



## **Irish Congress of Trade Unions**

### **Submission to the Joint Oireachtas Committee on Health**

### **Section 39 Organisations**

**31<sup>st</sup> January 2018**

## 1. INTRODUCTION AND BACKGROUND.

- 1.1 On behalf of the Irish Congress of Trade Unions (ICTU), I wish to begin this submission by formally thanking the Chair of the Committee, Dr. Michael Harty, and all committee members, for their invitation to participate in this discussion with regard to issues affecting workers employed in Section 39 Organisations.
- 1.2 The services provided by Section 39 Organisations are critical to the functioning of the public health service. They provide hospice services, intellectual disability services, training and education services and home care services. The members of unions employed in Section 39 Organisations are all qualified in their fields of expertise to the same standard as their counterparts in employed directly by the HSE and to those employed in Section 38 Organisations. Section 39 Organisations provide services through Service Level Agreements with the HSE and the Department of Education. Many of these organisations are household names, including The Irish Wheelchair Association, Rehab Group (comprising of Rehabcare and the National Learning Network) and Cheshire Homes. The numbers employed in these organisations can range from as little as three to several hundred. We estimate that there are approximately 12,000 full time equivalents employed in the sector. However the issue of pay restoration is a problem in those Section 39 Organisations that employ staff and provide services under a service level agreement with the HSE.
- 1.3 The profile of staff employed in Section 39 Organisations is very similar to those employed by the HSE. Large Section 39 Organisations will typically employ nursing staff, health and social care professionals, care staff, clerical staff, project workers and support staff. Like their colleagues in the HSE professional staff in Section 39 Organisations are required to register with the relevant statutory bodies. Section 39 Organisations are also subject oversight by HIQA.
- 1.4 Our members employed in Section 39 Organisations are not Public Servants. Because of this, they do not fall within the scope of public sector pay agreements including the most recent Public Service Stability Agreement. However, a significant number of Section 39 Organisations have established pay linkages with the pay scales in the HSE and wider public service.
- 1.5 In 2010, the HSE formally advised Section 39 Organisations that the block grant would be cut. The cut in the grant was to be achieved through cuts in staff salary in line with those applied to Public Servants under FEMPI legislation. The HSE at that time also confirmed that they would not pay Section 39 Organisations for incremental progression (**Appendix 1**). Because of this, the pay of union members in Section 39 Organisations had the same cuts applied to them as those in the public sector. However, union members in Section 39 Organisations continued to provide the vital services that so many people relied upon.
- 1.6 As the members of the Committee will be aware, the process of gradually restoring the pay of public servants commenced as part of the Lansdowne Road Agreement. Once this process was underway unions with members employed in Section 39

Organisations submitted claims for the restoration of pay. A small number of Section 39 employers did commence restoration in 2017 from their own resources while the majority did not citing inability to pay, as the HSE did not make the appropriate amendments to the block grant since 2010.

- 1.7 In response to the claims submitted by unions the HSE, the Department of Health and the Department of Public Expenditure and Reform continued to maintain that Section 39 Organisations have no pay linkage to the Public Service. The HSE advised Section 39 Organisations that unions in the sector would probably make claims for pay restoration. However, the HSE instructed Section 39 Organisations that these claims should not be conceded and should be referred to the WRC and Labour Court as appropriate (**Appendix 2**).
- 1.8 Unions with members in the Section 39 Organisations have pursued claims for pay restoration through the WRC and the Labour Court. The Labour Court has issued recommendations supporting the unions claim for pay restoration in at least eight cases. However, the HSE, the Department of Health and the Department of Public Expenditure and Reform have refused to provide the additional funds to allow for the implementation of the Labour Court recommendations. This position is untenable and unacceptable. It should be noted that but for an intervention by the public sector agreement oversight body there would have a much larger number of claims would have ended up before the Labour Court.. Furthermore, agreement has been reached under the auspices of the Workplace Relations Commission in relation to increased funding for Section 39 Organisations from the HSE to provide for increases in pay due to members of unions who provide sleepovers (**Appendix 3**).
- 1.9 It is untenable and unacceptable particularly in light of statements by the Taoiseach in Dáil Eireann that there was an established pay link between Section 39 Organisations and the wider public service and in the knowledge that the Oireachtas passed a motion calling for a the issue of pay restoration to be resolved through an agreed process.
- 1.10 The ongoing refusal by the Department of Public Expenditure and Reform, Department of Health and HSE to engage in negotiation or indeed a focussed, transparent and dedicated process with the aim of restoring the pay of union members in Section 39 Organisations has forced one union in the sector to service notice of strike action.

