the failure to include such an important issue was a subliminal attempt to delegitimise the concern.

Moreover, during the parliamentary debate, the minister of state alluded vaguely to the cost implications of parity – yet no estimates appear to be available of these likely costs and the bringing all ‘essential services’ into the public sector. There are about 300,000 public servants in Ireland, including 120,000 in the health services, including about 49,000 in §38 agencies. The number working in §39 organisations has not been calculated, but there are estimates from 9,000 to 50,000, the wide range underlining the importance of reaching a more exact figure. There is a widespread belief in the voluntary sector, informed by the well-established narrative of the Department of Public Expenditure and Reform (DPER) that both public sector numbers and public spending must be kept down, one likely to be shared by other departments and which may block parity indefinitely. Although the cost of bringing §39 organisations into the public sector has been cited as an overwhelming problem – and believed to lie at the root of governmental opposition – it would be both helpful and responsible if such an estimate were to be made. The Irish Government Economic Evaluation Service (IGEES) has, at its disposal, 200 staff, but it does not yet appear to have been tasked to do this.



50 Department of Rural and Community Development: *Ministerial briefing, June 2020*. Dublin, author.



3

Current situation of §39 organisations and their workforce

The core part of this research is an assessment of the current situation of §39 organisations and their workforce. This was based, as in the course of *Caring at what cost?* on surveys of the Fórsa workforce itself (3.1) and Chief Executive Officers or Managers, the latter including contributions from §10 organisations (3.2). A summary is made and conclusions drawn (3.3).

3.1 The views of Fórsa members

Members were asked how long they had worked with their present organisation:⁵¹

	2021	2015 <i>Caring at what cost?</i>
Less than a year	3.2%	2.9%
1-2 years	6.4%	4.7%
3-4 years	13.6%	6.4%
5-7 years	12.8%	18.7%
8 years or more	64%	67.3%

This shows a younger workforce, with a higher proportion of recent or new arrivals and a lower proportion staying there longer. It is now more settled: 91.2% were on permanent contracts, 5.6% temporary and 3.2% other (2015 figures were 76%, 20% and 4% respectively).

Members were asked about their job satisfaction:

	2021	2015 <i>Caring at what cost?</i>
Completely satisfied	8%	3%
Somewhat satisfied*	49.9%	48%
Neither satisfied or dissatisfied	11.2%	10%
Somewhat dissatisfied*	22.4%	33%
Completely dissatisfied	8.8%	6%

*Satisfied or somewhat satisfied; somewhat dissatisfied or dissatisfied. These were composited in 2021.

This is a balance of 57.9% satisfied (completely or somewhat); and 31.2% dissatisfied (completely or somewhat). There is an improvement in 'completely satisfied', but also an increase in 'completely dissatisfied'.

51 91.1% confirmed that they were members of §39 organisations, 5.6% were not sure and 3.2% were not.

Members were asked, over the past 3-5 years, the change in their job satisfaction:

	2021	2015 <i>Caring at what cost?</i>
Increased	13.6%	9%
Stayed the same	34.4%	22%
Decreased	52%	68%

This showed an increase in job satisfaction and decrease in dissatisfaction, accompanied by a move to 'stayed the same'.

They were asked about their general workload:

	2021	2015 <i>Caring at what cost?</i>
Increased	89.6%	75%
Stayed the same	9.6%	23%
Decreased	0.8%	3%

This was unambiguous, showing an increase in workload compared to 2015, with a rise to almost 90% (75% in 2015), with a fall in 'stayed the same' from 23% to almost 10%.

They were asked specifically about workload change as a result of the virus:

	2021
Increased	77.6%
Stayed the same	14.4%
Decreased	8%

In another clear outcome, over three-quarters considered that the workload had increased because of the virus.

Members were asked, in considering the future of their job and career, which sentiment best reflected their view?:

	2021	2015 <i>Caring at what cost?</i>
I would not change my job for any other	17.6%	9%
I am not eager to change my job but would do so if I could	40.8%	35%
Not sure	11.2%	13%
I would like to change my job soon	9.6%	20%
I would quit this job at once if I could	20.8%	23%

This shows a pattern of divergence in job attachment. At one level, extreme attachment grew (9% to 17.6%), extreme non-attachment fell a little (23% to 20.8%) and moderate nonattachment fell (20% to 9.6%). At the same time, mild non-attachment ('I am not eager to change my job but ..') rose from 35% to 40.8%.

Members were asked how important was it that they have public sector pay, terms and conditions and job security?:

	2021
Very important	95.2%
Important	4.8%
Not important	0%

Clearly, this is a burning issue, rating 95% high importance and 5% importance. Although a self-selecting sample, the question tried to gauge the level of feeling, this dividing unambiguously into 'very important' rather than 'important'.

There were three open questions:

(1) What do you think would be the benefits of having public service pay, terms and conditions and job security for 'section 39' organisations, be they for you, the organisation, or those using the service? (2) What would be the consequences of a failure to make progress on this issue? and (3) Other comments. Each is addressed in turn (3.1.1-3).

3.1.1 Benefits of parity

Members cited a variety of benefits arising from parity. First and foremost was a sense of fairness, recognition and equality. It would mark an end of injustice and discrimination. They would feel 'wanted again', their physically, mentally and emotionally challenging work recognised. Whilst an intangible, it was nonetheless the first and most important gain.

Parity would itself lead to more job satisfaction and down-the-line benefits such as improved retention of staff. They themselves would be more likely to stay. They would have peace of mind. Their loyalty was rewarded. Incentivized to stay rather than to move, they would no longer be distracted by thoughts of moving job, no longer 'constantly having to fight for our entitlements.' They would be secure, as would their organisations, without the fear of redundancy.

The other benefits cited were:

- The actual primary benefits of public sector conditions: pay, job security, pay restoration
- Pension, especially for those in mid or late career.
- Access to holidays, paid holidays, term-time leave, year-long leave of absence, study leave.
- Access to full maternity leave.
- Application of the European Working Time Directive, with recognition of sleepover hours as working time.
- Application of health and safety rules on second-hand smoke and avoidance of the need for sick leave.
- Improved work-life balance.

There would be concrete gains, such as 'the first pay increase in years'; being 'able to afford my own house' and 'a better chance of getting a mortgage'. One spoke of being able to 'move up from support worker to social care worker, the job I am already doing'.

There would be knock-on gains that went beyond the staff themselves:

- Much improved likelihood of recruiting and retaining qualified staff.
- Reduced costs for organisations arising from better retention and reduced recruitment.
- Better services for clients as a result of improved morale.
- Being able to plan services with the HSE, rather than separately.

