RehabGroup

Investing in People, Changing Perspectives

Who Cares?

Building a new relationship between the not-for-profit sector and the State 2018

‘Who Cares?’

A research report examining the challenges being experienced by some of the key not-for-profit providers of services to people with disabilities in managing their relationship with the State.

The report makes strategic recommendations for the building of a new relationship between not-for-profits and the State, at a time of critical change.

The research was commissioned by the Rehab Group, and carried out by Dr. Chris McInerney, Department of Politics and Public Administration at the University of Limerick.

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Preface

The independent not-for-profit sector, which provides vital services for many thousands of people with disabilities across Ireland, faces an uncertain future. This sector has arrived at a crossroads. It is finding it impossible to operate in the no-win environment between the fully funded State sector and the for-profit sector in the health and social care arena. After years of underfunding, a huge growth in regulation and compliance requirements, and having to operate in the absence of a Government strategy for its role and future, the sector will soon be unsustainable.

This research report has been commissioned by the Rehab Group to map the challenges currently being faced by the sector and to make recommendations for a sustainable future, a future where we contribute fully.

The question we are asking is, Who Cares? Who cares about the future of this sector? More importantly, who cares about the many thousands of vulnerable people who use the services we provide every day? Who cares about their, and our, future?

Ostensibly, the key challenges are under-funding, the management of a very significant demand for accountability and compliance, and meeting the requirements of regulation. These challenges are made more difficult by the lack of a policy framework for the current and future role of these organisations, known colloquially as 'Section 39s', a name drawn from their designation under Section 39 of the 2004 Health Act.

This report focuses on the challenges being faced by some of the large providers, whose current combined annual funding is in the region of €430m and who provide residential, respite and day services for more than 20,000 people with disabilities.

We would like to thank the CEOs of these large providers who willingly gave their time to contribute to this research and who, in the process, have provided a valuable insight into the reality of managing in an uncertain environment, while being fully committed to ensuring that those needing their services are fully supported.

This independent, not-for-profit group of providers – while substantially funded by and accountable to the State – is required to fulfil the entire panoply of accountability, compliance and regulatory structures which have grown up in the last decade, without being funded to do so. For-profits are not obliged to fulfil many of them and therefore do not have to carry the cost burden. Hence, not-for-profit providers live between the fully funded State sector and the for-profit sector; an environment that is currently eroding the ability of this sector to operate effectively and sustainably.

The real victims of this uncertain future are the people who rely on the residential, respite and day services which we provide, people whose needs are often complex, changing and varied and who deserve to live full lives as citizens, and the support to do so.

Historically, this group of not-for-profit providers stepped up when the State did not, to ensure that people with disabilities had the life they wanted; and we want to continue to do so. The State has been happy to allow us to do that but now questions arise about our future.

We believe that the independent not-for-profit sector, having a proud history of stepping up to provide services which the State does not, has a significant contribution to make. However, the current stranglehold in which we operate, caught between the statutory, fully funded sector and the for-profit sector, is unsustainable.

A new vision is needed, a vision which recognises that there is a role for an independent not-for-profit sector. A vision which is recognised in legislation, which allows the sector to continue to do what it has shown itself well capable of: that is, enabling people with disabilities to live the life they want - and deserve - to have.

Mo Flynn
Chief Executive,
The Rehab Group

Kathleen O'Meara
Director of Communications,
Public Affairs and
Fundraising,
The Rehab Group

Introduction

According to Census 2016, 13.5% of those resident in Ireland, that is 643,131 people, stated they had a disability. For many years the approach of the Irish State to meet the needs of people with disabilities has not been to provide services directly, but to instead rely on the delivery of services by a variety of voluntary/not-for profit organisations, albeit with funding provided by the State. Over the years, the nature of this provision has radically changed. In the early years it was driven by religious orders, now it is the remit of a range of secular and increasingly specialised and professionalised voluntary/not-for-profit entities. **The purpose of this report, which was requested by the Rehab Group, is to explore a particular element of the work of these not-for-profit organisations, namely their relationship with the Irish State.**

The significance of these organisations cannot be underestimated. In 2018, the Health budget for the provision of disability services was more than €1.81bn. Of this, more than 60% is allocated to provide residential services for approximately 8,400 people; 20% is allocated to provide 18,000 day places and supports to another 25,000 people, with the remaining amount providing respite services for more than 5,700 people and personal assistant and home support hours **(Health Service Executive, 2018)**. While details were unavailable for the 2018 HSE Social Care Divisional Operational Plan, the 2017 Social Care plan shows that more than €1.233bn was allocated to provide disability services in the non-statutory sector. This involved a combination of funding for not-for-profit organisations via Section 38 and Section 39 of the 2004 Health Act, a total of almost €1.157bn. More than €76m was also expended via 'for profit' organisations and for the delivery of commercial 'out of state services'.

Clearly, these are not inconsiderable amounts of money and their management requires constant, positive and progressive interaction between not-for-profit organisations and the State. This report sheds some light on those interactions and shows that while collaboration and partnership were features of past relationships, more recent years have seen a turn towards a command-and-control model and the growth of the regulatory state.

In order to produce a deeper understanding of the relationships in question, this research focuses on organisations providing disability services via Section 39 of the 2004 Health Act and, more specifically, to organisations covered by service arrangements, i.e. those receiving funding over €500,000[1]. This accounts for just over €428m of the total spending on disability services, almost 35%. Fifty nine percent of the total funding is expended via Section 38-funded organisations. The very significant differences between Section 38 and Section 39 funding are explained more fully in Chapter 1.

Within the Section 39 envelope, 19 agencies received funding of more than €5m each in 2017, accounting for over €303m of the total of Section 39 funding on disability. Given the volume of resources managed by this group of agencies they have been the primary focus of the research.

1 Section 39 also provides funding across a number of other service areas, including: addiction, youth services, services to older people, mental health, children and childcare, homelessness, home help, meals on wheels and other social services.

How the research was carried out

The main concern of this research was to understand the relationships between larger, Section 39-funded organisations and the State. As such, the research is qualitative and the main sources of data were those in senior positions in a variety of not-for-profit organsations. In-depth interviews were carried out with senior managers and CEOs in these organisations, some with a national remit, others focused on specific localities. As well as their geographical coverage, the mix of interviewees covered the range of disabilities – physical, sensory and intellectual. In order to ensure a range of perspectives, interviews were also completed with key individuals taking on broader representative roles. Finally, a number of senior health-sector officials were also interviewed, again involving a mix of national as well as regional-level experience. So as to enable them to speak more openly, a number of contributors to the report requested that their comments be anonymised. As a result it was decided to anonymise all contributions.

Structure of the report

One of the biggest difficulties when it comes to presenting research in the domain of not-for-profit organisations is terminology. For clarity, and to explain why certain terms have been used in the main body of the report, a short introductory chapter on terminology is included.

In Chapter 2 some of the historical context is provided, setting out how our current regimes of service delivery to people with disabilities have evolved through four phases of reliance and showing how the disposition of the State towards not-for-profit organisations has changed over time.

Chapter 3 adds further context, this time focusing on the nature of public administration in Ireland and elsewhere, emphasising that contemporary approaches to service provision are not just the product of gradual, incremental change but are also influenced by significant international trends carrying with them distinct ideological hues.

The main body of the research is presented in Chapter 4 which presents the experiences and perspectives of the interviewees, blending them where relevant with national and international literature in this field. Five main themes are presented here: the distinctiveness of the not-for-profit sector; perspectives on the nature of current relationships; accountability, regulation and compliance; funding and pressure on human resources. The approach to presenting the research findings has been very much to let the unedited interviewee reflections tell the story of this increasingly complex and challenging field. In doing so, it is hoped that both the message and, in some cases, the emotional investment that attaches to it are clear.

Finally, Chapter 5 presents an analysis of the research findings, draws conclusions from the research and offers several suggested ways forward. It also identifies some longer-term, bigger-picture conclusions; a few more medium-term considerations and some shorter-term concerns in need of immediate attention.

Executive Summary

Introduction

The purpose of this report is to explore the evolution of the relationship between the State and not-for-profit organisations involved in the provision of services to people with disabilities. The significance of these organisations cannot be overestimated. In 2017, €1.233bn was allocated to provide disability services in the non-statutory sector, including a total of almost €1.157bn to organisations via Section 38 and Section 39 of the 2004 Health Act.

Clearly, these are not inconsiderable amounts of money and their management requires constant, positive and progressive interaction between not-for-profit organisations and the State. **This report sheds some light on those interactions and shows that while collaboration and partnership were features of past relationships, recent years have seen a turn towards command and control and the growth of the regulatory state.**

The report also captures the growing sense of crisis in this sector, not least the crisis of financial sustainability confronting many not-for-profit organisations. As this research will demonstrate, the underlying causes of this crisis are the underfunding of services, the increased costs of complying with multiple and ever-expanding regulation, pressures on core administrative costs including insurance, and declining capacity to raise and use other sources of income.

The report makes a series of recommendations, not least the need to articulate a renewed collaborative relationship between not-for-profit organisations and the State and the provision of adequate funding to enable the continued provision of services to people with disabilities.

What's in a name?

It was recognised early on in this research that choices around terminology have the potential to communicate particular messages. It can tap into pre-determined assumptions that may not be fully accurate, or capture the changing nature of organisations that deliver services to people with disabilities. The commonly used **'Voluntary and Community'** conveys the strength of a broad sector, with community-based roots, one that is particularly well developed in Ireland, but that hides considerable variation in size, scale and ethos present within such a large number of organisations. It also obscures the scale, size and professionalism of many organisations and a corresponding decline in voluntary input.

The **'Third Sector'** terminology, though not commonly used in Ireland, usefully separates the range of community, voluntary, social enterprises, mutual and co-operative organisations from the public sector and the private sector, emphasising their independence from government, their particular value and motivational base and their commitment to reinvest surpluses in pursuit of common goals.

Though more commonly used in Ireland, the label **'charity'** sometimes invokes historical and paternalistic notions of charitable giving, dependence on charity, and a reliance on volunteers or poorly paid staff, even if the 'charity' employs hundreds of staff and has a budget in the millions of euros.

Ultimately, it was decided to use the term **'not-for-profit organisation'**, so as to communicate the social purpose of organisations while avoiding the often limiting connotations of the terms 'voluntary' or 'charity'. This is in no way to disconnect the organisations from their civil society, voluntary or charitable base. Instead, it locates them using more contemporary and internationally recognised language that may help to recalibrate the mind-set of some - including the public sector – towards recognising them as highly competent, professional and very necessary organisations in the landscape of policy design and service delivery in Ireland.

Historical context

This chapter positions the research in a brief historical context. From this, it can be seen that the key feature of the provision of services to people with disabilities is the State's persistent reliance on not-for-profit organisations. This may be attributed to the State's early capitulation to the Catholic Church and to pressure from vested interest groups to stay out of certain areas of the care of its citizens; a lack of adequate resources; and to a belief by some decision makers that these functions should not be taken on by government and should instead be best left to 'charity'. Over the years, this reliance on 'voluntary bodies' has not only been acknowledged by successive governments but at different times has been actively encouraged by them.

Four approximate phases of reliance are identified:

- **Conceded/abdicated reliance:** from the foundation of the State to the mid-1950s, characterised by the State's absences from the provision of services to people with disabilities;
- **Co-ordinated reliance:** from the mid-1950s to the mid-1980s – during which time the State remained largely absent from service delivery but began to make greater effort to more formally support and co-ordinate with not-for-profit delivery;
- **Collaborative reliance:** from the mid-1980s to the mid-2000s, recognisable by a greater emphasis on partnership, collaboration and co-operation and continued reliance on not-for-profit delivery;
- **Command-and-control reliance:** from the mid-2000s to the present time, representing the application of stronger State control over the activities of not-for-profit organisations through increased regulation and a growing emphasis on input-based accountability.

These different phases are reflected in the body of legislation that has evolved to support the role of not-for-profits in the provision of health and social services. The key persistent feature of this evolution is an outmoded distinction between organisations that provide services **'on behalf of the State'** and those that provide services **'similar or ancillary to'** the State. While in many instances almost the same services are being delivered, this distinction results in differential funding, pay and pension regimes being applied between broadly similar organisations.

During these four phases the **institutional landscape has also changed considerably**, oscillating between a localist, albeit centrally directed, orientation and a later, more nakedly centralised and controlling approach. More recent years have also seen the stronger emergence of the regulatory State, with the creation of The Health Information and Quality Authority (HIQA), the Charities Regulator and the Department of Public Expenditure and Reform, resulting in lower levels of local discretion and a weakening of collaborative approaches.

