



# Disability Federation of Ireland

Section 39 Bodies- Service Continuity/ Staff Recruitment  
and Retention

## **Briefing Paper: Summary Version**

Updated Version

6<sup>th</sup> April 2023

## 1. Overview of Key Issues

The delivery of high-quality services for disabled people that meet policy objectives is threatened by a crisis point in the recruitment and retention of staff in Section 39 organisations. DFI's [recent survey](#) of our members shows the level of pressure over the last 12 months. Of the 34 organisations that responded:

- 59% had concerns over the sustainability of their organisation due to retention of staff.
- 48% had reduced the level of service they offer due to reduced staffing levels.
- 62% had run an unsuccessful recruitment campaign in the last 12 months and posts remains unfilled.
- 71% had lost experienced staff to the public sector.
- 33% had lost experienced staff due to burnout.
- 70% had concerns over the additional risks their organisation is carrying due to staffing issues.

This is an ongoing and increasingly urgent issue for DFI members and disabled people, which in some cases threatens the viability of organisations, and certainly their capacity to deliver strong value for state funding investment. It has become a daily degradation of services, significantly effecting the relationship between those providing and those receiving services.

The 2019 *Report of the Independent Review Group Established to Examine the Role of Voluntary Organisations in Publicly Funded Health and Personal Social Services* (hereafter the Catherine Day report) found that voluntary disability organisations deliver approximately two thirds of all disability services<sup>1</sup>. Therefore, essential services to people with disabilities are threatened because of the current staffing crisis.

The purpose of this briefing paper is to catalogue the degradation across disability services which is having a significant negative impact on disabled people, caused by recruitment and retention issues. It looks at how this is impacted by evolving pay and conditions issues experienced by Section 39 organisations, relative to Section 38 organisations and the public sector. It presents several possible options for consideration to inform DFI's policy line.

---

<sup>1</sup> Catherine Day report, p.5

The basic legal distinction between Section 38 and Section 39 organisations is outlined in the table 1 below.

**Table 1: Distinction between Section 38 and Section 39 organisations as outlined in the Health Act, 2004**

The <b>Health Act (2004)</b> sets out arrangements between the HSE and voluntary organisations where:	
<b>Section 38</b>	<b>Section 39</b>
Service providers are entering into an arrangement where they provide a service directly on behalf of/in the place of the HSE	A body providing a service “similar or ancillary” to one that the HSE may provide.

## 1.1 DFI Member Breakdown

Available evidence shows that close to two thirds (62.4%) of DFI’s membership organisations, approximately 73 organisations, are Section 39 organisations. Of these,

- 51 have annual incomes over €250,000 and therefore have service arrangements with the HSE (69.9%)
- 8 have annual incomes below €250,000 and therefore have Grant Aid Agreements with the HSE (11%)
- The income of 14 was unconfirmed at the time of writing (19.1%)

## 1.2 Distinctions between Section 38 and Section 39 organisations

Under legislation Section 38 and Section 39 organisations are different, but in practice they “deliver similar services and for the most part fulfil similar requirements to obtain the HSE funding”<sup>2</sup> (EASPD, 2020). The Catherine Day report (2019) echoes this perspective, stating that the distinction is not “meaningful in terms of either the type of service provider, the services provided, or the level of funding received.”<sup>3</sup> The difference is “largely historical and no longer apparent” (Linehan et al., 2014)<sup>4</sup> and is “widely seen as being outdated” (Rehabgroup, 2018).<sup>5</sup>

<sup>2</sup> EASPD (2020). *Ireland: Financing of Care Services for Persons with Disabilities- Fact Sheet* [https://easpd.eu/fileadmin/user\\_upload/Publications/EAS\\_008-21\\_factsheet\\_financing\\_care\\_services\\_IE\\_v1.pdf](https://easpd.eu/fileadmin/user_upload/Publications/EAS_008-21_factsheet_financing_care_services_IE_v1.pdf), p.2

<sup>3</sup> Catherine Day Report, pp. 23-24

<sup>4</sup> Linehan, C., O’Doherty, S., Tatlow-Golden, M., Craig, S., Kerr, M., Lynch, C., McConkey, R., & Staines, A. (2014). *Mapping the National Disability Policy Landscape*, <http://www.fedvol.ie/fileupload/Moving%20Ahead%20Policy%20Report%2018th%20August%202014.pdf> p. 7.