3.1.2 Consequences of failure to achieve parity

Here, members cited the following consequences, both now and in the future:

- Demoralization. Many spoke of feeling 'demoralized, ignored and worthless'. One referred to 'low morale, anger, distrust, loss of enthusiasm'. 'People feel tired, exhausted, used'.
- Poorer job performance. They struggled to give 100% to their job. Their commitment had declined. There was a loss of professionalism, leading to a fall in the quality of service. Having disgruntled staff was bad for any organisation.
- Combined with the radically increased workload, there was stress and burnout. This had negative effects, both in the workplace and at home. People made poor judgements and errors because they were so burned out.
- Staff leaving. Many spoke of considering leaving their job. One was in the process of leaving for a §38. Some would 'probably' leave and some referred to being 'on the lookout' for HSE posts. Their organisation had already lost good staff and the 'constant rollover of staff' was bad for those who stayed but especially for those who used their service. Turnover was especially high in precarious residential care services. Clients did not get continuity of care from the same staff. Seeing other staff leave was in itself demoralizing. §39 jobs were increasingly seen as 'stepping stone' jobs that provided entry points into the public sector, which created a vicious circle of high turnover.
- A persistence of uncertainty was another consequence of failure of their insecure funding. Staff felt that their posts were not protected. Services had been lost. One contributor had already experienced, but survived, two rounds of redundancies. Another 'would love to get off year-to-year contracts'. Another spoke of 'two years begging for a contract'.
- Work poverty. Many felt that they lived in in-work poverty, in hardship. Poverty was especially the case for care workers. Many wrote of how they now earned less than in 2008.
- Continued time-wasting by having to campaign on the issue.

They put the situation of §39 organisations succinctly: 'people leave them, while others don't join in the first place'. A typical comment was 'our organisation has already lost a number of exceptionally trained and skilled staff and I have nearly left on a number of occasions'. One pointed to the 'loss of good, interested, hard working staff. Organisations will be left with short-term people who don't really care about their service users'. Although this was a specific situation, this was a telling comment:

§39s will not be able to retain qualified staff. Recruitment of Occupational Therapy (OT) staff has re-opened in the HSE. Many of our staff are qualified OTs, are on the HSE panel and will leave when offered HSE job because the salary scale is more favourable. The same will happen with our qualified social worker staff. We will be unable to recruit suitably qualified staff who are more likely to turn to public service jobs where pay is higher. This will lead in turn to the delivery of a lower quality service to people with disabilities, the most vulnerable people in society.



Another provided a succinct summary of the combined effect of turnover and 'the stepping stone' on the users of services:

The turn over in staff is huge, especially in our residential housing. People use it as a stepping stone to get experience and then move onto a £38 paid job or HSE. Our service users and residents are constantly dealing with change and new faces.

3.1.3 Other comments

Here, members made a variety of comments that amplified those provided above.

First, there was a sense of exasperation, even desperation. They referred to how they had been raising the issue, without success, for many years: 'morale is now very low'. It was both a personal issue and an organisational one. At a personal level, a typical comment was that 'my workload has doubled but I am on less pay now than ten years ago', while another commented on 'earning less than my social work colleagues in HSE and Tusla despite 17 years in the job'. This was general in the organisation: 'most staff in my service are on point 1 of pay scale, regardless of long they have been here'. Organisationally, there was a plea to 'address the issue before we lose our best staff'. Many recognised how long this would take, one feeling that it 'may not happen in my lifetime but would make a difference for younger workers'.

Whilst there was a sense of resignation, there was also anger, as this contributor indicated:

I work 46.5 hours a week in homeless services on sleeping night shifts. They pay me minimum wage between 11pm-8am. I do live work during these hours but am still paid the lowest pay. Responding to self harm, fights, overdoses, fire alarms, intruders, mental health crisis. From sleep into immediate action is a skilled job. Why am I paid so poorly? I have higher health risks and deal with social isolation and I am treated like rubbish.

The fact that the money had stood still since 2008 was a particular cause of grievance.

When it suited the government to cut pay back in 2009, it had no problem viewing staff in £39s as the same as public service and ensuring our pay was cut via HSE cuts in funding annually for several years after that.

It was not just the differential, but the cumulative effect of the associated problems:

Pay increases and increments have not taken place for eleven years in my organisation but the workload is totally overwhelming, colleagues are stressed and totally depressed. Workers will leave the jobs as as there is very little to keep them there.

The pay differential was especially unjustifiable when the qualification requirements for specific jobs were the same. The vaccination programme was a new grievance. Put simply, 'my HSE colleagues got their vaccinations, I haven't got mine'. In another case, some HSE staff had been vaccinated ahead of some £39 services with a closer contact role with clients in the disability area.

An unexpected issue was the poor quality of management in a number of some £39 organisations. In them, management appeared to make itself party to the disparity imposed by the HSE and reflected its approach of treating staff disrespectfully. Management was not only unresponsive to the predicament of staff resulting from disparity, but had minimalist and even poor work practices. One contributor drew attention to this: 'my employers pay more than most others, but some pay bare minimum and don't cover mileage'. Others cited bad employment practices by an 'unaccountable management' that would not be possible with public sector conditions. Here, the argument was that public service conditions would themselves make bad practices less likely and drive up the quality of management.

3.2 The views of voluntary organisations

Voluntary organisations were asked for their views. The sample comprised the 'top 50' organisations (50); and a randomised sample of §39 organisations (50) (total 100); supplemented by a survey of members of the Dublin Homeless Network (39) which obtained either or both §39 (SLA or grant-aid) or §10 or other funding. These voluntary organisations operated a wide range of pay, terms and conditions: many of their own devising, some previously or presently modelled on the public sector (e.g. 85-90% of HSE rates), but there was a general sense that most now compared poorly to the statutory sector.

First, to establish a base line, most voluntary organisations were aware of the Fórsa campaign, but this was less the case with small ones. A number referred to their workforce being members of Fórsa or SIPTU. CEOs confirmed that they did not have public service pay conditions – not out of choice, but because they were not given sufficient resources to do so. Quite a number had done so in the past and some still struggled to do so. Several organisations referred to the way in which §39 grants were a 'contribution toward' their services – they were not 'fully funded' and had to fund-raise the balance. To give an example, one social care voluntary organisation received €25,000 a year from the HSE, 10-15% of its costs (the rest are fund-raised), which was allocated to the employment of a part-time nurse: 'we are fully aware that we are unable to offer the same conditions for a nurse as the HSE.'

Voluntary organisations confirmed that their organisations had frequently ('at every opportunity') raised issues with their funders, formally, informally and through their advocacy work. It was a defined part of the discourse of many voluntary organisations with the HSE and other funders e.g. Tusla, local authorities, Dublin Region Homeless Executive (DRHE). Homeless services reported being told that funders operated under 2018 DPER guidelines which prohibited the application of public sector conditions. Attempts to raise the issue were met with a blanket refusal to discuss on the basis that these guidelines were irrevocably in stone. One reported how 'every year we had a battle with the HSE for our staff to have pay rises - while their staff got them automatically'. One had not even been able to get such meetings. Some could see how the HSE was under pressure too: 'you could see that the HSE was struggling and firefighting to respond to issues. Their managers tried their best to find money for us from pots here and there.'

During the rapid rise in homelessness, one organisation was informed that it could apply full cost recovery and public sector conditions. This was subsequently revoked as a mistake, which left the organisation with a financial crisis which forced it to reduce its conditions for staff. Its situation contrasted with private companies, which provide the majority of homelessness services. Some private companies offer public service pay and conditions, leading to an exodus of staff from voluntary organisations into these posts, five in the case of one of the larger voluntary organisations. Their contracts are confidential and the organisations themselves cannot be identified, although they are well known to voluntary homeless services. It is not known if SLAs are applied to them or if there is a simple charge for services supplied (or as one NGO suggested, 'a cheque in the post and little or nothing asked in return'). The comments of voluntary organisations are reviewed under the general situation, the consequences of lack of parity, the benefits of parity, the price of parity, solutions and a systemic funding model (3.2.1-6).