The key question raised from this section is, given the continued reliance on not-for-profit organisations to deliver services **what potential is there for a further and substantially different phase of engagement between not-for-profits and the State?**

Evolving approaches to the delivery of public services

Understanding the nature of/influences on public administration is important if we are to develop a clearer understanding of how the State sees the role of not-for-profit organisations. In Ireland and elsewhere, recent years have seen the gradual spread of New Public Management-informed approaches, manifest in:

- An increase in bureaucratic thinking and an emphasis on rules-centred models of administration
- An expansion of accountability and compliance requirements
- Reduced commitment to partnership
- Treating not-for-profit organisations as service-delivery extensions of the State rather than as distinct mission-and-ethos-driven organisations

Along with these is the apparent assertion of the primacy of the market as the guiding rationale for public policy interventions, as suggested in the Department of Health's 2012 Value for Money and Policy Review of Disability Services in Ireland. This stated that 'in theory', the public sector *'should only intervene when markets are not efficient and when intervention would improve efficiency'*. **Whatever about theory, in the real world the market has never prioritised services for marginalised groups, in Ireland or elsewhere and is unlikely to do so, not least for those with disabilities**. It seems strange therefore to rely on such an ideologically distinct, market-based rationale for public policy intervention. However, it does partly perhaps explain why the public administration system acts the way it does. One consequence of this type of thinking may be an unwillingness to recognise the need for an independent not-for-profit sector and for its broader democratic role.

4. The emerging research themes

Five main themes have emerged from the research:

- **What makes not-for-profit organisations different?**
- **The state of current relationships**
- **Accountability, regulation and compliance**
- **Funding**
- **Pressure on people**

4.1 What makes not-for-profit organisations different?

- **They have unique motivation:** Not-for-profit organisations are most often social-oriented and ethically based as opposed to being motivated by a focus on profits. In the words of one research participant, they are *'advocates, they're the soul, they're the conscience of the country'*.
- **They can deal with difference:** Undoubtedly, not-for-profit organisations have their own systems and

bureaucracies but these are considerably more flexible that those of the State and more open to adjustment than those of the private sector. Whereas the public sector often struggles to meet needs and plan for services that are outside of the mainstream, not-for-profit organisations are the opposite.

- **They have stronger relational capacity:** Many not-for profit organisations maintain strong connections with the communities they serve, a strength that public sector or for-profit organisations will rarely, if ever, be able to replicate.
- **They are innovative:** In the public sector the capacity for innovation is constrained by bureaucratic controls or by the directions of political leadership. While no organisation is constraint free, not-for-profit organisations, freed from an excess of political control and from the need to create profit, are in the best position to innovate, be flexible and to provide the type of nimble and nuanced responses to the often complex needs of marginalised groups, including those living with a disability.
- **They stick around:** Most not-for-profit organisations display important characteristics of longevity and durability. Even during the recent recession, many continued to maintain their level of service provision and indeed, expand it, despite significant cuts in State funding. While it may be attractive to some to consider a stronger role in service provision for the private sector during times of economic expansion, should the economic cycle of 'boom and bust' continue, this may prove vulnerable to future shocks.
- **They are inherently person centred:** Many not-for-profit organisations operate from a 'naturally person-centred approach' as opposed to being dominated by the requirements of a system of bureaucracy or the exercise of political control.

There are however threats to this distinctiveness, not least the nature and multiplicity of regulatory requirements and the spread of a more interventionist, managerialist culture within the Irish health sector.

4.2 The state of current relationships

There is a distinct feeling amongst not-for-profit organisations that the State does not value their contribution as much as it did in years gone by. While it wants them to deliver services to people with disabilities, it is less willing to see not-for-profits as partners in this exercise. Relationships with the State have changed, often in a negative way, with evidence of a drive for stronger accountability, compliance and the dominance of narrowly defined efficiency and value-for-money measures. At the heart of the analysis of virtually all of the not-for-profit participants involved in this research is a belief that higher levels of State control have superseded collaboration; domination has displaced dialogue and closer integration into the State's service delivery infrastructure has become more important than preserving independence and autonomy.

Inevitably, in any discussion on relationships, the role of the HSE is going to be subjected to considerable scrutiny. On the whole, relationships with the HSE are mixed, seen as stronger at local level but weakened at national level by poor communication and institutional arrangements, leading to a deeply felt loss of autonomy and independence.

4.3 Accountability, regulation and compliance

The stronger focus on accountability, compliance and regulation of recent years is simultaneously embraced by not-for-profits as essential to guarantee the quality of outcomes, but is also criticised for its narrow focus, for the inadequacy of financial provision to meet regulatory requirement, and for the existence of multiple and often competing forms and processes of regulation.

Nobody suggests that accountability is not a good thing. However, the poor and disconnected design of multiple and sometimes competing regulatory regimes runs the risk of undermining the work of not-for-profit organisations. All organisations believe that they must constantly seek to improve their own governance, optimise performance and deliver excellence in everything they do. They are also committed to being fully accountable for public funds and to ensure high levels of quality outcomes. However, there was concern about the ability of organisations to meet the ever-expanding regulatory requirements. **There exists a real fear that the balance and burden of accountability and compliance regimes is hampering the ability of organisations to function effectively and to deliver quality outcomes for people with disabilities.**

A number of key gaps in the implementation of compliance and regulation regimes were named:

- **There is an inadequate focus on bigger picture outcomes. Many not-for-profits want to see more strategically focused performance and outcomes-based accountability, with less time spent on the micro management of individual organisational activities. In short they want to be able to show how they are making a difference in people's lives;**
- **Regulation and compliance standards are inconsistently applied by different inspectors, across different HSE areas or across different regulatory regimes;**
- **There is an ongoing failure by the State to adequately support the costs of meeting compliance and regulation requirements;**

- **There are new compliance pressures on organisational governance, especially in relation to the appointment/retention of board members;**
- **Dealing with multiple compliance requirements and the duplication and overlapping nature of compliance requirements runs the risk of taking the human out of human-orientated services;**
- **Competing and changing compliance obligations exist between compliance regimes.**

Organisations may also find themselves stretched between multiple accountability obligations. Being connected to community means that not-for-profits need to be accountable to service users and their broader supporters. However, it can be difficult for organisations to manage multiple accountabilities, especially when those demanded by the State are directly linked to an organisation's funding.

4.4 Funding

Given the historical evolution of service provision in Ireland and the absence of any significant philanthropic base, it is not surprising the not-for-profit sector is highly dependent on the State for its funding (Mazars, 2016). This creates vulnerability for organisations and significant uncertainty for the people they serve. Five main funding related issues emerge from the research:

- **The cost of delivery - Paying the full economic cost of delivery**
- **Financial management and sustainability**
- **Value for money**
- **The impact of not-for-profit governance failures**
- **Alternative models of funding**

Paying the full economic cost – One of the most pressing issues raised by interviewees in this research is the unwillingness of the State to fund the actual cost of the delivery of services. All of the not-for-profit organisations interviewed reported their inability to deliver the expected level of service for the resources allocated by the HSE. The current service arrangement does not allow for the inclusion of deficits thereby masking the funding gap being experienced by all of these organisations.

Financial management and sustainability concerns – Apart from the inability to identify funding deficits within the service arrangements, many organisations have expressed concerns about their own financial sustainability and that of other not-for-profit organisations. At the heart of these sustainability concerns lie the underfunding of services; the costs of meeting multiple compliance requirements; the absence of funding for core administrative costs; increasing costs of insurance; high transport costs and pressure on organisations' abilities to fundraise.

Value for money – In recent times this issue has moved centre stage in the relationships between the State and the not-for-profit sector. Nobody objects to the principle of achieving value for money. However, for many of those interviewed in this research, the experience of value-for-money requirements are at best formulaic, at worst, ill informed. There is a clear belief that approaches to achieving increased efficiency should acknowledge complexity, the expertise of not-for-profit organisations and engage in serious dialogue with them. Simple application of a one-size-fits-all formula is not seen as likely to produce benefits for the users of services.

The impact of not-for-profit governance failures – Not-for-profit representatives recognise the impact of 'scandals' on how they are perceived, both by the public and by the State, and recognise that the not-for-profit sector needs to continue to improve how it does its business. However, they regret that there is often an inability or an unwillingness to distinguish between the many highly effective organisations and the very small number of entities with governance deficiencies.

Alternative funding models – Given the above issues, many contributors to the research have suggested that there needs to be a renewed discussion on alternative models of designing, delivering and funding service provision. One such model is commissioning. The role of commissioning was put firmly on the political and administrative agenda by the Department of Public Expenditure and Reform in 2015 when it undertook a consultation exercise and commissioned the Centre for Effective Services to carry out a Rapid Evidence Review (REA) about approaches to and experiences of commissioning internationally. However, it no longer seems to be a political or administrative priority.

The main conclusion emerging from this research is the clear need for a major and urgent revision of how not-for-profit organisations are funded and how funding agreements are overseen and managed. In the short term, where services are being provided under a Service Level Arrangement, it seems evident that the level of funding needs to match the actual cost of delivery. While there should be space for dialogue about costs and for the HSE to question the cost bases being proposed, not-for-profits cannot be expected to be pushed further into deficit by effectively **subsidising the State's provision of services**. Either the level of funding should be adequate to deliver the required services or the level of services provided needs to be reduced. Ultimately, an alternative model of funding needs to be considered if financial sustainability weaknesses are to be adequately addressed.

4.5 Pressure on people

The final theme emerging from the research is about people. The delivery of services to people with disabilities is a human resource-intensive process requiring highly experienced staff at all levels alongside unpaid board members capable and willing to take on increasingly onerous governance and compliance responsibilities. For the reasons outlined in this research, there can be no complacency that Section 39-funded organisations will be easily able to overcome the many human resource challenges faced by them. There are challenges to retain existing staff and to recruit new personnel. There are challenges to retain and recruit senior managers to oversee the effective operation of organisations. Finally, there are challenges to secure the involvement of a range of board members who can bring different perspectives and skills, not just those demanded by an increasingly professionalised regulatory environment.

5 Conclusions and ways forward

This report has detailed a range of issues that impact on the success and sustainability of the relationship between the State and the not-for-profit sector. A number of ways of moving forward on these issues are proposed.

Changing how public administration operates

The research has shown that over time, there has been a notable and negative shift in the nature of the interaction between the State and not-for-profits. Relationships, once based on loose co-ordination and strong collaboration, have been replaced by not-for-profit organisations being seen largely as contracting bodies, entities to be managed and to be directed, akin to being a 'sub-cost centre' of the HSE.

The key long-term message from this research is the need to renew an ethos of collaboration and co-operation in the relationship between the State and not-for profit organisations, one where broader public value principles, not just narrowly defined and short-term 'value for money' considerations, inform the choice of operational priorities and the character of relationships.

— **To this end, it is recommended that the Department of Public Expenditure and Reform needs to expand its approach to public sector reform to move beyond the more limited technical reform agenda that has been visible in recent years. As well as addressing the technical reforms, DPER needs also to address capacity issues so that the public sector can be freed up to play a more enabling and transformative role and can build more durable and effective relationships with the not-for-profit sector.**

— **In particular, it is recommended the HSE functional units dealing with the disability sector (nationally and regionally) should be designated as a pilot for public value/public governance-orientated reform processes, taking OECD recommendations on capacity building as their starting points (OECD, 2017).**

The issue of how the not-for-profit sector itself operates in the longer term was also raised during this research, the suggestion being that existing models of service delivery may need to change considerably to embrace and reflect a stronger commitment to emancipation, personal autonomy and control. Thus, as well as reform in the public sector, an internal sectoral focus on reform should also be considered.

— **It is recommended that the not-for-profit sector itself, via its main representative bodies, convene a process/forum to explore its own longer-term vision of how services might be best provided to people with disabilities and how organisations in the sector can be best configured to deliver such a vision.**

Building a new relationship

While partnership and collaboration have not been the defining elements of the State's recent disposition towards not-for-profit organisations, there is still a widespread desire to work in more collaborative ways. More effective future relationships can be built by:

- **Articulating a clear vision of the role not-for-profit organisations both in the design and delivery of services**
- **Agreeing principles for interaction, setting out of relevant roles, rights and responsibilities**
- **Establishing direct, regular and mutually respectful communications pathways between senior HSE staff and not-for-profit organisations**
- **Devolving decision making power to the HSE regions where the experience of and potential for collaboration is stronger.**
- **To provide a framework to address these issues it is recommended that the State commit to develop a Compact Agreement governing the relationship between itself and not-for-profit organisations. This should be done in partnership with the not-for-profit sector within a three-year period. If the task of developing a sector-wide agreement is seen as too demanding, a pilot for the disability sector should be developed instead. Models of such state-voluntary sector agreements already exist in Scotland, Northern Ireland, and in England and Wales and would provide a useful starting point.**

- **It is also recommended that the Government take a decisive step to signal the importance of the not-for-profit sector. To do this it should follow the example of New Zealand and create a junior ministerial portfolio for the community and voluntary/not-for-profit sectors. This should be located as a distinct office/unit within the Department of the Taoiseach. The portfolio would cover the development of strategic relations with the community and voluntary/not-for-profit sectors, including the negotiation, monitoring and review of a Compact Agreement; advancing funding frameworks relevant to organisations involved in substantial service delivery on behalf of the State and the review and revision of legislative frameworks governing these relationships.**

Moving to an alternative model of funding

There are real and justifiable fears for the financial sustainability of many not-for-profit organisations. The word 'crisis' has been communicated more than once during this research. If organisations collapse, either the service they provide will have to be picked up by another organisation, it will have to be delivered directly by the State, it may be deliverable by a private sector organisation (most likely at higher cost) or the service may just be lost. An alternative model of funding capable of meeting current and future delivery of services is clearly needed. Commissioning is a key element of this.