<sup>5</sup> Rehab, *Who Cares?*, p. 23

Specialist community based disability services are delivered to approximately 56,000 people, a large proportion of which are delivered by the voluntary sector. (Department of Health, Disability Capacity Review, 2021)<sup>6</sup>

While the exact number of people working in Section 39 organisations is not known, it is estimated that there are approximately 84,000 Section 39 workers of which 27,000 working in the disability sector (Anne Rabbitte, Dáil Éireann debate, 12 October 2022).<sup>7</sup>

The major distinction that does exist relates to pay and conditions. Staff in Section 38 organisations are public servants with the same terms and conditions as the HSE. Staff in Section 39 organisations are not public servants and are not bound by public sector terms and conditions of employment.<sup>8</sup>

The government's *Value for Money and Policy Review of Disability Services in Ireland* (2012) found that "average salaries in Section 39 agencies are **lower** than those in either the HSE or Section 38 agencies, or both, for **all categories of staff**"<sup>9</sup> [emphasis added by author]. This gap in pay has widened very significantly since 2012. In addition, Section 39 agencies do not have access to Public Service Pension Schemes,<sup>10</sup> are not covered by Public and Employer liability,<sup>11</sup> and do not have the same entitlement to statutory sick pay.

As of 2017, there were 39 Section 38 organisations, and over 2,000 Section 39 organisations operating across Ireland.<sup>12</sup> The majority of Section 39 organisations provide disability services.<sup>13</sup> Table 2 below provides further detail of voluntary organisations funding:

---

<sup>6</sup> Department of Health (2021). Disability Capacity Review to 2032: A Review of Disability Social Care Demand and Capacity Requirements up to 2032. <https://www.gov.ie/pdf/?file=https://assets.gov.ie/154163/8fe32ca7-2154-4fb0-8a41-6931c5f15471.pdf#page=1>

<sup>7</sup> Minister Anne Rabbitte at Dáil Éireann Debate (12 October 2022). Community and Voluntary Sector Workers: Motion [Private Members]. <https://www.oireachtas.ie/en/debates/debate/dail/2022-10-12/8/>

<sup>8</sup> Catherine Day Report, pp.24-25

<sup>9</sup> Department of Health (2012). *Value for Money and Policy Review of Disability Services in Ireland* <https://www.gov.ie/en/publication/ed3564-value-for-money-and-policy-review-of-disability-services-in-ireland/>, p.59

<sup>10</sup> DoH, *Value for Money*, p. 106

<sup>11</sup> Fórsa, *A New Systemic Funding Model*, p.7

<sup>12</sup> HSE Annual and Financial Reports, 2017, cited in Catherine Day Report, p. 20

<sup>13</sup> Catherine Day Report, p.24

**Table 2: Breakdown of funding to Voluntary Organisations (Catherine Day Report, 2019)**

Funding level	Number of Section 38 voluntary organisations	Number of Section 39 organisations
Over €250 million	2	0
Between €100 million - €250 million	6	0
Between €50 million - €100 million	8	1
Between €40 million - €50 million	1	1
Between €20 million - €40 million	9	7
Between €5 million - €20 million	7	29
Between €1 million - €5 million	2	113
Between €250,000 - €1 million	0	156
Between €100,000 - €250,000	0	194
Less than €100,000	0	1,687
Total	35	2,188

## 2. Evolution of Pay and Conditions in Section 39 Organisations

There were collective pay arrangements for Section 39 organisations within the Social Partnership model up to 2008, which kept pay in line with Section 38 and statutory services. We did not then experience the service degradation that we are now experiencing as a result of so many staff moving away from Section 39 funded organisations and directly into Section 38 organisations and the HSE. Pay and cost of living were not then inducements to move away from Section 39 organisations. In 2009, public sector pay reductions were introduced in response to the financial crash through Financial Emergency Measures in Public Interest (FEMPI) legislation. While the legislation did not apply to Section 39 organisations, at the same time Section 39 organisations received an equivalent cut to their funding, with most forced to cut pay.