3.2.1 General situation

The issue of parity – the focus of this report – was seen by voluntary organisations as part of a much larger problem of the relationship between voluntary organisations and their funders, be they the HSE, Tusla, local authorities or others. Many reported that they were underfunded for what they did: 'underfunding means that §39 organisations are accumulating debts. Some will go under'. Even when funding was agreed, there was no security. One voluntary organisation wrote of how it was paid quarterly. One year, the quarterly payment was withheld in error, but never reinstated, so donations had to be used to cover the loss. There were now no reserves and if a future payment were ever late, it would be out of cash. Working quarter-to-quarter created great anxiety for staff. Quite a number of smaller voluntary organisations relied on community employment to provide a service. One received 10-15% of its costs from the HSE, but 60% of its referrals came from there: many people in the local community imagined that it was wholly HSE-funded. One voluntary organisation spoke of being referred clients by HSE staff because these clients had more complex needs than the HSE could handle, to be treated by staff who were paid less.



Although some of the larger §39 organisations had now received pay restoration, many smaller ones had not. A typical comment was ‘the fact that there are no salary increases or access to pensions at the very least is very demotivating’. Much as voluntary organisations would like to provide parity with the public sector, their grant situation was so uncertain that this was not something that they could offer: ‘we have a remuneration policy based on the realities of our situation’. Organisations spoke of funding down between 10% and 15% on 2009. One spoke of being able to offer only the Living Wage to CORU-registered level 7 new and existing staff. The issue of pay was at the forefront of a general problem of reduced funding which brought all their services into question.

Some voluntary organisations found their low remuneration rates embarrassing. One voluntary organisation attracted adverse local media publicity for its rate of sleep-over payment, damaging to local fundraising and future staff recruitment. Staff in social care organisations were traditionally paid an allowance for sleepover, but in 2014 the Labour Court ruled that staff in disability and childcare services should be paid the minimum wage for sleepovers. The HSE funded the minimum rate in these two sectors only – but not in this one. On top of financial stress, organisations had been obliged to greatly increase their workrate. The work level had increased twice: the social consequences of the financial crisis after 2008; the Covid crisis in 2020-1; and would increase as they tried to deal with its aftermath – but pay rates had fallen.

3.2.2 Consequences of lack of parity

Voluntary organisations were clear in stating the consequences of lack of parity. One put it at its most simple.

The lack of pay parity is a serious issue for §39 organisations in terms of recruitment and retention, particularly at entry-level pay scales. Even minor difference between HSE/§38 organisations and their §39 equivalents can be a major factor in prospective employees deciding to work for, or remain with, a §39 organisation.

Disparity ‘presents very serious challenges for recruitment and retention’ was a typical comment. Disparity made it more difficult for §39 organisations to attract staff and keep them. Workers do leave to obtain public sector conditions, they said: ‘we have seen staff moving into the statutory sector for pay and associated benefits which we cannot meet’ and ‘we cannot retain staff, who move to the Brothers of Charity’ [section 38]. According to another, ‘we previously had two nurses, but as one left we found it impossible to recruit to fill the position as we were unable to offer a competitive salary. The current nurse has raised the issue on a couple of occasions and we have been trying to bring the rate up. If she should decide to leave, I think we would have trouble recruiting nursing staff again’. The current nurse had understood that in coming to them she would be ‘taking a hit on pay’ but the working arrangements suited her.

One organisation recounted how it was aligned with the HSE in 2010, but due to cuts this was and remains lost, putting it at a ‘serious disadvantage’ in recruiting and retaining staff. There were no pay increases from 2010 to 2020, apart from two one-point increases from their own fundraised funds, leading to a pay gap with the HSE of €11,000 annually and a cumulative €68,000 per individual. In the past three years, the organisation had a loss of staff of 22% in 2018, 19% in 2019 and 15% in the first eight months of 2020. Whilst pay was not the sole reason, equally it is known that many moved to the better pay of state organisations. One explained the disheartening effect of ‘lateral talent flight’:

A very significant factor is talent flight moving favourably towards HSE/§38 organisations. We regularly experience this and it is very disheartening to see staff leave our employment for employment elsewhere at the exact same grade. Employee turnover for progression purposes is understandable and acceptable in any sector whereas lateral talent flight is simply disheartening.

One provincial organisation reported losing 55 staff in 2019, 44 in 2020, citing 'poaching'. It lost all its relief staff. The HSE and §38 organisations could pay sleepover, shift, night, holiday and weekend allowance: it could not and was challenged to meet the working time directive. For provincial organisations, mileage was likewise an issue. Another organisation had been aligned with the HSE, but when the pay cuts began and were not restored, then their staff began to leave, which they do 'regularly'. Typical accumulated pay losses since 2008 were between €6,000 and €25,000 per individual. In 2019, exit interviews recorded 33% as moving to the HSE or §38 for their better conditions. Future lateral talent flight was a continuing fear:

We lost one staff member to take up a role directly with the HSE as the terms and conditions were more favourable. The staff we do have are highly skilled and experienced and it would be a huge loss to our service and clients if we were to lose any more of our people.

One §39 voluntary organisation spoke of how the §38 organisations and HSE ran a closed labour market, easy when the same conditions applied in both. Only a few posts were open to external applicants from §39 organisations but 'we lose some of our best people' as a result. This operates at the level of home help coordinators, where the HSE grade is one grade above what voluntary organisations can offer. This was a fast changing picture: 'as soon as an opportunity opens up, staff move.'

The difference between the two types of services and employers was well known in the sector and its labour market, not least because the tasks undertaken were similar: 'we do the same as §38s, but are paid less. We have problems recruiting when our neighbouring organisation is paying more with better conditions.'

We are competing in the same market as the HSE and new providers who never had the cuts. We are struggling to recruit and retain as our terms are significantly worse than other organisations providing the same service. We are losing staff to the HSE and cannot recruit therapists at all.

In some cases, §38 and §39 organisations were physically in close proximity, 'just down the road' or 'over the fence', making the pay and conditions differences even more evident and intolerable. The most severe effects were loss of continuity of care for vulnerable clients, especially those with disabilities, because 'seeing the same face' was so re-assuring for them. One voluntary organisation spoke of how 'we don't want to be a low-pay sector, supplemented by agency staff. Quality staff and continuity of service matter'.

Clients or service users were the long-term losers. One reported how, with its staff 'poached' by the better-paying HSE, its own services had disimproved. One organisation turned down a lead role in the reconfiguration of children's services because it could not attract the staff. Ideally, there should be a free flow of movement between the voluntary and statutory sectors, but there was little from the HSE or §38 organisations into §39 organisations.

For some, the problem was recruitment, for others retention and for many it was both. For one, it was the first: 'we lost some staff, but not huge numbers. The disparity is recruiting new staff'. It was reported that applicant staff, having gone through a recruitment process, then refused a job offer when they realized that terms and conditions were better in the HSE. Potential applicants would not even look at job adverts because their salary scales were several years behind the HSE. Some smaller organisations reported little staff loss. They were aware of their lower rates compared to the HSE, but 'were very loyal and did not want to move'. One organisation spoke of how it was aware from exit interviews that the terms and conditions in public service roles were attractive to leavers and had taken specific measures to reduce this and since 2018 there had been a decline in staff leaving for them.

Finally, several NGOs raised intangible but important aspects of this discussion. Whatever about the practical issues, different and lower rates in voluntary organisations were wrong, unfair and disrespectful. Many CEOs referred to how staff felt undervalued, leading to their demotivation.