## **2. THE IMPACT ON THE SECTOR.**

- 2.1 The apparent unwillingness to restore the pay of union members in Section 39 Organisations is having a devastating effect on staff morale.
- 2.2 Staff all of whom are professionally qualified are now starting to vote with their feet and are leaving to take up opportunities to work in Section 38 Organisations, the HSE or the Department of Education. Section 38 Organisations, the HSE and the Department of Education are in a position to offer higher rates of pay courtesy of pay

restoration under the terms of the PSSA. Indeed both the HSE and Section 38 employers are offering incremental credit in recognition of experience and service. This has also resulted in Section 39 Organisations increasing their reliance on Agency staff which members of the Committee will be aware is more expensive than employing staff directly.

- 2.3 The ongoing difficulties is also beginning to impact on those who rely on the education training support and care services provided by Section 39 Organisations. We have reports that service users are now been subjected to breaks in continuity of care. The Committee will be aware that Section 38 and 39 Organisations provide 18% of health and social care services that are available as part of public health service. However in respect of services in the intellectual disability sector Section 39 Organisations provide in excess of 70% of available services. These services could not be directly provided by the HSE without massive investment in additional capacity.

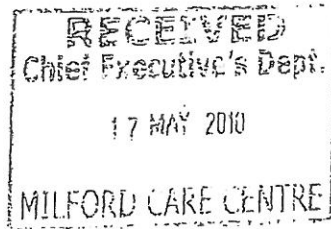
### **3. Conclusion**

- 3.1 In this submission, we have attempted to summarise the problems faced by union members in relation to their pay and the knock on impact on staff morale. We have also sought to highlight the impact on the people who rely on the services provided by these organisations.
- 3.2 While we appreciate that this Committee may not be in a position to resolve the issues we have sought to highlight we hope that the information you will gather during the course of the morning will allow you to advocate for initiatives that will lead to a satisfactory resolution for all concerned.
- 3.3 Ultimately these difficulties can only be resolved if all of the parties engage constructively. The unions will not be found wanting if we are presented with the opportunity to do so.
- 3.4 In the longer term however, the model of funding of Section 38 and 39 Organisations needs to be examined. In particular Congress is concerned that there are examples where a multiplicity of organisations are seeking to provide the same or similar services in the same geographical location. We are aware that Catherine Day has been commissioned by the Department of Health to undertake a study of the role of voluntary organisations in the provision of health services and this study should be expedited.

ENDS.

# Appendix One

Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive



Finance Manager  
Health Service Executive  
Mid-West Area  
Nenagh Health Centre,  
Tyona,  
Nenagh  
Co. Tipperary  
Tel: 057 46448  
Fax: 067 32445

13<sup>th</sup> May 2010

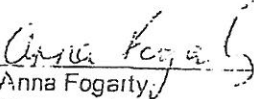
Re: Milford Care Centre

To Whom It May Concern:

I wish to confirm the following in relation to Milford Care Centre:

1. The budget allocation 2010 for Milford Care Centre of € 11,089,313 was based on a 96% split for pay and 4% for non pay.
2. The allocation for 2010 represents a reduction of 2% in the non pay element and 6% in the pay element.
3. Posts in Milford Care Centre have traditionally been funded by the HSE based on existing DOI IC salary scales and staff grades.
4. Incremental adjustments to Milford Care Centre base allocation have traditionally included percentage increases in line with National Pay Awards, as applied in the public sector.
5. Milford Care Centre budget allocation has traditionally been funded for Special Pay Awards, where funding has being received by the HSE.
6. Some adjustments have been provided over the years for increments but no funding was allocated to Milford Care Centre in respect of increments in 2010, as the HSE did not receive an allocation for same.
7. Milford Care Centre base allocation for 2010 is based on an agreed roll-over of the previous year's allocation, which has been adjusted to reflect all of the above.
8. Milford Care Centre is accountable to the HSE for the use of its agreed budget allocation under a Service Level Agreement

I trust the above clarifies.