As the economy recovered, pay restoration was introduced to the public sector between 2015-2022. This only applied in public services and Section 38 funded organisations. Section 39 organisations did not receive restoration of their funding and as a result could not restore pay to match the public sector. More recent pay restoration for Section 39 organisations (Work Relations Commission, 2020 - [see here](#)) aligned pay to pre-cut salary scales (i.e. to 2008 salary levels), but not to any of the

cumulatively significant increases in public sector pay. This means that as further pay increases in the public sector are agreed, and yearly increments applied, staff in Section 39 organisations mostly remain at the 2008 level of pay.

## 2.1 The Present Day: A significant and widening pay gap

Given the above, the gap in funding levels continue to widen, deepening the erosion in the capacity of Section 39 organisations to provide sustainable services. For example, the recent public sector pay increase of 6.5% negotiated in October 2022 to combat inflation was not applied to Section 39 organisations. The essential services provided by Section 39 organisations are thus diminishing further due to the significantly reduced competitiveness of Section 39 organisations in attracting and retaining staff as this pay gap widens.

A Workplace Relations Commission (WRC) hearing on the issue of pay parity has been agreed between the HSE, Department of Health and trade unions. However, a date for this engagement is awaited and has not yet been set. The Department of Public Expenditure and Reform has declined to attend the WRC hearing on Section 39 pay stating that it “would not be appropriate for [it] to be party to proceedings”.<sup>14</sup>

Fórsa, in its report, notes the overall reduction in funding during the financial crisis, which has never been redressed. Stating that “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.”<sup>15</sup> One of the most pressing issues raised in *Who Cares?* (Rehab, 2018) was the unwillingness of the State to fund the actual cost of delivering services, with all the organisations reporting an inability to deliver the expected level of service for the resources allocated by the HSE.<sup>16</sup>

## 2.2 Recruitment and Retention

Section 39 organisations are facing the same challenges as statutory services in relation to shortages of qualified staff needed to provide value for money and sustainable services. This is experienced in conjunction with being unable to offer comparable pay to statutory and Section 38 organisations. This has been recognised and acknowledged by senior HSE officials, who have indicated they cannot, as an entity, solely resolve this themselves: “We do not have the solution within our authority. However,

---

<sup>14</sup> Industrial Relations News (24<sup>th</sup> November 2022) <https://www.irn.ie/article/28956>

<sup>15</sup> Fórsa, *A New Systemic Funding Model*, p.11

<sup>16</sup> Rehab, *Who Cares*, p.8

we certainly want to be part of the solution” (Interim CEO Stephen Mulvany).<sup>17</sup>

One area where the impact of the lack of pay parity has been highlighted is Children’s Disability Network Teams (CDNTs). Section 39 organisations providing children’s services report that lack of pay parity is a significant factor in the problems they experience with recruitment and retention of staff.

27% of CDNT staff are employed by Section 39 organisations. The average vacancy rate nationally for CDNT staff is 34%.<sup>18</sup>

On the consequences of the lack of pay parity, organisations commented in a recent Fórsa Survey, that the most severe effects are loss of continuity of care for clients with disabilities. In addition, many CEOs referred to their staff feeling undervalued.<sup>19</sup> For our organisations the central component of the staffing crisis is the impact on people using services – this relates to the quality of services they receive, the accessibility of services and their sustainability. Constant churning of staff causes major disruption for both organisations and individuals. This echoes comments made by participants in DFI’s Self-Advocacy programme who have noted the severe impact of loss of valued and experienced staff members, and failure to recruit new staff. This is compounded by the need to repeatedly build trusting relationships with new staff.