— **In parallel with the development of the Compact Agreement, it is recommended that a model of commissioning for the provision of services to people with disabilities be developed without further delay. This model should reflect the place of partnership and co-production as well as a distinction between the strategic planning and purchasing/contracting stages. It should also seek to replicate the features of internationally recognised progressive models and avoid the negative impacts of narrow, managerialist and competition-based approaches.**

Legislative provision

There is general agreement that the existing Sections 38 and 39 of the 2004 Health Act are not fit for purpose, given that the services provided by organisations through Section 38 are largely indistinguishable from those provided by many of the larger organisations supported under Section 39. However, the legislative distinction means that the State assumes liability for the full costs of services provided by Section 38 organisations, whereas Section 39s, although the services are the same, and costs are similiar, are underfunded. As a result, for these organisations at least, the legislative distinctions between organisations providing services 'on behalf of' the State (Section 38) and 'ancillary to' the State need amending.

— **To address this anomaly, it is recommended that the Department of Health acknowledge that a reconfiguration of the legislative provisions governing the relationship between the State and not-for-profit organisations in the disability sector is needed without further delay. It is recognised that there are serious challenges in addressing this anomaly. It is recommended that a new, middle-ground legislative provision is agreed, falling someplace between Section 38 and Section 39. For, the moment, this could be called 'Section 38½'. Under section 38½ it would be acknowledged that funded organisations are providing services on behalf of the State, but that for historical reasons that they must be treated differently than those funded under Section 38. This could mean that for instance while their staff would not be counted as public sector employees, their salaries would be set to the protected pay scales applying in state or Section 38-funded organisations and that section 38½ organisations would be funded specifically to meet such salary levels. Equally, pension arrangements for section 38½-funded employees, while not enjoying defined benefit status, should be sufficient to not be the cause of employee attrition.**

Dealing with immediate need

Finally, a number of shorter term immediate recommendations are made:

— **Paying full economic cost of delivery – It is recommended that State recognise the impact of its underfunding of services and commit to pay the full economic cost of delivery in respect of services delivered on its behalf.**

— **Addressing current financial sustainability issues – An independent review of the level of financial deficits facing organisations in the disability sector be undertaken. This review should map out the scale of organisational deficits and their causes and should recommend actions to address them. Those appointed to carry out the review should be mandated by and should report to a joint Department of Health/not-for-profit task group.**

— **Easing immediate financial pressure – To ease some of the short-term financial pressures on organisations some of the big ticket items that increase particular financial stress on organisations should be addressed. In particular, it is recommended that not-for-profit organisations of a particular scale be included under the cover of the State Claims Agency for services they are carrying out on behalf of the State.**

- **Management of funding in service arrangements – The process of completing an annual instead of a multi annual service arrangement places an unnecessary burden on the administrative capacity of many organisations that operate across HSE regional boundaries. It is recommended that moving to a multi annual budgeting cycle be prioritised. This would also enable the development of more meaningful, outcome based reporting processes.**
- **Dealing with fundraised income – The issue of how fundraised income within not-for-profit organisations is dealt by the HSE needs immediate attention. It is recommended that, as part of the financial sustainability review suggested above, HSE practices on the use of/deployment of fundraised income also be examined.**

Regulation and compliance: Finally, there is general agreement that streamlining regulatory and compliance processes is essential. Just as the development of a system of Regulatory Impact Assessment was seen as necessary to enable a conducive business and economic environment in 2005, so too the same principle needs to apply to provision of services to people with disabilities. This requires the development of a better form of more intelligent, integrated and communicative accountability systems, which:

- **strike a balance between upward, downward and internal accountabilities**
- **eliminate duplication within the HSE sphere;**
- **accommodate the needs and demand of different regulators;**
- **focus not just on financial and governance compliance but also performative accountability;**
- **provide the basis for meaningful engagement and communication;**
- **restore lost confidence within the not-for-profit sector;**
- **resource the core administrative costs of organisations.**

1 | What's in a name?

1 What's in a name?

When first mooted, the intent of this research was to explore the relationship between community and voluntary sector organisations and the State, focusing on those organisations in the disability sector funded under Section 39 of the 2004 Health Act. However, as the research progressed it became clear the use of the term 'community and voluntary' was insufficiently precise. Indeed, this term is one that is mainly employed in Ireland, with other countries in the global north variously referring to the voluntary organisations, to third-sector organisations (TSOs) or to 'non-profits' or the 'not-for-profit' sector.

The term 'charity' is also used with reference to organisations engaged in publicly raising funds to be spent in pursuit of social objectives. In the global south, use of the terms 'Civil Society Organisation' and within that, 'Non-Governmental Organisations', are more common, bringing with them historical and democratic legitimacy associated with civil society nomenclature. Civil society usually refers to formal or informally established bodies, situated between the state and the family, operating largely autonomously of the state in pursuit of the shared or common interests of its voluntary members. Finally, the term 'charity' is often used with reference to organisations engaged in publicly raising funds to be spent in pursuit of social objectives.

All of these terms layer upon each other and are often used interchangeably. They have the potential to communicate messages and to tap into pre-determined assumptions that may or may not be fully accurate or capture the changing nature of organisations in this sector. Voluntary and community suggest the strength of a broad sector, with community-based roots, one that is particularly well developed in Ireland, but that hides considerable variation in size, scale and ethos present within such large numbers of organisations. Within this, reference to the 'voluntary' element captures the origins of many organisations set up at a time when the State largely abdicated responsibility for social service provision, relying instead on those concerned with issues and problems to step into the breach, underpinned by a clear value base and societal improvement objective. However, continued use of the 'voluntary' terminology obscures the scale and size of many organisations and a corresponding decline in voluntary input:

"I think the public generally don't understand the voluntary sector and I think that even the language that we use around it, the fact that we call it the voluntary sector. And going back to the terminology you were using earlier on about civil society. I'm much more comfortable with that. I'm not even particularly comfortable using the word charity for our organisation because it has connotations of everybody just doing it because we're all great guys. But you cannot run organisations of this size and provide the types of services that we provide on goodwill. It's simply not possible." **(Interviewee 6, 2018).**

It may also be the case that the continued use of the term 'voluntary organisation' implies a lower level of professionalism or perhaps a lower level of complexity in managing what are ultimately highly complex organisations.

The foundation of the knowledge and expertise referred to above is inherently linked to the type of dedicated and professional staff that work in not-for-profit organisations. Many of those working with the not-for-profit sector do so on vocational grounds, drawing off motivation that goes well beyond salary. Many are also highly educated[2] and possess skills not available in the public or private sectors. However, the disconnect between the desire for professional, high-quality services and a willingness to pay for them has been observed in recent research on the Irish 'charity' sector:

2 McInerney and Finn 2015 'Caring at What Cost'.

"There is a disconnect in the expectations for charities and the level of funding which people would like to see allocated to the professionalisation of the sector. In the abstract, few people disagree with the statement that 'charities should get the best professionals possible to work with them' (Figure 2), yet less than half (41%) agree that charities should pay competitive wages for these professionals." **(Amarach Research, 2017).**

The 'third sector' terminology, though not commonly used in Ireland, usefully separates the range of community, voluntary, social enterprises, mutual and co-operative organisations from the public sector and the private sector, emphasising their independence from government, their particular value and motivational base, and their commitment to reinvest surpluses in pursuit of common goals (UK National Audit Office[3]). This commitment to the reinvestment for social good as opposed to the distribution of surplus for private gain gives rise to the language of 'not-for-profit' or 'non-profit', and to associated tax benefits in many countries, i.e. such organisations on receipt of non-profit designation are not subject to tax on surplus incomes.

In Ireland, to enjoy such tax-exempt status, organisations must be registered as charities and apply to the Revenue Commissioners for charitable tax-exempt status. As well as adding to the terminology clutter, the idea of charity sometimes invokes historical and paternalistic notions of charitable giving, dependence on charity and a reliance on volunteers or poorly paid staff, even if the 'charity' employs hundreds of staff and has a budget in the millions of euros. It is also sometimes associated with a rejection of 'structural or collectivist solutions to risks caused by disadvantage, social justice and inequality in favour of relief from poverty based on patronage' **(Kenny 2002: 287)**. Of course, many if not most not-for-profit organisations recognise the structural causes of disadvantage and exclusion and do not limit themselves only to service delivery oriented to meet the needs of individuals. However, the State can often impose pressure on organisations to do just that, questioning their legitimacy if they stray too far into the realm of policy and politics.

As of July 2018, there were 18,339 registered charities on the public register maintained by the Charities Regulator[4], as distinct from the more than 29,000 entries contained on the Benefacts Register of not-for profit entities. To gain charitable status, organisations must have a clear, charitable purpose – namely the prevention or relief of poverty or economic hardship; the advancement of education; the advancement of religion; or any other purpose that is of benefit to the community, with this final category being very widely defined[5].

Finally, the use of a 'civil society' designation communicates important democratic legitimacy but is again not one that is commonly used in Ireland. Representing the space between the State and the household or private firm, it again encompasses certain characteristics such as separateness from the State, some level of autonomy and independence. For many, it also communicates a distinct democratic responsibility to contribute to the formation of policy and to hold government to account when it fails to address the needs of all or acts in the interest of few. For many of its constituent organisations it also legitimises their role in advocating for rights and for positive change, a role that especially thrives when a democracy evolves to embrace progressive participatory principles and procedures. In practice, the breadth of civil society organisations in Ireland is huge, including trade unions, business organisations, farming organisations, as well as the range of voluntary, environmental and community-based organisations. Given this breadth of membership, using the term civil society is this research lacks necessary specificity.

Ultimately, and bearing in mind the particular purposes of this research, it was decided to use the term 'not-for-profit organisation'[6], so as to communicate the social purpose of organisations, recognising their non-distributive motivation while avoiding the often limiting connotations of the term 'voluntary' or 'charity'. This is in no way to disconnect the organisations from their civil society, voluntary or charitable base. Instead, it locates them using more contemporary and internationally recognised language that may help to recalibrate the mind-set of some, including the public sector, towards recognising them as highly competent, professional and very necessary organisations in the landscape of policy design and service delivery in Ireland. Issues around the distinctiveness of the not-for-profit sector are returned to in Section 4 below.

3 https://www.nao.org.uk/successful-commissioning/introduction/what-are-civil-society-organisations-and-their-benefits-for-commissioners/

4 https://www.charitiesregulator.ie/en/information-for-the-public/search-the-charities-register

5 https://www.charitiesregulator.ie/en/information-for-charities/apply-for-charitable-status

6 This term can be further broken down between 'commercial not-for-profits' where some level of income is generated from commercial activities and 'non-commercial not-for-profits' where reliance is almost entirely on grants, contract-based income and donations.

2 | Historical context

2 Historical context

To understand the contemporary provision of services to people with disabilities and the relationship of the State with many of the not-for-profit organisations providing those services, it is important to reflect on some of the historical foundations underpinning these relationships. It is also important to realise that since the foundation of the State the provision of services to people with disabilities in Ireland can best be characterised as State secession of most of its responsibilities, firstly to religious organisations and more latterly to a wider range of voluntary/not-for-profit organisations.

This section of the report identifies four modes and phases of reliance: conceded reliance; co-ordinated reliance; collaborative reliance and command-and-control reliance, identifying the features for each, the role of the State, the key components in the institutional landscape and the key legislative junctures. These final two, the institutional and legislative landscapes, are then discussed in more detail.

2.1 The four phases of reliance

The absence of the State from the direct provision of services to people with disabilities and the reliance on others to meet these needs is something that has been inherited from earlier periods of government and administration. For this reason, the theme of reliance is identified in this report as the key defining characteristic of how the State has chosen to provide services for people with disabilities. Four different forms of state reliance used are loosely associated with certain time periods. These four phases, as outlined in Table 1 are:

- Conceded/Abdicated reliance;
- Co-ordinated reliance;
- Collaborative reliance;
- command-and-control reliance.

Each of these phases is discussed in turn.

Phase 1: Conceded/Abdicated reliance

The first phase of reliance is labelled as conceded or abdicated reliance, loosely running from the foundation of the state to the mid-1950s. The influence of the Catholic Church in the early years of independence in Ireland are well documented. These efforts sought to secure recognition for religion, for the Catholic Church and, in some cases, directly for Catholic Social Teaching as part of the new nation's legal framework, not least in the formulation of the 1937 Constitution. These efforts have been well documented. For example, the Jesuits convened a committee with the specific purpose of aligning the constitution with Catholic teaching, which drew on papal encyclicals, the Polish constitution of 1921 and the Austrian Constitution of 1934 to produce their own preamble and series of articles covering the family and private property **(Hogan, 2012)**. In one communication from a prominent member of this committee, Fr. Edward Cahill, an explicit but ultimately unsuccessful request was made to incorporate the specific understanding of social justice as elaborated upon within Catholic Social Teaching into the draft constitution though the insertion of a dedicated article. It is probably not surprising therefore that, while not legally codified, elements of Catholic doctrine can be seen to have had a significant influence on the configuration of State services, not least those for people with disabilities.