  
Anna Fogarty  
Finance Manager

# Appendix Two



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

Oifig an Stiúirthóra Náisiúnta um Chúram Príomhúil  
FnaSS|Ospidéal Dr. Steevens | Baile Átha Cliath 8. Eircode  
D08 W2A8

T 01 6352232 / 635 2632 / 061 463302  
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Office of the National Director Primary Care  
HSE, Dr. Steevens Hospital, Dublin 8. Eircode D08 W2A8  
T 01 6352232 / 635 2632 / 061 463302  
R: [primarycare@hse.ie](mailto:primarycare@hse.ie)

Wednesday, 24 May 2017

**Mr. Pat Quinlan,  
Milford Care Centre,  
Castletroy,  
Limerick.**

**Re: Section 39 Members of the Voluntary Hospices Group**

Dear Pat,

I refer to your correspondence dated 6<sup>th</sup> April 2017 regarding the above.

**Pay Claims**

The Not for Profit Group in your correspondence have identified 2 separate but related issues of concern:

- Firstly, pay claims arising for your organisations under the heading of "Pay Restoration" in the context of the LRA and FEMPI legislation and
- Secondly, general pay claims arising as public and private sector pay rates are adjusted over time in line with the overall economic improvement.

In responding to this situation the HSE has outlined for you from the outset that public pay policy is determined by Government, with the Dept. of Public Expenditure and Reform (DFER) as the Lead who set out the position for the various Government Departments including the Department of Health through guidelines on national pay agreements and circular letters.

In relation to the process for dealing with "pay restoration", this is of particular significance at Government and Department level due to the potential for unapproved knock-on claims, with a specific process now established involving the pay commission and associated process for national pay talks. I emphasise again that the HSE is required to comply fully with the arrangements as set out by DPER in this regard and we have no latitude to unilaterally agree pay rates outside of this process.

Similarly, I wish to confirm that well established arrangements are in place to address general pay claims supported by the industrial relations machinery through the WRC and the Labour Court.

I attach for information a summary note prepared by Mr. John Delamere, Head of Corporate Employee Relations with the HSE which sets out the position. I would draw attention in particular to the following 2 paragraphs:

*Section 39 agencies are not encompassed by the provisions of the LRA or of FEMPI. For example, the pension levy of 2008 does not apply to such personnel. It is accepted that a number of such agencies have had a pay alignment with rates applicable in the public service and that pay rates were reduced in the "crash" years.*





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*It is now likely that there will be claims to have pay rates restored in such agencies to reflect the developments that are occurring in the public service. Such claims should be dealt with in accordance usual procedures applying in such employment, i.e. direct discussions initially, with referral to WRC and Labour Court if required.*

You will note that the arrangements which have been agreed nationally with Trade Unions in relation to pay restoration apply to public servants. Section 39 Agencies are not encompassed by these agreements. At the same time the HSE recognises that your organisations are receiving pay claims from Trade Unions on behalf of their members employed with you. You are required to progress those claims through the normal IR process up to and including the WRC and Labour Court if required.

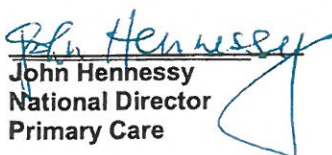
No assumption can be made before the conclusion of that process as to the outcome and any potential liability that might arise as a result. It is in this context that I have confirmed for you that the matter needs to be dealt with on an organisation by organisation and case by case basis, as the services provided are not uniform and the claims and indeed the outcomes may differ across the sector and by organisation.