At a political level, the issue of pay parity has been discussed extensively. For example, in October 2022, the Labour party called for pay parity with the public sector for Section 39, Túsla-funded Section 56 and Section 10 homeless service workers. This motion was not opposed by the government, with Minister Anne Rabbitte stating “a total of 84,000 people work in this space and each one of them is valued and respected.... I want them to know their work matters. We are dependent on their work and that is why this process needs to begin. The phrase “14 years” slips off the tongue easily but it is far too long not to have proper recognition within a process”. She went on to state “At the end of the day, we want fairness, equity, respect and value.”<sup>20</sup>

---

<sup>17</sup> Committee of Public Accounts (2<sup>nd</sup> February 2023). 2021 Report of the Comptroller and Auditor General and Appropriation Accounts, Vote 38-Health, Health Service Executive- Financial Statements 2021 (Resumed). [https://www.oireachtas.ie/en/debates/debate/committee\\_of\\_public\\_accounts/2023-02-02/](https://www.oireachtas.ie/en/debates/debate/committee_of_public_accounts/2023-02-02/)

<sup>18</sup> Inclusion Ireland. Summary of Children’s Disability Network Teams: National Staff Census and Workforce Review <https://inclusionireland.ie/news-events/childrens-disability-network-teams-national-staff-census-and-workforce-review/>

<sup>19</sup> Fórsa, *A New Systemic Funding Model*, pp.23-33

<sup>20</sup> Dáil Éireann Debate (12 October 2022). Community and Voluntary Sector Workers: Motion [Private Members]. <https://www.oireachtas.ie/en/debates/debate/dail/2022-10-12/8/>

## 3. Policy Considerations for DFI

### 3.1 Legislative amendment of the Health Act 2004

Many consider the Health Act (2004) to be out of date, and not reflective of the nature of services provided by Section 39 organisations. An option for DFI is to campaign for legislative change of the status of Section 39 organisations. However, there is a risk that any legislative amendment could take a long time, while organisations continue to lose staff in the meantime at an unsustainable rate. Legislative change would therefore need to be pursued alongside calling for interim measures to address the immediate crisis in delivering quality and sustainable services that the state has undertaken to have provided.

DFI would also need to consider whether it was seeking for Section 39 organisations to be considered identically to Section 38 organisations in the new legislation. Alternatively, it could advocate for a position similar to that recommended by Rehab's paper - a 'Section 38 ½' provision. This 'middle-ground' legislative provision would include funding for salaries set to pay scales in line with the public sector/Section 38 organisations.<sup>21</sup>

Since the Health Act 2004, subsequent legislation has increased the regulation of Section 39 bodies. The Charities Act 2009 confirms that all Section 39 organisations that are charities are operating as "public benefit" organisations that fall under the remit of the Charities Regulatory Authority. This affirms that these organisations are of public service, particularly when they enter service arrangements with the state. Many also fall under the remit of the Health Information and Quality Authority (HIQA), established in the Health Act 2007, which monitors safety and quality of the healthcare and social care systems. The increased regulation placed on Section 39 organisations through legislation has not been accompanied by increased funding.

### 3.2 A Multi-Annual, Sustainable Funding Model

In Fórsa's research, CEOs and managers identified multi-annual funding as a first step to bring some form of immediate financial stability and certainty to staff. The features of a sustainable, systemic funding model would provide greater certainty year-on-year, allowing for increased strategic development. Specific elements of the sustainable model include:

- Public sector terms and conditions.
- Set salary scales including inflation, increments and pensions.

---

<sup>21</sup> See Rehab, *Who Cares?*, p.10, p.69 for more detail on this proposal



- Multi-annual funding of 3-5 years.
- Full cost recovery, including management, administration, overheads and compliance.
- A more simplified reporting process.
- Restoration of 2008 rates in all organisations, including grant-aided organisations.
- Rectification of historic under-investment<sup>22</sup>.

### 3.3 Funding increase to current public sector pay rates and agreement that further rises will be applied

DFI could seek a return to the pre-financial crash status quo i.e. for organisations to receive an increase in funding to match current public sector pay, and for agreement that public sector increments etc. will be matched via yearly inflationary payments through the service level agreements. The major risk is that the sector and staff would be at risk in the event of uncontrollable, external events that impact on state funding, as happened during the years of the financial crisis.