3.2.3 Benefits of parity

Voluntary organisations were very clear as to the potential benefits of parity and a level playing field for this part of the labour market. They stressed that parity on its own was not enough: there had to be a reform of and respect in the funding relationship. They may be summarized as:

- The recruitment of better staff into voluntary organisations;
- Their retention and the creation of career paths and opportunities;
- Improved morale, motivation and self-worth;
- Reduced turnover staff staying longer, keeping experience within the organisation;
- Recognition of equivalent service in the other sector;
- For clients, improved quality of service, being able to do more.

Voluntary organisations would be saved the struggle of ‘unequal competition’ with the HSE and §38 for staff. Although there would be costs, voluntary organisations pointed to the way in which savings could be achieved by a more efficient social care model provided through the home and the community, occupational therapists, public health nurses and primary care teams. Overall, voluntary organisations felt that there would be major advantages. Staff would stay, their services would be sustainable and they could plan longterm.

3.2.4 The price of parity?

One of the main issues arising was whether, in the event of parity, state funders would seek, as a *quid pro quo*, much closer control of voluntary organisations. There was a fairly universal view that there would be ‘more control’ or ‘closer alignment’. This in turn raised the issue of the present level of control, the compliance systems already in place and how they should be paid for, the question of ‘full cost recovery’.

Many voluntary organisations found the current relationship over-controlling and one-sided - there was not much more autonomy to be conceded. A similar comment was that oversight could not be more onerous anyway. SLAs were ‘skewed completely toward protecting the funder’, not negotiated but ‘forced upon us’. Reporting processes were onerous and time consuming, or as one said, ‘we just can’t fight the SLAs and the spreadsheets any more. You have barely finished one and you have to start the next one’. One voluntary organisation suggested a better way: ‘we welcome guidance from the HSE but that is what it should remain, guidance’. One drew attention to the SLA template for §39 organisations being much the same as for §38, raising questions as to why terms and conditions were different.

One CEO counted the number of conditions that had to be met: Charities Regulator Governance Code (49); Housing Agency Regulator; Governance (63); Performance (95); Financial (23); HSE SLA (61); National Quality Standards Framework (26); GDPR (clients, staff, volunteers); Working Time Directive, with costs arising from rostering systems; SLAs with local authorities and Tusla (total 317). Many of these overlapped and duplicated each other. Some of these standards required mandatory training which the organisation had to pay for from fund-raising. A typical comment was that the governance overhead was ‘unsustainable’, especially resented for being unfunded. Another was ‘if the HSE had a proper inspectorate, little of this would have been necessary’.

For some NGOs, §39 funding was only a small part of what they received. This was the case, for example, with some organisations working with the homeless, whose prime role was in accommodation but which did also provide some health-type services. Here:

Some of the policies and procedures sought by the HSE of recipient NGOs are very medically oriented (eg their complaints policy is drafted in a way that assumes you are a large hospital) and are partly or wholly inappropriate for NGOs for whom health is not the main service outcome. What’s more important for us is a consistency of approach across the HSE regions in policy and practice and a recognition by them that recipient NGOs are not all medical centres with medical consultants and specialists. Yet this rather clumsy, scatter-gun assumption is at the heart of some of the policies and procedures they oblige recipient NGOs to adopt.

One social care organisation providing residential care for people with disabilities was struggling with HIQA compliance, for which it sought HSE funding, but this was denied. It asked the HSE to take over the service, which was then tendered out. The voluntary organisation ceased to be a frontline service and became a small information and support service for which it does its own fundraising.

Several voluntary organisations highlighted the paper-chasing nature of compliance, such as this example:

They demand more from us each year, our paperwork increases, more hours have to be put into admin and we are given little choice. As a part of our 2020 SLA we were required to align one of our policies with that of the HSE. We were given a guide, a contact person and told not to just copy the HSE policy. It took two to three weeks of back-and-forths before the liaison person agreed to approve our policy. Six months later they came back to us to inform us we did not meet all the requirements. We went back and forth once again for a number of weeks agreeing and disagreeing to additions to our policy. Eventually I took their policy and replaced the word HSE with our name and they approved it immediately. I highlighted to them that it was just a copy of their policy which they asked us not to do and they denied this even though it is all in black and white.

Another drew attention to its inappropriate commercial nature:

I received a welcome pack from a new energy supplier. I rang them and was informed that the HSE had engaged their service for all HSE agencies and that in doing so we would make significant saving on our energy bills. I explained to them that, while we did receive some funding from the HSE, they had no authority to do this. I also rang the procurement department in the HSE to discuss further. They told me they were instructed to do this for all HSE and HSE funded agencies but could not tell me who actually instructed them to do it. I informed them that not only had they no authority to do this but also that the 'great deal' they had negotiated with this supplier was actually more expensive than what we were already paying.

A third case highlighted multiple, uncoordinated systems of statistical compliance:

Research is an important part of our work, some of which have been published in the British Medical Journal. We have always kept a database and moved to a electronic system over a decade ago which records and produces our statistics. We have reported our statistics voluntarily to the HSE since we began. Maybe five years ago Tusla decided that it wanted to use a database for all the agencies it funded. Our service and many others explained that we already had well established databases and were happy to provide any stats they require. Tusla went ahead and spent a lot of money having this database built and training people to use it. We were also informed we would lose our funding if we did not sign up. Eventually we came to an agreement where at year end we would download our stats and upload them in bulk to the Tusla system. Our systems do not match exactly so it takes about two weeks to format our statistics to upload successfully to Tusla. More time and money but no increase in funding. The HSE has now indicated it also wants to establish a database for our service and others like us. This would mean that our small service would be using three different databases. Would it not make more sense for Tusla to collaborate with the HSE and share this information? I know there will be no talking to them on this matter but this kind of approach is not sustainable.

The lack of funding for compliance – or full cost recovery generally – was an especial source of friction. Indeed, rather than pay for them, some funders attacked NGOs for having 'overheads', which was a 'bad word'. One voluntary organisation estimated administrative and compliance costs at 10% of total costs, for which the HSE expressly ruled out any support.

Compliance had become a battleground on which relationships had deteriorated, one very much echoing the IRG report. As one NGO stated succinctly:

Where once we had a collaborative, respectful relationship with a view to achieving the same goals, this has evolved with the changing of staff to a more “Do as we say or we will pull your funding” relationship.

Some referred to ‘no love lost’ and ‘an abusive relationship’. State funders who often criticized voluntary organisations for their scandals and fatcat salaries could not take any criticism in turn: ‘it drives them mad’. Now there was ‘no trust, no transparency’.

Some feared the loss of independence and were afraid of parity turning them into a statutory agency rather than an NGO. One explained how it fund-raised so as to retain its independent voice and wanted to be less reliant on state funding.

3.2.5 Working toward solutions

Voluntary organisations presented a number of ideas and solutions to these problems. Some of these are made more concrete in the following section, *A systemic funding model*. In the first instance, some voluntary organisations favour direct parity with the public sector, post-by-post. Their boards of management insisted that they should press funders for such parity. For one organisation which previously had parity, lost in 2010, there were great advantages to being on equal footing with state organisations: ‘the benefits would be in equal pay and conditions, recruitment, recognition, morale’. The only potential disbenefits were employment embargoes; and that the HSE would be even more over-controlling ‘and the little autonomy left would evaporate’. Voluntary organisations also asked ‘parity with whom?’ Many were funded from different funding schemes, not just the HSE but from different departments, so there had to be a cross-governmental approach.