I have also emphasised that the HSE Corporate HR function is committed, together with the CHO Chief Officers and their teams, to providing any required support to your organisations by way of advice etc on the matters involved. As you know your organisations are normally supported by IBEC in these processes without HSE intervention. However, in circumstances where public pay policy is the central component of the claims being made the HSE has agreed to provide this extra level of support to assist your organisations in these particular circumstances.

I also want to address an issue raised by a number of organisations, i.e. that Board members had concerns around the extent of potential liabilities, unfunded, that may arise in the event that claims are upheld through the industrial relations machinery at the WRC or Labour Court. I want to re-iterate that the appropriate governance response in such circumstances is to fully comply with the industrial relations process in the first instance and to ensure that no claims are agreed or liability created without fully complying with these established arrangements. The support from the HSE as referenced above will provide the required advice to ensure that you comply appropriately with the agreed processes. I believe this should provide significant assurance and support to your Board members in addressing the matters involved.

I trust the above provides clarification on the issues raised.

Yours sincerely

  
John Hennessy  
National Director  
Primary Care

Building a Better Health Service

CARE COMPASSION TRUST LEARNING



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

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**MEMO**

**To: Pat Healy, National Director Social Care**

**From: John Delamere**

**Re: LRA etc. Section 39 agencies**

**Date: 28<sup>th</sup> March 2017**

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The provisions of the Lansdowne Road Agreement (LRA), provides for adjustments to pay rates for public servants in accordance with the provisions of the Financial Emergency Measures in the Public Interest Act 2013 (FEMPI 2013).

The arrangements provide for an adjustment in pay rates for certain public servants to include an additional payment from April to August 2017, inclusive, for those earning up to €65k, the continued application of the €1,000 annualised payment from 1<sup>st</sup> September 2017 for this cohort of staff, and the first phase of pay restoration for public servants who were subject to pay reductions under FEMPI i.e. those earning over €65k.

Section 39 agencies are not encompassed by the provisions of LRA or of FEMPI. For example, the pension levy of 2008 does not apply to such personnel. It is accepted that a number of such agencies have had a pay alignment with rates applicable in the public service and that pay rates were reduced in the “crash” years.

It is now likely that there will be claims to have pay rates restored in such agencies to reflect the developments that are occurring in the public service. Such claims should be dealt with in accordance usual procedures applying in such employment, i.e. direct discussions initially, with referral to WRC and Labour Court if required.

In the event of such occurrences, HSE CERS will advise the agencies concerned on the matters involved.

John

# Appendix Three



An Coimisiún um Chaidreamh san Áit Oibre  
Workplace Relations Commission

Áras Lansdún, Bóthar Lansdún, Droichead na Dothra,  
Balle Átha Clíath 4, Éire.  
Lansdowne House, Lansdowne Road, Ballsbridge, Dublin 4, Ireland.  
T: 1890 22 02 27 or +353 (0)1 6136700  
F: +353 (0)1 6136701

Direct Phone Line: 613 6709  
Our Ref: C-160859-16

15 December 2017

Mr Tony Kenny  
SIPTU  
Liberty Hall  
Dublin 1

Dear Mr Kenny

I refer to the conciliation conference of earlier today between representatives of the HSE and IMPACT/SIPTU/Unite concerning Sleepovers

The following is a note of what transpired at this morning's conciliation conference.

1. HSE Mental Health arrears plus 2017 payment have been funded and are with the CHO's.
2. HSE Section 38's ID, arrears up to 2016 now funded in two parts, November 2017 and January 2018. Arrears for 2017 have not yet been secured but have been requested.
3. Section 39's Physical and Sensory, up to 2017 funding is in place for 2017. The unions are requesting that a process be put in place for S. 38's and S.39's whereby the HSE confirms that monies have been allocated to CHO's and then onto individual S.38's and S.39's. Management could not agree to this at conciliation but committed to reverting to the unions once they have consulted.
4. The unions agree in principle to populating a roster group subject to sufficient progress being made on all issues.
5. Funding for 2018 has gone into the estimates.
6. This process will re-convene on the 9<sup>th</sup> of February 2018 at 10.30am in the offices of the WRC.

Yours sincerely

Brendan Cunningham  
Regional Manager