A key tenet of Catholic Social Teaching is subsidiarity. This 'assigns the ownership for an action to the lowest level of social responsibility e.g. individuals, families or intermediate groups' **(Jones and Waller 2010)**, albeit that Quadragesimo Anno, the papal encyclical where it originated, extends this definition and emphasises that: 'All power and decision-making in society should be at the most local level compatible with the common good.' **(Live Simply Network, 2012)**. This qualification is sometimes forgotten. It is generally accepted that the exercise of this principle strongly influenced both the political and administrative leaders of the country away from State-led provision of services in the fields of health and social care and towards continued reliance on provision by religious groups, aided by the fact that the new State also had very limited financial resources and limited capacity to take direct responsibility itself **(Linehan, O'Doherty et al., 2014, Mulkeen 2016, Power,**

2017). In fact, it is noted that the Department of Health in the 1950s expressed an *"explicit preference for religious orders to deliver intellectual disability services, resolving to ask heads of religious orders personally to expand services and, if necessary, to 'induce' further orders to enter the field"* **(Linehan, O'Doherty et al., 2014: 1)**. The bulk of these services were provided within large-scale residential schools run by religious orders, although there were some examples of non-religious civil society provision with the foundation of the National Council of the Blind in 1931 and the National Association for Cerebral Palsy in the late 1940s. With the passing of the 1953 Health Act, legal provision was made for the delivery of services by non-statutory entities and some level of State co-ordination emerged, moving us into a second phase, or more co-ordinated reliance.

Table 2: Four phases of reliance and State/not-for-profit relationships

Phase	Key characteristics	Role of the State	Legislative Features
Conceded/ Abdicated Reliance 1923 – Mid-1950s	— Abdication of State responsibility, surrender to principles of subsidiarity/Catholic Church control — Mainly religious orders with some secular civil society provision — Highly institutionalised model	— Some State assistance provided — Hands-off State role — Limited planning and coordination of service provision	— Ministers & Secretaries Act (1946) establishing the Dept. of Health
Co-ordinated Reliance Mid-1950s to Mid-1980s	— Increased provision of services by lay organisations alongside religious provision — Emergence of 'family and friends' structures — Beginnings of moves away from institutional care settings — Increased expenditure on services — Continued, State reliance on provision of services by voluntary organisations and 'encouragement of the development of voluntary organisations	— Increased funding — Responsibility taken for co-ordination of service — Recognition of the obligations of the State *'to ensure that services were available for both adults and children with an intellectual disability'* (Department of Health 2012) — Distinction between 'directly funded bodies' and others (1953 Health Act, Section 10 and 65 organisations) — Strong regional focus with the creation of the Regional Health Boards in 1970	— Health Act (1953) — (S10 'Extern institutions'; S65 'Assistance for Certain Bodies') — Health Act 1970 (S4 Establishing Health Boards; -S26 'Arrangement by health boards for provision of services')
Collaborative Reliance Mid-1980s to Mid-2000s	— Continued reliance on provision of services by voluntary organisations — Emergence of disability-specific service provision/advocacy organisations — Recommendation by the Commission on the Status of People with Disabilities that services be provided by mainstream service providers, especially in the education sector — Influences of the era of social partnership — Failure to take on mainstreaming recommendation in any meaningful way	— Increased policy outputs and development of policy frameworks — Continued regional co-ordination and management — Strong collaborative/partnership approaches, nationally and by sector — Beginnings of re-centralisation of control with the creation of the HSE in 2004	Health (Eastern Regional Health Authority) Act 1999 (S. 10 Arrangements by Authority for provision of services)

Phase	Key characteristics	Role of the State	Legislative Features
Command and Control Reliance Mid-2000s to present	— Continued reliance on voluntary organisations — Emphasis on value for money; efficiency and effectiveness/ accountability and compliance — Evolution of policy on alterative models e.g. personalised budgeting — Declining collaboration/increasing command and control	— Continued policy development — Increased managerialist tendencies — Increasing/multiple State regulation and compliance arrangements and institutional arrangements	— Health Act 2004 (S6 'Establishment of executive'; S38 'Arrangements with service providers'; S39 'Assistance for certain bodies': S58 Dissolution of Health Boards) — Health Act 2007 (S6 Establishment of HIQA) — Charities Act 2009 'Establishment of Charities Regulatory Authority' — Ministers and Secretaries (Amendment) Act 2011 S7 Department of Public Expenditure and Reform

Phase 2: Co-ordinated reliance

The second phase of reliance, what we call 'Co-ordinated Reliance', is associated with the emergence of a greater level of co-ordination by the State of the efforts of non-statutory service providers. With the passage of the 1953 Health Act more visible official recognition of the role and distinct capacity of a range of non-statutory agencies emerged, including a more structured provision for financial support. The key sections of this Act are discussed below. It was this Act which inaugurated the distinction between organisations providing services on behalf of the State or those providing service 'similar or ancillary' to those provided by the State. This distinction is at the root of at least some of the complexities facing disability sector not-for-profits at the present time. It is also worth noting the majority of those in receipt of direct funding from the State were religious orders.

During this phase, continued reliance on the not-for-profit sector was visible and indeed advocated. In the 1965 report on of the Commission of Inquiry on Mental Handicap the particular role of 'voluntary agencies' was recognised and its expansion advocated:

'Many of these voluntary agencies have acquired considerable experience and skill in the care of the mentally handicapped. They have brought to the field an exceptional degree of dedication, sympathy and understanding. Their services in general appear to be efficiently and economically run and any short-comings in the services provided by them seem to be largely due to lack of finance, with consequent insufficiency of trained staff. We consider that the services of these voluntary agencies should be used to the maximum extent and we recommend that the Minister for Health, the Minister for Education and health authorities ***should encourage and assist the continuance and development of voluntary organisations...'*** **(Government of Ireland 1965: 147, emphasis added).**

Crucially, in the same report, the Commission concluded that

'...health services for the mentally handicapped should be provided on the same basis as other sections of the community. We recommend, therefore, that health authorities should continue to have the legal responsibility for making available health services for the mentally handicapped.'

Into the 1970s and 1980s the reliance on voluntary organisations continued and indeed increased with the emergence of disability specific organisations, providing services in a more targeted way to dedicated groups. With the creation of the Health Boards as part of the 1970s Health Act, a stronger sub-national layer of delivery, co-ordination and partnership potential was added. This eventually led to the replacement of the direct Department of Health funding relationship with some larger disability sector organisations in favour of funding provision through the Health boards. The 1970 Act also reinforced the divergent treatment of different types on non-statutory service provision and specifically introduced the provision of superannuation payments for one group of non-state providers but not for others.

Phase 3: Collaborative reliance

By the late 1980s, a culture of partnership and collaboration was being fostered, justifying the description of this phase as 'collaborative reliance'. A stronger State-led policy and co-ordination orientation saw a rapid expansion of the State's policy architecture on disability, alongside a continued reliance on voluntary organisations for delivery. The key policy outputs during this period included:

- Needs and Ability – A Policy for the Intellectually Disabled, produced in 1990, stressing the need to move away from larger residential settings;
- Services to Persons with Autism was published in 1994;
- Towards an Independent Future – the Report of the Review Group on Health and Personal Social Services for People with Physical and Sensory Disabilities was produced in 1996;
- In the same year, A Strategy for Equality – the Report of the Commission on the Status of People with Disabilities was launched;
- Also in 1996 the Health (Amendment No 3) Act, which specifically names the importance of co-operation with voluntary bodies 'providing services similar or ancillary to services which the health board may provide' (Government of Ireland 1996:Section 2(b));
- This was followed in 1997 by Employment Challenges for the Millennium – Report of the National Advisory Committee on Training and Employment (1997) and Enhancing the Partnership – the Report of the Working Group on the Implementation of the Health Strategy in Relation to Persons with a Mental Handicap (1997).

It is particularly worth noting one of the key statements of the Enhancing the Partnership report which emphasised both the role and the autonomy of the 'voluntary sector':

'In relation to the voluntary sector, the Health Strategy acknowledged the integral role that the sector plays in the provision of health and social services in Ireland. It recognised that voluntary agencies have been to the forefront in identifying needs in the community and in developing responses to them. However, it considered that the direct funding of some voluntary agencies by the Department of Health impedes the proper co-ordination and development of services at local level. The Health Strategy stated that in future the voluntary agencies will receive funding from the health authorities. The larger voluntary agencies will have service agreements with the health authorities which will link funding to agreed levels of service. The independent identity of the voluntary agencies will be fully respected under the new arrangements. They will retain their operational autonomy but will be fully accountable for the public funds they receive. They will continue to have a direct input to the overall development of policy at national level.'

This report also recommended *'in view of the importance of a co-ordinating and planning structure to the smooth development of mental handicap services'* that in each Health Board area two committees would be formed, a consultative committee on services to 'provide a forum of the exchange of information and ideas' and another on services development into the future **(Department of Health, 1997: 30-32)**.

This phase of strong collaboration coincided with the period of national and emerging local social partnership and the dominant disposition within the world of politics and administration towards partnership and collaboration. The majority of those interviewed in this research confirm that partnership and collaboration characterised the relationship between disability-related organisations and the State during this period.

Phase 4: Command-and-Control Reliance

The current phase of delivery of services to people with disabilities and the associated relationship between the State and voluntary organisations is characterised as command-and-control reliance and contrasts with the more collaboration-oriented disposition of earlier years. What this phase does have in common with earlier years, acknowledged in the Value for Money report carried out by the Department of Health (2012), is continued reliance on not-for-profit organisations to deliver services on its behalf. However, unlike the other period, since 2005 provision takes place in a climate dominated by an emphasis on the twin pillars of managerialism, effectiveness and efficiency and the value for money ethos. Along with these there has been a visible increase in the focus on accountability, compliance and regulation, leading to an expansion in the range of accountability and compliance requirements, as well as an increase in the number of accountability and regulatory institutions to oversee them. It is important to note that this phase coincided with the economic crisis of 2008 and beyond, which resulted in financial and service delivery pressures for many organisations.

There is little doubt that during this phase also there has been a decline in the focus on partnership and collaboration, paralleling a more general decline following the demise of social partnership towards the latter end of the first decade of the new century. The research that follows elaborates in detail on how this phase of reliance has been, and continues to be, experienced.

2.2 Mapping the legislative evolution

The different components of the relationship between the State and not-for-profit organisations described in the last section are reflected in the body of legislation enacted to support their function within the broader context of health and social service provision. Some of the broader legislative junctures have been described in Table 2. However, for the purposes of this research, it is important to set out how these relate to organisations now funded under Section 39 of the 2004 Health Act. This legislative evolution is set out in Table 3, below.