Some voluntary organisations felt that this issue was not as straightforward as it looked, but required ‘a higher level of thinking’ and recommended a more graduated approach, one summarized by the view that ‘parity is not the issue, but the lack of a progressive wage structure’, which should be the objective. Many argued for NGOs to provide their own metric of parity, based on the type of work to be undertaken, with the state automatically taking particular costs into account e.g. inflation, compliance. Salary scales should be agreed with funders, with annual increments and pension contributions. Some tasks were not directly comparable to public sector posts. Some regarded pension parity as over-ambitious, or the last objective that could be achieved: one organisation had the experience of trying to open such a discussion and was told bluntly ‘we pay for services, not for pensions’. Even if there cannot be pension parity, ‘there should be certainty on pay, sick leave, maternity, paternity, sleep-over rates’. One particular area where there should be parity, especially important in such a feminized workforce, was maternity leave top-up.

In social care, job roles in the voluntary sector were quite different from state services. Public sector rates were a useful point of comparison, ‘but you are not comparing like with like’, especially the social care models of the voluntary sector with the medical model of the state sector. Some posts and scales were very individual and simply not comparable. It would be a big but necessary task to map and devise the kind of reference points and tables that could then inform §39 organisations, one that required a detailed knowledge of what they did and how they operated. In the social care field, for example, this could lead to guidelines as to how the structure, staffing, administration, job descriptions, qualifications, salaries, experience and so on of these organisations could be made comparable to the public sector.

One example was recommended of where a solution had been found. The problem of fullcost recovery had progressed in the case of Garda Youth Diversion Programme (GYDP), whose projects are run by voluntary organisations. The issue came to a head when one of the participating voluntary organisations questioned why it was €32,000 short on actual cost of salaries. A working group was formed between them and the funders, with external research brought in to calculate ‘full costs’. It was agreed that the voluntary organisation could charge a 5% administrative fee and overhead fee for payroll, accounts, insurance, audit, supervision and compliance. Pensions are recognised as an employer cost to salaries. In one project, for example, the overhead worked out at €4,000 per project worker, or €12,000 for the three involved. Guides on how to do so have been published.⁵²

52 Irwin, David: *Costing projects and programmes in the voluntary sector*. London, Esmée Fairburn Foundation, 2007.

3.2.6 A systemic funding model

Fórsa asked CEOs and managers what in their view would constitute a sustainable, systemic funding model:

- Public sector terms and conditions, or if more appropriate, progressive employment guidelines, including training and career paths, which modelled them;
- Set salary scales including inflation, increments and pensions;
- Such terms to be explicitly built into the public procurement and tendering process including the forthcoming integrated finance and procurement system (IFMS);
- Multi-annual funding of 3-5 years for staff certainty and organisational stability;
- Full cost recovery, including management, administration, overheads and compliance. It should also include the recruitment, induction, training, support and expenses of volunteers. A *quid pro quo* would be that NGOs would not fundraise directly for these services;
- A much simplified reporting process;
- Restoration of 2008 rates in *all* organisations, not only §39 but §10 and grant-aided others;
- Rectification of historic under-investment.

Their purpose was to achieve broad consistency across §38, §39, §10 and public sector. For many, the first step was multi-annual funding, because that would bring some form of immediate financial stability to the organisation and certainty to its staff. As one voluntary organisation put it:

Two to three years of guaranteed funding at a minimum but I would go as far as five years with services in operation over 15 years. We need the guarantee of funding and time so we can plan, research and organize for now and the future.

Voluntary organisations stressed that the technical details of the funding model were arguably less challenging than the change in attitude on the part of state funders that had to precede them. As an example of the former, it was pointed out that in Sweden, contract staff received permanent conditions overnight during the pandemic, so it was not technically that difficult. They recognized that this would require ‘a shift in attitude, collective vision toward the voluntary sector’ which was still a long way off, ‘a fundamental reconstitution of the relationship’ and ‘a new national framework’. There was a view that the HSE did not understand voluntary organisations and how they worked. All this was happening in an environment in which social partnership had effectively collapsed. In expressing the ideal, one organisation summarized it thus:

A more collaborative relationship rather than the authoritarian one we seem to have now. Come out and meet us, spend time in our service and see the work we actually do. Speak with our clients and the services that refer to us. Look at what it is we are doing well and share it with other similar services and vice versa. Don't just have a checklist of requirements for us to meet each year. Know what we do.

CEOs emphasized the importance of a collaborative approach. Many voluntary organisations obtained funding from multiple funding streams, so applying public sector conditions to HSE funding on its own, for example, would not solve the problem. It was important to involve all departments that funded voluntary and community organisations, the lead department on the voluntary sector (Community and Rural Affairs); the Department of Public Expenditure and Reform; as well as voluntary organisations, their umbrella bodies and the trade unions. Several appealed for a ‘coherent national campaign’ to lead the parity process. Many stressed that voluntary sector managers and trade unions were ‘on the same page’, ‘essentially looking for the same thing’ and urged Fórsa to keep up the campaign. They especially recommended Fórsa provide detailed, reliable up-to-date information on the campaigns for both restoration and parity and be alert to those being left behind.



The IRG report was agreed to be a key text. Its biggest test was the definition of 'essential services'. Did it imply that NGOs had to separate out essential services on the one hand and, on the other, a 'charity side' of 'non-essential services' and advocacy and go and fundraise for them separately? Leaving aside practical considerations, many 'essential services' already did very skillful advocacy, fully paid for the state. Reflecting this discussion, one voluntary organisation took the view that §39 was no longer appropriate and no longer fit for purpose. It crossed a wide range from some quite large voluntary organisations, for which it was the principal funder, to many small ones receiving quite small grants that supplemented their main operations. A new system was required.

3.3 Summary and conclusions

In summary, this chapter found that, among Fórsa members

- A younger workforce, with a higher proportion of recent or new arrivals and a lower proportion there longer;
- A 31.2% dissatisfied rate, an improvement in 'completely satisfied', but also an increase in 'completely dissatisfied';
- Compared to 2015, workload had greatly increased, almost 90% compared to 75%. For 77.6%, the workload had increased because of the virus;
- In questions examining work attachment, extreme attachment grew, extreme nonattachment fell and moderate non-attachment fell by half. The most notable change was the increase in mild non-attachment ('I am not eager to change my job but ..'), which rose from 35% to 40.8%;
- All rated the need for public sector pay, terms and conditions and job security as important or very important.

For Fórsa members, the benefits of public sector conditions would be first and foremost a sense of fairness, recognition, an injustice ended. This of itself would lift job satisfaction and performance. The main benefits were not only in the main public sector conditions (pay, pension, job security) but in important adjacent areas (holidays, leave, maternity), work-life balance, working time rules and health and safety. There would be concrete gains in living standards, getting a home and promotion. For their organisations, there would be improved recruitment, retention, reduced costs, better services and more effective planning.

The consequences of failure were identified as demoralization, declining job performance, stress and burnout, staff leaving, uncertainty and in-work poverty. The current situation had established a pattern of §39 organisations being a stepping stone of pass-through employment while seeking a route into a better work environment in §38 or HSE employment. Among Fórsa staff, there was a sense of exasperation, resignation, despair and anger. Although their disadvantaged material circumstances compared to the public service were comprehensively outlined, their driving sentiments concerned their sense of injustice and issues of worth, value and respect.