### 3.4 Formal agreement of pay parity, and that increments and further pay rises will apply to section 39 organisations

A formal agreement for Section 39 pay parity and the funding of increments and further pay rises in line with the public sector would provide greater confidence and long-term certainty. This would address workforce challenges in a more sustainable way. The exact form this agreement would take would need to be negotiated with all relevant stakeholders, including government, HSE, the voluntary sector and unions.

### 3.5 Section 39 organisations move to Section 38 organisations

An option that has been put into practice for four Section 39 hospices at the end of 2022, is redesignation to Section 38 agreements. The Minister for Health, Minister Donnelly commented that the redesignation “will provide financial and staffing sustainability to ensure that these providers of adult specialist palliative care services can continue their vital work.” The Department of Health was tasked with carrying out an evaluation of the redesignation to ensure the appropriate level of resources were secured to assist in the transition to Section 38 service arrangements.<sup>23</sup>

---

<sup>22</sup> Fórsa, *A New Systemic Funding Model*, p.34

<sup>23</sup> Department of Health (18<sup>th</sup> October 2022). ‘Minister of Health announces redesignation of Section 39 adult hospices to Section 38 status’ <https://www.gov.ie/en/press-release/ba122-minister-for-health-announces-redesignation-of-section-39-adult-hospices-to-section-38-status/>

The major difference between the disability sector and the voluntary hospice sector is that there are significantly greater numbers of voluntary disability organisations, over 200. Therefore, it is perhaps likely that any such arrangements would, at least initially, be restricted to some of the larger Section 39 organisations.

### 3.6 Disability specific resolution with DCEDIY

Voluntary disability organisations are now in the unique position of being funded through a different government Department, since the transfer of functions from Department of Health (DoH) to the Department of Children, Equality, Disability, Integration and Youth (DCEDIY). Therefore, DFI could focus specifically on lobbying DCEDIY for pay parity in Section 39 disability organisations. This could be presented in the context of the transfer of functions, and the need for DCEDIY to address priority issues impacting the sector from the outset, in order to ensure that the workforce is in place to implement Departmental policy and the realisation of the United Nations Convention on the Rights of Persons with Disabilities.

However, the transfer of functions relates only to community disability specific services and there are many organisations (many DFI members) who support disabled people who will continue to be funded through the DoH. These organisations would be excluded from a disability specific solution.

DFI is a member of a broader group of voluntary organisations working on this issue through a campaign led by The Wheel. A stronger, collective voice results in a stronger message, with more opportunities and platforms. Adopting a collective position does not prohibit DFI from raising the disability specific impact of the lack of pay parity with DCEDIY.

### 3.7 Position of organisations with Grant Aid Agreements

DFI must consider the position of organisations who receive grant aid agreements. Many of these organisations are small, support disabled people in the community, often vital services, and have the same issues regarding pay. They also face greater uncertainty in relation to annual funding that further inhibits planning and sustainability. There is a risk of these organisations being excluded from potential solutions because of their size and scale of statutory funding received. They do not have the same voice or advocacy capacity as larger, national organisations. Furthermore, the government may not fully appreciate the essential nature of the services they provide. The discretionary nature of Section 39 funding contributes to the uncertainty that organisations face, placing disabled people who depend on them at risk.

## 4. Summary

This briefing document provides context to the degradation across disability services that is having a significantly negative impact on disabled people. This will continue to place additional pressures, not only voluntary organisations but also on the statutory system, as services determine they are no longer sustainable or cannot carry the additional risk of under-staffing.

It outlines the causes behind this degradation, including the current crisis in the retention and recruitment of staff being experienced by Section 39 organisations. It outlines the historical decisions that have resulted in significant pay disparity at a time of increased costs of living and unprecedented rates of inflation.

Due to the status of Section 39 organisations, the lack of pay parity sets them at a significant disadvantage when competing for suitably qualified staff where there is under supply across all grades and professional areas. Ultimately, the people using these services lose out as a result.

Several policy solutions are outlined in this document. Decisions also need to be reached on the actions required to bring this issue to resolution, including increasing advocacy, political engagement and lobbying.

**--Ends--**