Since the earliest days of the State, responsibility for services to people with disabilities has always been primarily located within the health portfolio, though the 1965 Commission on Mental Handicap did stress the equally important role of the Minister for Education. In more recent years the location of disability within the health sphere has been questioned as the medical model of disability has been increasingly brought into question. Instead, the social model of disability seeks to ensure that *'disability is considered in the context of interpersonal and physical environments, cultural attitudes and social structures'.* **(Murphy, Cooney et al., 2009: 607)**

Table 3: The legislative landscape

Legislation	Key Sections	Impact
Health Act 1953	Section 10 (1) A health authority may, with the consent of the Minister, make and carry out an arrangement for the giving of institutional services to any person or to persons of any class, being a person or persons who is or are **entitled to receive institutional services** from such authority otherwise than under section 26 of this Act, in an institution **not managed by such authority or another health authority** Section 65.— (1) A health authority may, with the approval of the Minister, give assistance in any one or more of the following ways to any body which provides or proposes to provide a service similar or ancillary to a **service which the health authority may provide**	Introduces the distinction between provision of financial support to organisations providing services for people 'entitled to receive institutional services' and organisations providing a service that is 'similar or ancillary to' services provided by the state The directly funded organisations were mainly those providing institutional care run by religious orders
Health Act (1970)	S26 (1) A health board may, in accordance with such conditions (which may include provision for superannuation) as may be specified by the Minister, make and carry out an arrangement with a person or body to provide services under the Health Acts, 1947 to 1970, for persons eligible for such services	Effectively replaces section 10 of the 1953 Act Section 65 of the 1953 Act is maintained
Health (Eastern Regional Authority) Act 1999	**Section 10** (1) Subject to *subsections (2)* and *(4)*, the Authority shall, having regard to the resources available to it, make one or more arrangements with one or more persons for the provision of services within its functional area (3) The Authority may determine an arrangement or any part thereof made under *subsection (2)(a)* in relation to the provision of a service and make and carry out an arrangement in lieu thereof with a voluntary body for the provision of the service In this act voluntary bodies were defined as **'a voluntary body which provides or proposes to provide a service similar or ancillary to a service that a health board may provide'**	Preserves the distinction between different types of non-directly State-delivered services
Health Act (2004)	Section 38: 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** Section 39 (1) The Executive may, subject to any directions given by the Minister under section 10 and on such terms and conditions as it sees fit 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**	Section 38 continues the provision of the 1970 Act, (Section 26) (and the 1953 Section 10 provision) Section 39 continues the provisions of the 1953 Health act (Section 65) Artificial distinctions are maintained between the new Section 38-funded and 39-funded funded organisations and the larger Section 39 funded bodies

Legislation	Key Sections	Impact
Health Act 2007	Establishing the Health Information and Quality Authority to 'promote safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public'	Creates the basis for increased compliance requirements
UNCRPD 2018	Ratification of the Convention on the Rights of Persons with Disabilities	Does not contain new rights but brings together existing civil and political rights

What this brief review of the supporting legislation shows is the distinction since 1953 between funding provided by the State directly to a small core of organisations – described as providing services on behalf of the State to people 'entitled to receive institutional services' (section 10) – contrasted with the organisations receiving funding under section 65 of the 1953 Act who provide a service '*similar or ancillary to a service which the health authority may provide'.* This would appear to suggest that in some way those receiving the services under Section 65 were not seen as having the same type of entitlement to receive services as those under Section 10. This distinction was further entrenched in Section 26 of the 1970 Health Act which allowed the newly created Health Boards to 'make and carry out an arrangement with a person or body to provide services under the Health Acts, 1947 to 1970, for persons eligible for such services'. This section also made provision for superannuation payments, but this was not extended to organisations who continued to receive funding under Section 65 of the 1953 act. It is noticeable that the list of organisations receiving direct funding on foot of the 1953 and 1970 Health Acts comprised mainly religious organisations providing institutional service**s (Hogan, 2006)**, perhaps not surprising given the level of Catholic church involvement in attempting to shape the direction of health services at this time **(Barrington, 1987).**

The legislative provisions under the 1953 and 1970 Health Acts and the 1999 Health (Eastern Regional Health Authority Act) continued until the 2004 Health Act which gave rise to the HSE. Even though a substantially new act was created and there was by this stage little practical distinction between the pre-existing 1970's Act Section 26 organisations and the larger of the 1953 Act Section 65 organisations, the legal texts of earlier years were largely transposed into the new act. A clear opportunity to regularise some fundamental anomalies was missed. While theoretically the distinguishing factor between the two types of organisations is whether they provide services 'on behalf of' or provide 'ancillary to' the HSE, the difference between them, especially in the case of the larger section 39 funding organisations is largely historical and is recognised as no longer apparent **(Linehan, O'Doherty et al., 2014).**

Alongside the specifics provisions of the various health acts within which the relationships between the State and not-for-profits are provided for, it is important to note that other legislation has also impacted on the broader provision of services to people with disabilities. This includes the Disability Act (2005) which supports the provision of disability-specific services and was intended to improve access to mainstream public services; the Assisted Decision Making (Capacity) Act in 2015 and the belated ratification of the UN Convention on the Rights of Persons with Disabilities in March 2018. It would make more sense to reader to include this highlighted line with quote below:

'...are not viewed as "objects" of charity, medical treatment and social protection; rather as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.'

2.3 Mapping the institutional evolution

Finally, having outlined the stages of development of service provision and State/not-for-profit relationships it is worth noting the main changes in the institutional landscape over the different phases. However, it is not the intention to offer any substantial evaluation of the impact of the different reconfigurations.

In the early years of the new State its responsibility for healthcare was limited and any extension of State control over health services was fiercely resisted, both by the Catholic Church but also by the medical profession **(Barrington, 1987).** While responsibility for health was formally aligned with the local government function, in reality the extent of this responsibility was constrained. Indications of a desire to change this was to some extent signalled by the establishment of the Department of Health in 1946 and by subsequent efforts to develop some form of a national health service. However, as Barrington has so extensively documented, the entrenched opposition of the Catholic Church, allied to and fuelled by the vested interests of the medical profession, ensured that anything approximating to a national health service would take many years to appear in Ireland.

Table 4: The institutional landscape

Phase	Key State Institutional Features
Conceded/abdicated reliance 1923 – 1952	Dept. of Local Government and Health (1924) Department of Health (1946)
Co-ordinated reliance 1953 – 1987	Department of Health Establishment of Regional Health Boards (1970)
Collaborative reliance 1987 – 2004	Department of Health Health Boards Eastern Regional Health Authority (1999)
Command-and-control reliance 2005 to present	Department of Health Abolition of Health boards and ERHA Creation of the HSE (2004) Creation of HIQA (2007) Establishment of the Charities Regulator (2009) Creation of DPER (2011)

In 1970, regional level health boards were established to administer health services under policies set down by the Department of Health. While it has been considered by some that this represented evidence of decentralisation, this is not universally accepted **(Barrington, 1987)**. Whatever the motivation for the existence of the health boards, they did provide the basis for many disability service providers to engage with the State at a local level and provided the foundation for stronger collaboration and partnership. During the later phases of co-ordinated reliance and of the collaborative reliance phase, the operational proximity of the health boards allied to the strong oversight and policy role of the Department of Health provided an institutional landscape that was, while challenged, more conducive to partnership and co-operation. During this time, many not-for-profit organisations retained contact directly with the Department.

The extent of how much the health sector was challenged became evident with the establishment of the HSE under the Health Act (2004). The HSE was designed to create a single unified health administration so as to eliminate duplication and reduce the costs of health care. With the creation of the HSE, an entity employing over 100,000 people and a strengthened national management structure, the Department of Health's role moved much more substantially to the policy making domain, while the regionally oriented sub-structures were abandoned. The creation of the HSE marks the beginning of the command-and-control phase, though it is not the case that the HSE is solely responsible for it.

Other key arrivals on the institutional landscape during the command-and-control phase include the Health Information and Quality Authority (HIQA), established in 2007 and which has a remit to 'drive high-quality and safe care for people using our health and social care services in Ireland'[7]. Since November 2013 the remit of HIQA has been extended to cover 'all designated centres for people with disabilities'.

However, it is not only the creation of institutions in the Health sector that has been significant to the activities of not-for-profit organisations. In 2009 the Charities Regulator was established as Ireland's national regulator for charitable organisations, tasked to 'regulate the charities sector in the public interest so as to ensure compliance with the law and support best practice in the governance, management and administration of charities'[8]. Subsequently, in 2011, the Department of Public Expenditure and Reform (DPER) was established to carry out the twin functions of prudently managing the State's finances and reforming the public sector, and by extension, organisations that are in receipt of substantial amounts of State funding. According to its current Statement of Strategy, DPER's mission is: *'To serve the public interest by supporting the delivery of well-managed, well-targeted and sustainable public spending through modernised, effective and accountable public services* **(Department of Public Expenditure and reform, 2016)**. In the view of many of those interviewed for this report, DPER is seen as the key driver of efforts not just to better manage public expenditure but to reduce it where possible.

7 https://www.hiqa.ie/about-us
8 https://www.charitiesregulator.ie/en/who-we-are/what-we-do

Summary and key conclusions

From this historical review, the key feature of the provision of services to people with disabilities is the State's persistent reliance on not-for-profit organisations of different shapes. This may be attributed to the State's early capitulation to pressure from the Catholic Church and vested interest groups to stay out of certain areas of the care of its citizens; to a lack of adequate resources; and to a belief by some decision makers that these functions should not be taken on by government and should instead be best left to 'charity'. Over the years, this reliance on 'voluntary bodies' has not only been acknowledged by successive governments and reviews but, at different times, has been actively encouraged by then.

However, from 1953 onwards, distinctions were drawn and framed in legislation between different types of voluntary organisations, eventually being seen as a distinction between those providing services on behalf of the State and those providing services ancillary to, or similar to, the State. These legally codified distinctions are widely seen as being outdated but, despite this, there does not appear to be any great official appetite to replace them.

Over the years the institutional landscape has also changed considerably, oscillating between a somewhat more devolved, localist, albeit centrally directed orientation and a more nakedly centralised and controlled approach. The creation of the HSE is the most recent, and perhaps least productive, expression of the centralisation tendency. More recent years have seen the emergence of the regulatory State, with the creation of HIQA, the Charities Regulator and the Department of Public Expenditure and Reform; resulting in lower levels of local discretion, weakening of collaborative approaches and an increase in the presence of the regulatory State.

The key question from this section is what potential is there for a next, substantially different phase of engagement between not-for-profits and the State. Clearly, the State will continue to be reliant on not-for-profit organisations but whether it returns to the more collaborative practices of the past or tries to deepen its command-and-control approach remains to be seen.

3 | Evolving approaches to the delivery of public services

3 Evolving approaches to the delivery of public services

Introduction

Chapter 2 outlined the evolution of the delivery of services to persons with disabilities in Ireland. From this it can be concluded the reality of the reliance experience is the product of a unique hybrid of ideology; religious and other vested group influence; historical circumstances of limited, low resource availability and the Irish State's reluctance to become directly involved in the provision of services to people with disability.

This section now turns attention to the most recent of these four phases, the command-and-control reliance phase, and in particular explores its distinct political and administrative ideological foundation, with particular focus on the influence of New Public Management (NPM) and its managerialist underpinnings.

The changing nature of Irish Public Administration

While the main purpose of this report is not to extensively review how the Irish system of public administration has evolved, it is important to have some knowledge of it so as to better understand where and how not-for-profit organisations are expected to fit in. MacCarthaigh (2012) has proposed that this evolution can be divided into four phases:

- An **emergent phase** characterised by a focus on the function of core government departments and the primacy of political over-administrative decision making;
- A **development phase**, during which overall policy-making capacity was seen to increase, necessitated in part by the pursuit of a new, externally oriented economic outlook;
- A **modernisation phase** which saw considerable change, not least with the creation of a large number of State agencies and the emergence of coalition government as the norm and finally;
- A **management and reform phase**, which produced reform initiatives including the Strategic Management Initiative (SMI) in 1994 and the Delivering Better Government reform programme in 1996.

The transition to a management and reform phase in the period from 1991-2008 is not surprising given the rise in emphasis of managerialist approaches through the developed world at that time. This trend, New Public Management, can be seen as the manifestation of neo-liberal ideology within the realm of public policy and public administration. Discussion of it is included here in order to illustrate that much of what characterises the relationship between the not-for-profit sector and the State in Ireland is not a natural order of things, but is the product of a distinct ideological disposition that has made its way across the globe, and which is to some extent declining in other former New Public Management pioneer jurisdictions. It is infrequently recognised in popular commentary just how the current political and administrative context within which not-for-profit organisations operate has been shaped by neo-liberal thinking and how this thinking has translated into the world of public administration. This experience is not unique to Ireland of course.

Over several decades, a neo-liberal economic approach has pervaded political thought in the UK and elsewhere, privileging markets and New Public Management arrangements in public services **(Clarke et al., 2000)**. *Accordingly, outsourcing public services to both for-profit and non-profit providers has steadily expanded. Simultaneously, significant reductions to public welfare spending have provoked growing concerns about maintaining provision in poorer areas* **(Milbourne and Cushman, 2013: 2).**

The impact of these changes have been considered in the world of 'care' in many different OECD countries, though just how they are delivered in practice may vary.

However, what is common is a distinction between those who begin to see 'care as enterprise and those who see a clash of values and interest in for-profit care' **(Mulkeen, 2016: 35)** and the potential for competition between the two to become a feature of the care landscape. Market-oriented principles and ways of working therefore become increasingly visible in the world of care, as does the increasing role of the state as a regulator. Other identified characteristics of NPM include budget cuts; accountability for performance; competition rather than collaboration; contracting out; a renewed emphasis on financial management; the language of client or customer rather than citizen; changes in management styles (Gruening 2001). In this mode:

Competition rather than collaboration between public and private sectors is emphasised. Furthermore, welfare provision is restructured in accordance with New Public Management (NPM), which introduces more formal standards and performance measures, and puts more emphasis on efficiency and managerial control. Contractual relations and accountability demands increasingly replace traditional welfare partnerships based on trust and mutual agreement **(Hustinx L., De Waele E. et al., 2015: 115-116)**

The extent to which NPM informs Irish public policy making and implementation remains somewhat contested, with some suggesting that the Strategic Management Initiative (SMI) launched in 1994 is "the Irish version of NPM" and that "the ideas that informed NPM are the well-entrenched orthodoxy" (Litton 2012:32-33). However, others wonder about the influence of NPM by comparison with countries such as the UK and New Zealand, suggesting that at least some administrative reforms owe their origins more to preoccupation with administrative convenience and efficiency rather than any particular ideological commitment to the ideals of NPM (Hardiman and McCarthaigh 2008). In the instance of services to people with disabilities, the discussion in Section 2 certainly reinforces this argument, illustrating that the Irish State has consciously relied on not-for-profit organisations to deliver services since its very foundation, rather than taking on this role itself. Reliance on not-for-profits is therefore not simply a product of an NPM ideology, however, the nature of how the State engages with them may well be.