This chapter found that the experience of voluntary organisations was that:

- Most, but not all, were aware of the Fórsa campaign. They confirmed that they received §39 (or §10 or other) grants; and that they were unable to operate public sector conditions. Many had raised the issue of parity with their funders, but generally met a wall of opposition. Ironically, there was evidence that some private providers operated public sector conditions.
- The issue of parity was part of a much bigger problem, namely the asymmetric relationship between voluntary organisations and their funders, especially the main one, the HSE. Voluntary organisations found themselves in a general situation of underfunding, indebtedness, reliance on community employment and two radical increases in their workload, with a third to come;

- The consequences of lack of parity were the difficulty in attracting applications, recruiting staff and keeping them. It was a serious problem. Figures of a loss of staff of 22%, 19% 15% and 33% were cited. The lack of parity was well known in the labour market of health, social care and homeless services. They reported an outflow of staff to §38 organisations and the HSE, but no traffic in the other direction. There was a defined problem of lateral talent flight. Lack of parity had intangible but real effects in undervaluation, loss of morale and demotivation;
- There were clear benefits of parity in the form of the recruitment of staff, their retention, career paths, improved self-worth, staff staying longer, the preservation of experience and ultimately for clients, improved quality of service;
- The price of parity was seen as ever closer funder supervision, but most voluntary organisations considered themselves to be already grossly over-controlled. One cited 317 different regulations from a range of compliance fields, while others reported extreme examples of excessive and inappropriate supervision. These had led to a significant deterioration of relationships with funders, who were considered authoritarian and disrespectful.
- Ideas were presented as to how it might be possible to work toward solutions. Although some favoured 'immediate and full parity', others favoured a graduated approach progressively applied, one respecting the more complicated circumstances of voluntary and especially social care organisations. Examples of full-cost recovery already existed (e.g GYDP).
- They outlined a systemic, sustainable funding model would be based on set scales and guidelines, multi-annual funding, full cost recovery, simplified reporting, full restoration, rectification of underinvestment;
- The challenge of such a model was less the technical aspects, more the change in attitude required of funders and departments, with a shift toward an inclusive, collaborative approach in a spirit of social partnership.

There is at least one situation here in which further information would be welcome. It is unclear which are the DPER documents referred as a justification for not paying public sector conditions. DPER did issue, in 2019, a reference document *Public spending code*, which defined salaries as the gross wage at the relevant grade, plus the employer contribution including pension, plus 25% for overheads.⁵³ If anything, this would imply arguments *for* parity and full cost recovery, rather than against.

Overall, a key issue to take away is the way in which the issue of parity, both simple and complex in itself, is a part of a much wider problem of voluntary-statutory relationships, dialogue, social partnership and the model of health and social care.

53 Department of Public Expenditure and Reform: *Public spending code – central technical references and economic appraisal parameters*. Dublin, author, 2019.



4

Summary, conclusions and recommendations

This chapter begins with a summary of the research (4.1), followed by conclusions and recommendations (4.2).

4.1 Summary

This summary reviews the context, progress since 2015 and the current situation derived from the perspective of Fórsa members and voluntary organisations (4.1.1-3).

4.1.1. Context

As recorded in chapter 1, this report updates 2015 IMPACT research *Caring - at what cost? Rebuilding and refinancing the voluntary and community sector*. The basic problematic of health services delivered by the HSE and a small number of HSE-funded §38 organisations, both with public sector conditions; and a larger number of HSE-funded voluntary organisations with inferior conditions, remains. This research added §10 organisations providing homeless services, whose situation is comparable to §39 organisations. The past number of years has seen the gradual but still incomplete restoration of pay for the larger §39 organisations and the underlying disparity remains intact. Their situation was subsequently reviewed in research reports by Rehab (2018) and by the European Association of Service Providers for Persons with Disabilities (2020), which confirmed its unchanged nature. It is set in a European context, in which Ireland is an outlier in its lack of a national health service and in the high volume of health and social care services delivered by voluntary organisations which in other countries are delivered directly by the state.

4.1.2 Progress

As outlined in chapter 2, the period from 2015 saw a continuation of the campaign for parity by staff of §39 organisations both through Fórsa and rest of the trade union movement (SIPTU and ICTU). The HSE not only continued to defend the reduction of conditions of the §39 workforce while denying their improvement but argued that public sector conditions would limit their freedoms and have unstated policy implications. When the situation of §39 organisations was presented in the Dáil (2019), the government referred the matter to the new dialogue forum in the Department of Health.

A key event in the period post 2015 was the Independent Review Group (IRG) (2018). Although it decided not to concern itself parity, its deliberations were of considerable relevance. The IRG confirmed the poor relationship between the HSE and voluntary organisations; identified their underfunding as a serious problem; agreed the need for all voluntary organisations to be funded for full-cost recovery; and proposed that Ireland should move to a model whereby 'essential services' would be both identified and fully funded. The IRG proposed a charter to govern the relationships; three to five-year multiannual budgets; a simplification of SLAs; and a forum for dialogue.

The last, the proposed dialogue forum was duly established in 2019, meeting only twice before its activities were, a small planning group continuing to function. The forum should, in theory, provide the place where the issue of disparity could be progressed. Although as noted previously the Minister of State referred the issue of parity to the forum, parity is not part of its terms of reference; nor has it addressed the matter directly; nor does it include the situation of staff in §10 organisations. Although it includes employers, it has not approved membership to trade unions, contrary to the principle of social partnership. Some opportunities may be open to address the issue of parity in the disability work of the new Department of Children, Equality, Disability, Integration and Youth.

Overall, the government response to the issue of disparity has been one of avoidance. Despite its importance to the workforce of voluntary organisations, the issue has been evaded in key documents (e.g. Programme for Government and the new strategy for the voluntary and community sector), Sláintecare, the reports of the Comptroller and Auditor General, the social partnership funding review and ministerial briefings. Although ignoring an issue may be a well-established political tactic to delegitimize an issue, the problem of parity is intimately connected to the totality of the set of problems identified by the Independent Review Group. To isolate and exclude one key issue is likely to undermine the resolution of the others. Furthermore, although the potential cost of parity is likely to be a concern to government, no research is known to have been done to put a cost, although the government has the full resources of its economic evaluation service at its disposal. Some voluntary organisations pointed out that until 2010 their salaries were tied to the HSE and fully paid-for by the HSE (gross pay, PRSI and pension) so there is a databank of past costs for guidance.

Two positive developments to record are the government commitment to full-cost recovery embraced in the new strategy for the voluntary and community sector *Sustainable, inclusive and empowered communities* (2019) and the emergence from the HSE of the concept of 'tight and loose', which offers ways to address a key problem in the voluntary-statutory relationship identified by the IRG, namely the balance of accountability and control.