In the UK, NPM-motivated changes in how public services were delivered under successive Conservative and Labour government are described as requiring **'a purchaser/provider split; competition and contestability; and market incentives. Markets were seen as the means to drive up standards and drive out inefficiencies' (Davies 2011: 642).** In more recent years in Ireland this more ideologically distinct language is increasing in visibility. This report provides an opportunity to test the degree to which this is manifest in how the State is engaging with not-for-profit organisations within the disability sector. At first glance, increasingly centralised, bureaucratised and transactional forms of engagement (with a narrowing focus on economy and efficiency, value for money, contacting out and weakening relational capacity) suggest that a significant shift in approach has taken place. This is further evidenced in the 2012 Value for Money Report which recommended that *'there should be a focus in every organisation in receipt of public funding on driving efficiency on an ongoing basis, contingent on client need within a value-for-money framework. This should be coupled with a more sophisticated risk assessment and management process.' (Department of Health 2012:xxiii)'* This in itself might not be considered objectionable but the rationale offered in the VFM report for public policy intervention is more fully embracing of the private, market-orientation of NPM:

Rationale is concerned with establishing why a public policy intervention is necessary *and requires consideration of the public policy objectives and the reasons for public sector provision.* ***It is also linked to the concept of market failure, which applies when the private sector does not produce the optimal level of a good or service. In theory, in the absence of a specific market failure, the market delivers goods and services in quantities that best meet people's needs and preferences, given scarce resources. The public sector, in theory, should only intervene when markets are not efficient*** *and when the intervention would improve efficiency. Therefore, the first condition for public sector intervention is evidence that a market failure exists* **(Department of Health 2012: 22, emphasis added.)**

Given that the market has never prioritised services for marginalised groups in Ireland or elsewhere and is unlikely to, not least for those with disabilities, it seems strange that such an ideologically distinct, market-based rationale for public policy intervention should be offered in a value-for-money report on the delivery of services, though perhaps its explicit articulation is to be welcomed. However, it does communicate a limited ability to consider value for money in a different way, one that places human service as the primary concern, not narrowly defined economic and/or efficiency concerns.

In this regard, it is worth noting observations about how New Zealand, as an early adopter of NPM practice has now moved away from what is described as a 'second phase' of neo liberalism, this second phase being the *'extension of marketisation and the introduction of neo-conservative social policy'*. Instead, it is proposed that a third phase *'is dominated by a state-driven partnering ethos' where 'the development of such partnerships were seen as the best way to counter the fragmentation of social services*

that occurred during the earlier competition driven phases of neo liberal reforms' **(Aimers J. and Walker 2008: 1)**. Similar perspectives suggest that New Zealand's 'Better Public Services' reform process that took place between 2011-2015 represents a distinct shift from NPM towards the more collaboration-oriented New Public Governance and towards an emphasis on 'inclusion, partnership, networks and stakeholder involvement' and towards 'an ideological shift to accepting the legitimacy of interest groups in general'. **(Grey and Sedgwick 2013: 14)**

This would suggest that New Zealand may have learned important lessons which have subsequently informed its approaches to the development of partnership-based commissioning, though it is not certain that all elements of public administration in New Zealand have moved so strongly to the post-NPM era (Lodge M. and Gill D.).

Beyond service delivery – the democratic role of not-for-profit organisations

Of course, an immediate victim of NPM-style thinking is the ability of the state (and possibly not-for-profit organisations themselves) to recognise the value or need for an independent civil society and within that, an independent voluntary/not-for-profit sector. Speaking on this theme in the UK the Baring Foundation has argued that:

> *An independent voluntary sector lies at the heart of a healthy democracy and has helped shape much of what we value today, from the abolition of slavery to rights for disabled people. Its independent voice provides a channel for different people's voices to be heard, including those who have least power – and this voice is even more important, given increasing disengagement with formal politics. There's also enormous potential for an independent voluntary sector to help design more effective public services, especially to better-support people with specialist needs, and it can reach out to different communities and mobilise their energies* **(Panel on the Independence of the Voluntary Sector 2015: 6).**

Similarly, in New Zealand, the impacts of the 'contract' culture on democratic recognition has been observed, leading to calls for a 'rethinking of the contract environment' if the 'true and full democratic voice of the community and voluntary sector' is to be recovered **(Grey and Sedgwick 2013: 9)**.

Just as with the New Public Management discussion, so too there are likely to be different perspectives on the democratic role of not-for-profit organisations, with some inevitably advocating a more expanded participatory role, others a more narrowly functional and instrumental perspective. In context of this research consideration needs to be taken of the broader role of not-for-profit organisations as part of civil society and their role in providing a social base, as envisaged by associative democrats. Clearly though, not all organisations see themselves as playing this role and may be more comfortable simply occupying a service delivery role. Others will see their role not as a representative one but as a facilitator for others to represent and advocate for themselves.

Distinctions have also been drawn between competing sets of values within public administration systems, between those embracing a more strongly bureaucratic ethos and its emphasis on accountability, economy, trustworthiness, impartiality and predictability, and others favouring the equal recognition of democratic ethos and its values of advocacy, innovation, political awareness, creativity and fairness (Goss R. 1996). In an ideal world both would be present in any given administration system, as would a clear recognition of the broader democratic purpose of not-for-profit organisations.

Summary and conclusions

Understanding the nature of, and influences on, public administration is important if we are to develop a clearer understanding of how the role of not-for-profit organisations is envisaged by the State, or parts of it. This chapter has proposed that in Ireland and elsewhere, recent years have seen the gradual spread of New Public Management-informed approaches. For some, the adoption of NPM-informed policy making and implementation represents little more than sound management of the public purpose. However, along with it comes:

- An increase in bureaucratic thinking and an emphasis on rules-centred models of administration and away from approaches that equally value entrepreneurial and/or deliberative understandings of public responsiveness;
- An emphasis on regulatory compliance above all else, to the point that compliance requirements run the risk of impeding the achievement of outcomes;
- Relegation of partnership and relational concerns into second place, behind a requirement to integrate service providers into the machinery of the state;
- A tendency towards treating not-for-profit organisations as service delivery extensions of the state rather than as mission and ethos driven organisations.

In the chapters that follow a more detailed microcosm of the public administration sector will be revealed, enabling a later assessment of how the current ethos of public administration impacts on the delivery of services to people with disabilities.

4 | The emerging research themes

4 The emerging research themes

In the report to-date some of the historical, legislative and institutional contexts have been set and more recent trends in public policy and public administration have been described. This section of report presents five main themes that have emerged from the research, supplemented where relevant with reference to relevant Irish and international literature. These themes are:

- The distinctiveness – or otherwise – of the not-for-profit sector and whether it is still needed;
- Perspectives on the nature of current relationships;
- Issues of accountability, regulation and compliance, and bureaucratisation;
- Funding (impact of scandals, commissioning, levels of funding, funding modalities); and
- Pressure on staff/CEOs/board members.

4.1 The distinctiveness – or otherwise – of the not-for-profit sector

It is not unusual to encounter public officials, politicians or the media raising questions about what is it that is different or distinctive about the not-for profit sector. This question is one posed in the questionnaire distributed as part of the Independent Review Group consultation process and was also raised by senior health sector officials in the process of completion of this report.

"My challenge to those organisations is to please tell me what those unique attributes are. And please describe to me what your added value is. Because I've probably said the same thing. It tends to be this black and white thing, voluntary all good, State all bad. It's a complete misnomer it's a red herring." **(Interviewee 3, 2018)**

This section addresses this challenge and draws from Irish and international literature as well as the findings of this research to demonstrate the particular and unique attributes of the not-for profit sector.[9]

When questions are raised about distinctiveness the question needs to be asked, distinctive from what? Using the concept of not-for-profits as a third sector, distinctiveness is generally seen as being from the State and the private sectors. The not-for-profit sector in Ireland shares important characteristics, roles and functions with similar sectors in countries throughout the world and, as a result of these, adds to the economic, social, cultural, democratic and spiritual health of a nation, in a unique way that neither the State nor the private sector can do. These unique roles, functions and characteristics are usefully described by the UK Baring Foundation as being:

*...to **generate and deploy social resources** because it is not for profit and not the public sector; the way **it allows people to come together voluntarily for a common cause; the 'civic space' it creates** for people to express diverse views; and the way **it can generate transformative relationships of trust which helps people find lasting solutions to their own problems** (Baring Foundation 2015, p9 emphasis added)*

So, looking more closely, what is it that makes the not-for profit sector different?

It is motivationally distinct

International literature suggests that not-for-profit organisations bring important motivational and organisational distinctiveness that is important for the health of a society and which needs to be protected. Speaking about how the 'Third Sector' differs from the state and the private sector, Goddin advises us to:

'Note well, however, that what enables the Third Sector to play that role in supplementing the other two sectors is that that sector is motivationally and organisationally distinct from the other two. Recalling that fact ought make us wary of arrangements, whether of "partnership" or "competition", that straddle the various sectors. The worry must be that, in bringing diDerent sectors under the same yoke, the very thing that made

9 Of course it has to be recognised that the not-for-profit sector itself is not homogenous and covers a very broad range of entities so any of the elements of distinction here may apply to a greater or lesser extent within different not-for-profit organisations. Indeed, some not-for-profit organisations may exist for purposes that might not be seen as universally good or in pursuit of the common interest.

the Third Sector a useful adjunct to the other two sectors — its organisational and motivational distinctiveness — risks being lost.' **(Goddin, 2003)**

Asserting the distinctive role of not-for-profit organisations, one CEO highlighted the motivational uniqueness:

"Non-profits are the advocates, they're the soul, they're the conscience of the country. Because I don't think in all fairness bureaucratic statutory systems are geared that way. Decision making in public bodies is cumbersome, it's convoluted, it has so many layers to it. The person needs help now, right now, where and when they need it. They're [the bureaucracy] not equipped to deal with that. They are slower and they're more expensive." **(Interviewee 1, 2018)**

For many not-for-profit organisations their mission is socially oriented and ethically based as opposed to being motivated by a focus on profit maximisation (Costa, Ramus and Andreaus 2011). These differing motivations have been captured in the following scenario offered by one senior health sector official:

"A private company comes in, sets up a house, we buy three places off them, it's going very well, it's working very well, we haven't had too many experiences of closures or collapses. But a private company can, by its very nature, shut the door tomorrow. It can fold up and walk off the pitch. Okay if it's running a registered centre it's obliged to give HIQA a certain number of months' notice but at the end of the day it can go into liquidation, it can stop trading. So the State would have to step in. A bit like a private nursing home I suppose. And I'm not saying private companies will be motivated by that. They certainly wouldn't. But it can happen. Section 39 is kind of different...They have a durability by virtue of a different core existence. The core existence of a private company is commercial enterprise. That's not to say that they're bad people or that they don't care about people with disabilities or whatever like a private hospital. They're very good at it. But at their core is a commercial enterprise that earns money for its shareholders. That's what they do. A section 39 agency doesn't have at its core to earn money. It has at its core to provide what it wanted to provide in the best way it possibly can and to secure the best level of funding and resource to do that." **(Interviewee 5, 2018).**

It is a concern that this distinctiveness of mission may be eroded by limited conceptions of value added, driven by ideologically narrow visions of effectiveness and efficiency that relegate concerns about equity and equality to a place of lesser importance.