4.1.3 Perspective of Fórsa members and voluntary organisations

In chapter 3, this research investigated the current situation of §39 organisations and their workforce, to which §10 organisations were added, so as to enable direct comparison with the preceding research in 2015. The profile of §39 Fórsa members was of a younger workforce; a significant increase in workload, recently attributable to the virus; a distinct level of non-attachment; with 5% rating the parity issue as important and 95% as very important. Fórsa members saw the benefits of parity in the form of primary gains (pay, pay restoration, job security and pension) but also secondary gains (leave, working time, health and safety) and work-life balance. There would be knock-on gains for their organisations in the form of recruitment, retention, reduced costs, improved services and better planning. Conversely, the consequences of failure to achieve parity were demoralization, declining job performance, stress and burnout, staff leaving, uncertainty and in-work poverty. Although Fórsa members were well aware of the material consequences of disparity, many of the issues of which they spoke first were the intangibles of morale, stress, uncertainty and demotivation. This listing, though, insufficiently conveys the sense of exasperation, desperation, frustration, anxiety, resignation and anger in the workforce. Although members referred at some length to the practical consequences of disparity and the anticipated gains from parity, the uppermost sentiments in their minds were their sense of injustice, lack of fairness, disrespect, grievance and enforced hardship.

This part of the research shed light on the internal labour market between §39 and §10 organisations on the one hand; and §38 bodies, the HSE and other state employers (e.g. local authorities) and even the private sector (homeless services) on the other. There was clear evidence of people planning or trying to move from the first two into the rest; of §39 and §10 organisations finding it more difficult to attract candidates in the first place; and of poaching the best §39 staff by private and statutory bodies. Jobs in §39 organisations were called 'stepping stones'. Leaving aside what they perceived to be the personal injustice of their situation, §39 and §10 workers identified the situation as imposing a range of costs. It was costly in human resources, with the exodus of good staff. It was financially costly in the form of the recruitment and retention costs. It was organisationally costly in terms of high turnover, instability and the inability of organisations to plan. Above all, it was costly for the users of their services, for there was a drift downward in the quality and experience of staff and the lack of continuity and quality in service for them.

Most but not all §39 and §10 organisations were aware of the issue of disparity, more so the larger organisations. It was a live issue. Their general situation - one that will not surprise readers of the IRG report - was that financially they were struggling, even embarrassed at the remuneration they offered and had perforce expected their staff to increase their workrate while their pay was static or falling. Lack of parity was a serious challenge to them, principally for recruitment and retention. They confirmed the nature of the labour market identified by Fórsa workers. They referred to 'talent flight'. They had a diminishing ability to attract new staff. Several spoke of how some staff stayed out of loyalty even when they had good economic reasons to leave. Voluntary organisations identified the benefits of parity as recruitment, retention, morale, experienced staff staying longer and their ability to improve their service.

The research explored with voluntary organisations the 'price of parity'. Although some were concerned about the loss of their independence, most believed that they were already excessively over-controlled and cited the current burden of compliance, which they found extreme and which moreover they had to fund from their own resources. There were examples of inappropriate, commercial and statistical compliance. Between them, they contributed to a worsening and ever more fractious relationship with what they regarded as an authoritarian, mismanaging HSE.

In working toward solutions, many voluntary organisations favoured parity in principle but alerted the research to the complications and challenges in doing so, especially in the poorly defined field of social care. Quite a number advocated a graduated approach commonly termed 'a progressive wage structure' converging toward public sector parity and comparability. In examining a systemic funding model, voluntary organisations emphasized a set of progressive employment guidelines, set scales, systems for increments and pensions, 3-5 year multi-annual funding, full-cost recovery, simplified reporting, full restoration and rectification of underinvestment. The Garda Youth Diversion Programme had shown how full-cost recovery, one of the key issues, could be resolved. One particular suggestion was that instead of the full canon of governance standards there be a single 'charity passport', perhaps based on the Charities Institute Triple Lock Standard, supplemented by limited field-specific requirements (e.g. housing). Another idea was that of an inspectorate to replace many aspects of the current régime⁵⁴. They stressed that the technical details were less demanding than first obtaining a prior change of attitude on the part of the state in general and the HSE in particular, one that was collaborative and respectful.

4.2 Conclusions and recommendations

Examination of the situation since 2015 shows that the underlying problematic of lack of parity remains, moreover one also applying to §10 workers. Although the pay restoration process has reached a definite stage, the financial situation of many of the voluntary organisations affected remains dire, compounded by the weight of disproportionate and inappropriate compliance which they are expected to fund themselves. A theme of this report, reinforced by those who contributed to it, is that parity should not be seen in isolation, but as part of the broader set of problematics affecting the voluntary sector.

A first finding of this research was the existence of a distinct labour market of §39 and §10 organisations on the one hand; and of §38, HSE, other statutory bodies (Tusla, local authorities) and the private sector (e.g. homeless services) on the other, with those in the former - involuntarily, one might add - seeing the former as a stepping stone to the latter. For completeness, the sub-market of Community Employment should be added.

A second finding was that the current situation is costly. Whilst government might fear the costs of providing public sector conditions for §39 and §10 workers, especially pensions, the current situation already imposes its own costs. These were itemized: a disaffected §39 and §10 workforce, higher recruitment and retention costs for voluntary organisations, the costs of excessive compliance which distract from services; declining quality of service for clients. Exit rates of up to 33% a year were recorded, which can only be described as wasteful of human resources. While the approach of government may be to ignore the issue of parity, or attempt to delegitimize it as a concern, it is continuing to apply real costs within health and social care services and those using them.

⁵⁴ The model in Ireland is the Department of Education. Although there are reporting requirements on schools, responsibility for quality, evaluation, accountability, good practice and policy advice is invested in an inspectorate.

A third finding is the importance of not viewing the issue of parity purely in economic terms.⁵⁵ This research was able, through the perspectives of Fórsa members and voluntary organisations, to identify both the costs of disparity and the benefits of parity. What was striking about the views conveyed by both groups was that in the first instance they were the ‘intangibles’: issues of morale, respect, value, worth, commitment; and conversely feelings of demoralization, desperation, frustration, anger. As much as material factors, these sentiments are an important part of the equation of the problem and its solution. Unaddressed, they will have long-term corrosive, costly effects on individuals, organisations, their services and clients.

In considering recommendations, the principal change on the landscape is the IRG report and the subsequent dialogue forum. In its principal recommendation that ‘essential’ services be identified and fully funded, the IRG outlined, implicitly rather explicitly, a method by which the parity issue could be resolved. The other recommendations (multi-annual funding, full-cost recovery, simplified compliance) are likewise integral parts of this direction of travel. Voluntary organisations stressed how multi-annual funding was the soonest, fastest, first way to provide some certainty for voluntary organisations and their staff within them. However, the fact that this was a top decision, so long ago, in the rapidly abandoned 2000 white paper *Supporting voluntary activity* shows just how challenging is even this first step. The enunciation by the HSE of the concept of ‘tight and loose’ is also a constructive, welcome attempt to progress the connected issue of compliance and accountability.

The dialogue forum should, in theory, provide a place where these issues, including parity, should progress. Although the Minister of State referred the parity issue to the forum, it appears to be the view of the Department of Health that the issue should be excluded and moreover, contrary to the principle of social partnership, the forum should include employers but not trade unions. One voluntary organisation cautioned that the department was already not taking the forum seriously and that participation by trade unions therein could turn out to be a wasted use of time. The fact that the forum has not met since January 2020 indicates that – even allowing for the virus – it is hardly an uppermost concern in the department’s mind.

A key purpose of this research was to reach a view on what should be a systemic funding model for §39 organisations. This in effect is its recommendation. Its parameters were outlined both by Fórsa members and by voluntary organisations. It is fair to acknowledge that whereas some voluntary organisations – especially those who had applied them up to 2010 – advocated full public sector conditions with all due speed, others favoured a more granular approach of what they called ‘progressive employment guidelines’ that would embrace and converge with the elements of public sector terms and conditions but would also reflect their own positions, job definitions, structures, skills and tasks which in social care did not necessarily have immediate public sector comparators.