"I understand that the HSE have to be accountable to the government for the money they spend and that's without question, we have to be accountable to the HSE for the money we spend, but it seems to be very much based on money, money, money now and the people are being forgotten." **(Interviewee 10, 2018)**

They can deal with difference

A further distinctive feature of many not-for-profit organisations is their greater capacity to meet different needs and to deal with nuance. Clearly, not-for-profit organisations have their own systems and bureaucracies but these are considerably more flexible than those of the State and probably more willing to adjust than those of the private sector. It is well recognised that the public sector often struggles to meet the needs and plan for services that are beyond the standard, the normal, or that meet the needs of the majority population. In a report completed for the Institute for Public Policy Research in the UK, the author contends that:

*'**States work best** when a problem has a **technical, mechanical solution which can be employed everywhere within a shared geographic space**. They are **at their worst** when they need **to respond flexibly to local particularities, when they need to act nimbly or with nuance**, and – most importantly of all – when they delve into problems of the nation's spirit or of the human heart. **Anything which requires difference, contingency and essential unpredictability is not going to be a skill of the state.'** (Stears 2012:39 Emphasis added)*

Over the years the role of the not-for-profit sector has been to complement public sector standardised policy making with the nuance and nimbleness that it is uniquely positioned to supply, in part based on the fact that policy makers who are removed from the frontline of service provision may simply not realise, or conceive of, how policies can have different impacts on different groups. Essentially, not-for-profits have been dealing with the State's failure to provide mainstream services to meet the needs of people with disabilities. By contrast, the ethos and motivation of many not-for-profit organisations is consciously towards meeting such needs. Such a perspective is captured in the words of one CEO of a large disability organisation who commented:

"Service delivery is a big part of what we do, but it's not who we are." **(Interviewee 6, 2018)**

They have stronger relational capacity

The nature of how the state relates to its citizens and how citizens relate to each other is both complex and subject to constant change. It is worth quoting at length again from Stears (2012:40) on this theme:

"The sort of relationships that many of us are striving for, whether in our workplaces, neighbourhoods or across the country as a whole, are what we might call 'democratic relationships'. They are the ***emotionally resonant connections between people of otherwise diverse experiences, background and interests****... these relationships are* ***unpredictable and contingent, dependent on the actual interactions between the people at their heart****. They depend on* ***people committing themselves in some sense to another****, dedicating themselves to doing things for each other not because of personal advantage or as the result of any deal but because of the sense of* ***mutual connection that enables a richer sense of the meaning and purpose of one's own life****." (Emphasis added)*

As well as its limited capacity to deal with the non-standard, Stears further suggests that states increasingly struggles to operationalise these type of more complex relationships:

'We live in ***increasingly 'commodified' societies****, where people are often treated more as objects than as human beings and respond by treating each other accordingly. The task facing us in so many areas of life is, therefore, to* ***turn away from that objectifying tendency and to try to learn to interact in a more fully relational way*** *instead.'* **(Stears: 40)**

These points are hugely important for this research, especially when considering the distinctive role of not-for-profit organisations. This is not to suggest that not-for-profit organisations get every relationship right, but affirms that a core part of their ethos is relational.

A CEO emphasised the importance of engaging with the broader community:

"So there is that bit as well like there is a whole community out there and if you don't go and engage with it, if you don't go and ask, if you don't go and have the conversation, if you don't go and offer something then nothing is going to happen." **(Interviewee 11, 2018)**

Given their origins it is not surprising that many not-for profit organisations maintain strong connections with the communities they serve. Some are membership organisations, others are formed by the parents and friends of people with disabilities and as a consequence bring a direct experience and stakeholding from the community they serve. This is a strength that public sector organisations or for-profit concerns will never be able to replicate and one that is rarely measured, captured or indeed mentioned in more narrow value-for-money or cost-benefit analyses.

They are innovative

In the public sector it is well recognised that the capacity for innovation is constrained by the rules and regulations that derive either from bureaucratic controls or from the directions of political leadership **(Bryer, 2007)**. Similarly, in the private sector, innovation and flexibility is inevitably bounded and motivated by the drive to optimise profitability. While no organisation is constraint free, it can be argued that voluntary/not-for-profit organisations, freed from an excess of political control and from the need to create profit are in the best position to innovate, to be flexible and to provide the type of nimble and nuanced responses to the often complex needs of marginalised groups, including those living with a disability. Voluntary organisations, in the words of the CEO of one large disability organisation, have the capacity to be:

"...adventurous, the ability to innovate, to be able to champion issues for people without the burden of democratic control, to get out of group think... We have always innovated, tried new things, taken risks. A state by its very nature finds it very difficult to do that. So you need that level of development, creativity to be able to move things on. But you also need some understanding about what the nature of the relationship is. And what you have at the moment is a State that is saying, 'No, we want to control everything that you do' but while they do that they really curtail your ability to innovate because they give you no leeway in which to operate." **(Interviewee 9, 2018)**

They stick around!

Alongside a distinctiveness of ethos and motivation, most not-for-profit organisations display important characteristics of longevity and durability. As the history of service provision in the disability sector attests, many organisations have been in existence in one form of another for decades, with many of the organisations interviewed in this research tracing their origins back to the 1960s and 1970s, emphasising their durable capacity for engagement. Underpinning this durability and longevity is a core objective to advocate for, and provide supports and services to, people with disabilities. Even during the recent recession, many voluntary organisations continued to maintain their level of service provision and indeed, expand it, despite significant cuts in State funding (McInerney and Finn, 2015). Thus, while it may be attractive to some to consider a stronger role in service provision for the private sector during times of economic expansion, should the economic cycle of 'boom and bust' continue, such a course of action may be vulnerable to future shocks. As a result, actions by the State that undermine the longevity and durability of not-for-profit organisations may prove to be misguided in the longer term.

However, there is a danger of complacency and just because something is good does not mean that it does not have to evolve and change. Just how much change there should – or can – be is inevitably a question for debate:

"They're not needed a lot of them aren't required, we don't need ... these large institutionalised providers they're not needed. So, everything we're doing is on the premise that these are needed because it's a major employment sector. It employs thousands of people in very traditional ways of working, very automated, you know rotas, nursing staff very automated traditional ways of working. It's very hard to shift that model there's no political will to shift the model so you can fairly ask what's the alternative?" **(Interviewee 12, 2018)**

While this might be considered as a radical shift in role, others within the not-for-profit sector have also questioned whether the way their organisations exist and carry out their functions should be adjusted:

"I think as well society is changing in that the expectations of families of services like ours is different. The families are very clear that their son or daughter has a right to a service, should be getting that service and that's it not a charity and I think that's driving things. I think we have lost something of the community ethos that we had so we found ourselves about 10/12 years ago having conversations about how to nurture natural supports and, you kind of thought, well when we started we were about natural supports, we were about supporting families, we were about working with the community and now we're having to recruit volunteers..." **(Interviewee 11, 2018)**

They are inherently person centred

The 'naturally person-centred approach' of many not-for-profit organisations has also been proposed as one of their most distinctive features. The Disability Federation of Ireland emphasises this alongside their ability to harness volunteer inputs:

"This relates principally to their naturally person-centred approach, specialist knowledge and skills, and innovative ways of working. Many disability organisations have been actively engaged in devising new systems which can capture a range of outcomes and indicate the quality of service they provide. 'Societal value' also refers to the extent to which disability organisations co-fund disability services, through their own fundraising activities, which brings additional sources of funding to support the work that would not otherwise be available to the State. Volunteer inputs, concentration of expertise about specific conditions, building of trustful relationships with individuals that support their self-determination and working to make mainstream services accessible for all are other examples of 'societal value' disability organisations bring." **(Disability Federation of Ireland, 2016).**

The human- as opposed to a system-focused approach is illustrated strongly in the following account about the provision of community-orientated natural supports to people with disabilities and their families. However, there is little belief that the State is likely to be willing to fund such alternatives, as this extended quote captures:

"....we had brought these posts what we called in-home advisors basically just small team of five people and they would always directly engage with the parents of young children who had come into, who had been born with disabilities and they would go in and they would work alongside families to help implement say programs that maybe physiotherapists, OT's or whoever, speech language therapist might put forward but they were very much founded on building a relationship with parents, working alongside them. And I go to meetings now and I hear conversations about therapists and more of those and there is a need for more of that, nobody says 'and we want more in-home advisors'. If you go and talk to the families and you say to the families tell me the role

that has made the most difference in 100% of cases they tell me the in-home advisor. And ok that's a paid role it's not a voluntary role it's a paid role in our organisation but it kind of fits with this idea that these softer things, the things that have real meaning for people aren't always valued by the people who are making decisions... If I went to the HSE tomorrow and said will you give me €35,000 or whatever it is to fund one of those posts or will you give me €35,000 for the Speech and Language Therapist I will always get the Speech and Language Therapist. Well, I won't always get it but I'm more likely to get the Speech and Language Therapist than I am the other because it's not seen as, the same value isn't on it." **(Interviewee 11, 2018)**

Threats to distinctiveness

There are however, recognisable threats to this distinctiveness and whether the distinct motivational and operational characteristics can be maintained is open to question. For one contributor to this research, the question is whether the context of increased regulation runs the risk of obscuring distinctiveness of mission and capacity to deliver:

"Particularly in the heightened regulatory environment we're all in now, particularly with HIQA, there's only a certain amount of flexibility now. The regs are very specific, you can't do what you want. So that's becoming less clear to me now in terms of what the actual... what's the added value really? You're delivering a service and you're delivering a service in accordance with a standard that's monitored and regulated." **(Interviewee 3, 2018)**

For others, the fear is distinctiveness may be diminished by the competitive nature of contracting and competition. In such cases the distinct identity may need to be selectively disguised or diminished as circumstances demand, with not-for-profit organisations having to adjust to ever-changing circumstances. Drawing from the world of housing provision in Northern Ireland it has been observed that not-for-profit housing associations are *'chameleon-like in their ability to present themselves as the private sector for funding purposes, the voluntary sector when community partnerships are required and the public sector when accountability is at stake'* (Mullins and Murie 2006:187). Of course, just how far such fluidity goes before not-for-profits lose their distinctiveness of mission and ethos and lose connection to other forms of accountability is a key issue for consideration.

The impacts of NPM-type approaches are also seen as having other consequences, not least reducing the potential for smaller-scale providers to be involved in service delivery, partly as a result of increasing level of bureaucratisation.

'An approach founded on notions of quasi-markets and competition between providers. It is a climate that favours larger providers that have the scale and skills for competition and, which often places non-profit organisations "under pressure to professionalise, bureaucratise and scale up" **(Rees, 2013, p. 11)***. This can squeeze out smaller providers (or restrict entry) and undermine the third sector ethos, as care is increasingly commodified.'* **(Power 2017: 81)**

Not-for-profits report finding themselves almost pushed into being more alike private sector operators:

"A lot of this speaks to two things, one is what's the distinctiveness of this type of provision compared to a private sector provision or a State provision but the other one is what's lost or is it getting to the point where there's one pressure nearly pushing you to be barely distinct from private sector providers?" **(Interviewee 11, 2018).**

Ireland, however, can learn lessons from elsewhere and design the engagement between the State and the not-for-profit sector so as to maintain the valuable distinctive features and avoid this...

'As more and more public services are opened to outsourcing, competition will increase. This will inevitably change the behaviour of both the voluntary sector and public sector commissioning bodies. Voluntary organisations that have previously relied on grants rather than contracts may find themselves obliged to enter the bidding for contracts. Some voluntary organisations are restructuring internally in order to create or improve the capacity to compete for contracts. In the process, some have run down other aspects of their work such as policy development, campaigning and advocacy.' **(Davies 2011: 645)**

Conclusions

This section demonstrates the importance of recognising and legitimising the unique and distinctive role and contribution of the not-for-profit sector. This is not to say that the sector doesn't also have its weaknesses. However, on balance, not-for-profits contribute hugely to the social, economic, cultural and democratic health of the country. There can sometimes be a temptation in official, political and popular commentary to jump on the relatively small weaknesses while forgetting the huge strengths of the sector. And perhaps, as has been observed in the UK, the not-for-profit sector itself needs to be more assertive in highlighting its distinctive contribution. If it doesn't:

"The voluntary sector risks declining over the next ten years into a mere instrument of a shrunken state, voiceless and toothless, unless it seizes the agenda and creates its own vision..... The voluntary sector must do more collectively to assert its independent mission and demonstrate how it adds distinctive value to the wider public and other stakeholders." **(Panel on the Independence of the Voluntary Sector 2015: 14-15).**

This proposition will be revisited in the final section of this report.

4.2 Perspectives on the nature of current relationships

Section 2, the existence of a more collaborative disposition in relationships between the Irish State and not-for-profit organisations was observed in the period up to 2004, followed by a drift towards increased bureaucratisation, regulation and centralised control. This was later contrasted with the shift in New Zealand away from more narrowly based marketisation towards a *'state-driven partnering ethos'*. In this section, the nature of current and past relationships is explored through the experiences of those directly involved, not-for-profits as well as key officials. What emerges is a clear image of a State and not-for-profit sector sharing an uneasy space, with evidence of distrustful and fractured relationships, albeit with a common analysis of many key problems potentially resolvable by replacing command-and-control impulses with collaboration and communication dispositions. There is clear recognition that these relationships have changed over time and need to be reconsidered and recast:

"And then I had an interesting conversation with somebody, a senior manager in the HSE recently who made a reasonable point of saying in our sector it's not the same as 50 years ago. The State is now providing huge amounts of funding, it's not that the State is now absent from the sector as it clearly was at a point in time, but now that it has more presence in it things are different, so we should have a dialogue about now what makes sense. I think that's absolutely correct as long as that's fair and equal and all perspectives are valued in it and I'm not sure that all perspectives are valued. And I see organisations who have been innovative, responsive, have done extraordinary things feeling uncertain, unsure of where they stand and unsure about their future and their confidence getting knocked and I think that's a pity" **(Interviewee 11, 2018).**

A number of relationship themes are explored:

- Perceptions of value and being valued;
- How relationships have changed over time;
- The drive for control;
- The role of the HSE;
- Autonomy and independence.