If one may synthesize the views of those who contributed to this research, the systemic funding model comprises:

- The general principle of public sector conditions for all §39 and §10 workers (parity), the principal elements being:
- Restoration, pay scales, increments, pension, security;
- Leave (annual, maternity, parental, year-long leave-of-absence, study)
- Working Time Directive and related e.g. sleepover, relief, weekends, holidays, mileage;
- Health and Safety (including application to second-hand smoke);
- Work-life balance;
- Their embodiment in progressive employment guidelines modelled on and converging toward public sector conditions, adapted for social care and other services;
- The replacement of §§38-39 of the Health Act with legislation embracing the principle of parity and state funding for essential services;

- Parity to be built formally into the process of procurement and tendering;
- Multi-annual funding of a minimum of three years, longer (e.g. five years) in the case of long-established organisations;
- Full cost recovery that embraces administration, overheads and compliance;
- Single-standard governance and a simplified reporting process embracing 'tight and loose', with consideration of replacing some functions by an inspectorate;
- Rectification of historic under-investment.

Both Fórsa members and voluntary organisations urged Fórsa to continue and strengthen its campaign through a broad-based collaborative coalition of members, other trade unions (e.g. SIPTU, nursing unions) and ICTU, voluntary organisations and civil society that while advocating parity in the first instance would address the broad issues concerning the voluntary sector in the health service, social care, homelessness and further afield.



Terms of reference

In 2015, IMPACT published *Caring - at what cost?* report by Chris McInerney (2015), original research which explored the situation of §39 funded organisations and their workforce. Fórsa has asked for a refreshed, renewed version that would take account of the evolving nature of these organisations and the key role played by many §39 workers in delivering frontline services during the COVID-19 pandemic. Looking toward a sustainable, systemic funding model, the research would assist Fórsa in its campaign for pay parity and improved conditions for §39 workers, in line with those in public sector employment. Accordingly, the purpose of this text is to bring the 2015 report up to date, discarding material no longer relevant or useful, updating it in the light of developments since 2015, with fresh 'ground truth' from interviews and survey work.

Method

In order to maintain comparability with the 2015 report, it follows a similar method, viz::

- Desk research;
- Telephone interview with persons familiar with and knowledgeable about §39 issues;
- Communication with a sample of CEOs of 100 §39 funded organisations, 50 being the 'top 50' large organisations and the other 50 on the basis of a computer-generated random selection. This was done through a combination of posted and e-mail requests. The Dublin Homeless Network, most being in receipt of both §39 and §10 and other funding, offered to participate and its members (N=39) were invited to contribute. Detailed individual replies were received from 21 and extracts are included in the text.
- On-line survey of Fórsa members to gain their information and views, posted on 8th February with a 20th February closing date (125).

Acknowledgements

The writer wishes to acknowledge the help provided to him by:

- In Fórsa, Joe O'Connor, head of campaigning; Catherine Keogh, Eamonn Donnelly, Sean McElhinney, Helen Canning; Ross Murray; Margaret Coughlan.
- Ivan Cooper, The Wheel;
- Chris McInerney, University of Limerick;
- John-Patrick Clayton, UNISON;
- Nick Acheson, independent researcher (formerly University of Ulster);

- Conor Hickey, Greg Tierney, Crosscare;
- Catherine Kenny, Sam McGuinness and Paula Byrne, for collecting and synthesizing the views of the members of the Dublin Homeless Network.
- Alison Harnett, Jillian Sexton, National Federation of Voluntary Service Providers.

Because of the sensitivity of the issues involved, the protocol for this research was for information and views provided by CEOs to be treated on a not-for-attribution basis. They were invited to identify themselves affirmatively should they wish, so my thanks to the following: Gerry Phelan, Irish Wheelchair Association; Ted Bradley, Dromcollogher Day Centre, co Limerick; John-Mark McCafferty, Threshold; Rialto Development Association; John O'Sullivan, Enable Ireland; Karen Golden, Galway Simon Community; Marie Linehan, Kerry Parents and Friends Association; and all the others who also made contributions.



Annex 1

Survey of Fórsa members

Section 39 Organisations Survey

Fórsa continues to campaign for its members in what are called 'section 39' organisations to have access to the same pay, terms and conditions and job security as their public service counterparts, working in other voluntary organisations in our health and social care services called section 38 organisations and in the HSE itself. Fórsa has commissioned an independent social researcher, Brian Harvey, to produce an updated version of the research report *Caring at what cost? Rebuilding and refinancing the community and voluntary sector* by Chris McInerney and Cian Finn published by IMPACT in 2015. Accordingly, we are asking you fill in a short survey as part of this work which will help to inform this new research. You are not asked to identify yourself and all comments will be treated anonymously. It is short - completing the form should take about three minutes. The deadline to respond is 22nd February.

First, to check, do you work in a section 39 organisation?

Yes

No

Not sure

How long have you worked in your present organisation?

Less than a year

1-2 years

3-4 years

5-7 years

8 years or more

How would you describe your job satisfaction now?

Completely satisfied

Somewhat satisfied

Neither satisfied nor dissatisfied

Somewhat dissatisfied

Completely dissatisfied

Over the past few years, has your job satisfaction...

Increased?

Stayed the same?

Decreased?

Over the past few years has your *general* workload...

Increased?

Stayed the same?

Decreased?

Specifically dealing with Covid 19, what has been its effect on your workload...

Increased?

Stayed the same?

Decreased?

Considering the future of your job and career, which sentiment best reflects your view?

I would not change my job for any other

I am not eager to change my job but would do so if I could

Nor sure

I would like to change my job soon

I would quit this job at once if I could

How important is it to you that you should have public sector pay, terms, conditions and pensions?

Very important

Important

Not important

What do you think would be the benefits of there being public service pay, terms, conditions, security and pensions for section 39 organisations, be they for you, the organisation, or those you are helping?

What would be the consequences of a failure to make progress on this issue?

Other comments that you would like to add?

Annex 2

Survey of voluntary organisations (CEOs and managers)

- Are you aware of the campaign by Fórsa for parity for workers in §39 organisations?
- Has the issue of parity with public service workers ever been raised or discussed internally within your organisation or *externally* with your funder (in this case the HSE)? If so, could you tell me the nature and outcome of such discussions?
- Is the lack of parity for workers in §39 organisations a problem for your organisation and its workforce, either directly or indirectly? If so, how much of a problem and why?
- It has been stated that disparity in conditions has led to workers in §39 organisations leaving in order to obtain better conditions in §38 organisations, the HSE and elsewhere; or considering doing so. Is this the case or not? Is there evidence one way or the other (e.g. exit interviews)?
- Would there be benefits to your organisation and/or its workforce if there were to be parity and if so, what do you imagine these might be? Conversely, might there be disadvantages and what might those be? Might it change the relationship with the HSE (e.g. governance, autonomy, funding conditions) and how could such issues best be anticipated and addressed?
- Fórsa seeks a 'sustainable, systemic funding model'. From your point of view, what would do you think that might look like?
- Finally, do you have any advice as to how this issue can best be pursued and progress made? What do you see as the principal obstacles and how could they be overcome?



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