4.2.1 Perceptions of value and being valued

Much of the tenor of the views reported from participating not-for-profit organisation conveys at best a clear sense of not being valued and, at worse, fear that there is an intention to fundamentally change the nature of such organisations. The sense expressed by one CEO suggesting that there isn't "any appreciation of the role or the value of the non-profit" **(Interviewee 1, 2018)** is not untypical, though for another, this feeling is deeper and more searching:

"I'd say it's a bit fraught. I'd say that there is something of a breakdown in trust. I think the State has an agenda or is certainly exploring an agenda that is creating extraordinary uncertainty. So you look at Sláintecare Report and it talks about too many Section 39 organisations and the need for them to be rationalised. You see the growth of the regulatory and compliance agenda; you see a kind of almost intrusion in the autonomy of organisations to be independent... but I think that there is a huge intrusion on organisations and their autonomy and their independence; and I think it's the State is moving in a direction that we've very unclear about and we're not sure that we're being heard or listened to not too" **(Interviewee 11, 2018).**

Another reflected on perceived beliefs that not-for-profits are seen as unprofessional:

"I do think there is a belief that voluntary organisations are not professional, waste money. They question whether they deliver value for money you know!" **(Interviewee 9, 2018)**

These comments echo those of The Wheel presented at the Federation of Voluntary Organisations Conference in May 2018, where being seen as 'amateur and second rate' or as the 'property of the HSE' and being underfunded as 'executors of HSE Policy' were amongst the perceptions reported (Cooper 2018). However, the source of the 'undervalue' is not always seen only as the HSE:

"I have to say the establishment of DEPR created a different animal altogether. And they see themselves as the absolute guardians of the public purse and they will hold everything. And their intransigence, we'll it's not, it's their very particular views about how the sector operates, I would say a lot of it would be quite negative view points and you see that reflected then in some of the directives and behaviours" **(Interviewee 9, 2018).**

On the other side of the equation, State perceptions about the effectiveness and efficiency potential of not-for-profits have, for some officials at least, been influenced by a number of high-profile governance weaknesses, albeit in a small number of organisations. Speaking about the impact of these one senior health sector official suggested that 'charities' are no different from other institutions in the State who have found themselves under scrutiny:

"And I think the other lever for that change is the various controversies that have emerged in the voluntary sector. All the institutions in one shape or form have gone through the crisis of confidence in terms of one controversy or another and the charities side is no different to that and we can think of loads of them. So I think that has brought about a different kind of relationship particularly between the political side and us as a State agency" **(Interviewee 3, 2018).**

However, when asked whether he/she ever envisaged a time when the State might resume responsibility of direct service delivery the following was the response:

"I don't think so. Personally I don't see that happening. I mean I think very much when all is said and done it's a good sector they need to be supported, it needs to change. I think scale-wise there's a lot of inefficiency. There could be a lot done in terms of consolidation, reconfiguration but not to the point where there isn't a need for the sector. I think there's always going to be a need for the sector" **(Interviewee 3, 2018).**

4.2.2 Relationship shifts over time

The relationships between not-for-profits and the State have changed over time and it is clear from this research is that the direction of change since the early 2000s has been less than positive. To contextualise this discussion it is worth recalling the quite historical formula for 'service agreements' contained in the Enhancing the Partnership' report **(Department of Health 1997:35)** which set out the following core principles intended to underpin funding agreements:

- respect for the operational autonomy and ethos of the voluntary agency;
- recognition of the statutory role of the health board;
- allocation and associated service levels must be adhered to;
- the operation of the agreement for a number of years, with provision for annual allocations;
- the terms under which an agreement might be reviewed and revised;
- arrangements for monitoring, review and resolution of difficulties;
- flexibility to take account of the unexpected or local circumstances;
- they should be administratively simple to avoid high transaction costs;
- only agencies in receipt of an allocation above a level determined by the Minister will have a service agreement;
- tax obligations are complied with.

These mutually agreed principles provide a useful baseline against which existing relationships described below can be assessed.

In considering the nature of current relationships, participants in this research were asked if they could identify critical junctures where dominant relationships shifted. A number were identified:

- The creation of the HSE in 2004;
- The Comptroller and Auditor General report in 2005 which highlighted weaknesses in audit and accountability **(Comptroller and Auditor General 2005)**;
- The recession and its impact between 2008 to 2014 approximately;
- Governance weaknesses in a small number of not-for-profit organisations;

— Key personnel changes in the HSE;

— The creation and increased influence of DPER and its focus on narrowly defined value for money.

Whatever the key junctures identified there is little doubt that relationships have deteriorated:

"I see that the relationship between what was Health Boards now HSE and the Voluntary Sector has changed significantly. Partnership, real partnership is a thing of the past. It's very much control and command and compliance. Local people, local agencies with people they are very committed to, very passionate, really good people and at national level as well. But there is a huge dysfunctionality in the HSE and I suppose we are being bombarded with compliance, compliance, compliance" **(Interviewee 2, 2018).**

Another interviewee agrees and considers that changes in programme management and personnel within the HSE at different points may have been significant:

"I think a number of years ago there were I would say probably more solid working relationships that had been in place for many years and people knew each other very well and kind of could almost anticipate how somebody would react to something and how best to negotiate a particular situation. I think some of the changing, the junctures, at which change happened, would have been the various HSE transformation programmes, where not only did the people change but the roles changed and the communication structures changed" **(Interviewee 8, 2018).**

These relationship changes are not just experienced by not-for-profits but are also observed by officials, one of whom suggests a key motivator of the changed relationship was the increased focus on accountability:

"But yes I would agree the dynamic in the relationship changed from the mid 2000s not because the HSE came and the health board but because of that whole demand around accountability, service arrangements, service agreements" **(Interviewee 5, 2018).**

Whatever about the changing nature of the HSE, many have also suggested that the creation of DPER, its stronger focus on controlling public expenditure and its very tight and narrowly defined value-for-money parameters has had a huge influence on the HSE as well as on not-for-profit organisations. There is also some level of recognition that the approach of the HSE is to simply pass DPER requirements down the line to the organisations it funds:

"Everything at the moment is being run by DEPR. Even the Minister today was saying, 'I've to go back now and fight with DEPR' and that's the reality" **(Interviewee 2, 2018).**

Relationships therefore have been impacted upon by institutional factors and by value-for-money factors. However, they are also impacted upon by a changing perspective on how not-for-profits should integrate with the State's service delivery infrastructure. Historically, it has been shown that the State relied heavily on not-for-profits to deliver services but was satisfied to let them operate with considerable independence, only later making efforts to co-ordinate and collaborate more directly. Now however, there is some evidence of a more integrationist approach that would see a range of not-for-profits becoming more closely incorporated into the State system, but not to the point where their employment would be taken over by the State. This integration of the service-delivery role of not-for-profits more fully into the policy architecture of the State, planned or otherwise, comes with a price, as outlined by one health sector official:

"So if you're going to be part of an integrated network, now you take for example children's disability services, quite a lot of the funding that we have like the therapy services, respite etc. is actually delivered through the third sector. But for it to be integrated within the wider health stream it has to a) it has to conform, okay it can be innovative but it has to be networked, it has to be part of a system so it becomes seamless for the service user. So I think that that is a pinch point and has been a pinch point because organisations have tended to want to 'give us the money, leave us alone, we'll do our own thing'. That day is gone, that can't persist really. So I think that has changed the dynamic quite a bit and that's why and I suppose that's part and parcel also of how service arrangements are now being negotiated because they're being negotiated in terms of trying to meet local need but based on national policy frameworks" **(Interviewee 3, 2018).**

There is however concern that this may result in a loss of capacity to innovate and be creative:

"And that will be felt as time goes by, that will be felt because there will be less and less opportunity to develop new thinking, develop new services in response to changing needs, to take risks because everything will be so controlled." **(Interviewee 9, 2018).**

It also leads to a sense that not-for-profits are seen by some in the HSE and possibly the Department of Health as little more than extensions of the State's administrative infrastructure, though without the privileges of pension and comparable pay levels:

"It wasn't always like this. In fact, the voluntary sector were the major providers and the major inputters into national policy. Now there's a feeling that, and this is as experienced on the ground, that now you're a kind of sub-cost centre of the HSE and the financial systems and HR systems are set up along that line." **(Interviewee 14, 2018).**

Integration then clearly implies some loss of autonomy and innovation capacity but also potentially a closer alignment of State and not-for-profit activities and possibly closer management of the latter by the former. This echoes experiences from New Zealand where the shift to a 'neo communitarian approach' resulted in a 'narrowing of government funding priorities to only fund those services that meet government priorities' (Aimers J. and Walker 2008:4). And while this may represent a logical approach from a political/administrative perspective, it is only logical if: A, the political/administrative system has a good grasp of what is needed to meet the needs of people with disabilities, b. it does not have this knowledge that it has engaged in detailed dialogue with people with disabilities and not-for-profit organisations or c. it has entered into dialogue with people with disabilities and not-for-profit organisations about what is needed to operationalise high-level policies. However, there is a sense that the potential for such deliberative approaches to policy design and delivery are a distant ambition and remain subservient to more legalistic, rule and regulation-bounded approaches:

"Going back to what I was saying earlier you can't be all things to all people. A partnership invokes that there is parity. There is a difference. We are legislatively obliged to provide services, we can collaborate in terms of how we provide those services but if we're given the task of ensuring integration, ensuring conforming to policy that's agreed through the legislature that implies that somebody has to direct. So it can't be... and that's different to working as co designers with parents of a service user and developing the policy and services. In the delivery of services it's a different relationship." **(Interviewee 3, 2018).**

This discussion speaks directly to the issue at the heart of the existence of Section 39-funded organisations and the legislative distinction that sees them deliver services, supposedly, not on behalf of the State but services that are 'ancillary' to those the State delivers. This distinction has been discussed earlier where it was noted that another category of sometimes quite similar organisations, Section 38-funded bodies, deliver services 'on behalf of' the State. It would seem that a key point here is that if the State sees a need to integrate the types of services provided by Section 39-funded organisations more closely with those it delivers itself, it can no longer see them as 'ancillary' and, as a result, cannot any longer sustain the Section 38/Section 39 distinction. However, it is suggested by one senior official that there is little appetite to open up discussions on legislative change, not least because of the volume of other issues pressing on the time of health sector officials:

"There's a huge change agenda coming through, a lot of it driven by human rights thinking. A lot of it driven by the legal change which is coming from the courts. Obviously, HIQA inspection has had a huge impact on that sector. As a personal view I would say in a good way but it looks like it may have been a blunt instrument. Who is going to sit down and say we have time to start talking about the difference between Section 38s and Section 39s. In a system that's resource-constrained, where services are under pressure, where you are trying to get the decongregation done, who's going to have the time to unpick that and what risks would you be bringing into your world? I'm not saying it's impossible, it could potentially be done but I have heard nobody tell me that's top of the agenda any time soon." **(Interviewee 13, 2018).**

4.2.3 A drive to control?

At the heart of the analysis of virtually all of the not-for-profit participants involved in this research is a belief that higher levels of State control have superseded collaboration, domination has displaced dialogue and integration has become more important than preserving independence and autonomy:

"But this is also rooted back in the State having devolved its responsibility for the delivery of so much to religious or other bodies and it hasn't worked out. It nearly wants... there's part of it that wants these to become State-provided services. It wants that control now but it doesn't know how to change what it has created." **(Interviewee 9, 2018).**

There is a strong sense from virtually all not-for-profit interviewees that the current approach to relationships between not-for-profits and the State, represented by the HSE or DPER, is best captured in phrases such as

'command and control' or 'master and servant', conveying a huge sense of frustration about how a collaborative ethos built up over many years has been eroded:

"It has gone from being maybe 10-15 years ago very much a partnership relationship between 39s and the HSE obviously who are our primary funder to becoming... the term that I've heard used quite a lot is more of a 'master/servant' type relationship." **(Interviewee 6, 2018).**

Another interviewee refers to an emerging culture within the HSE of "aggressive managerialism":

"There is definitely also a cultural thing, like a far more strident, I'd go as far to say an aggressive managerialism has taken hold within the HSE, in Social Care in particular." **(Interviewee 14, 2018).**

The frustration with being on the receiving end of such an approach is acknowledged by at least some officials in the health sector:

"If I was on the receiving end of that I'd probably call that command and control. But what I would say to be fair to the State is the HSE's on the receiving end of that be it from the department, the Department of Public Expenditure, ministerial decision or whatever." **(Interviewee 5, 2018).**

This same official traces the reasoning for the emergence of this type of approach and emphasises that it is not only not-for-profit organisations that are at the receiving end of it but State bodies also:

"Look, there is absolutely no doubt that the nature, content and purpose of the service level agreement, now service arrangement and grant aid agreement, there is no doubt that was not done by agencies like the HSE as a positive choice thing. That's not saying we would disagree with it, I would agree with a lot of what's in it. But we didn't wake up one morning and say 'let's do this because it's good for governance'. We did it because we were being criticised for giving out public money, measured against which we had no accountability. And I think what agencies are now experiencing and we experienced it ourselves, it's the level of accountability and counting that perhaps has that command and control factor to it. I would say that's a feature of how the State treats the State." **(Interviewee 5, 2018).**

And in turn, amongst not-for-profits there is recognition that some in the HSE may be equally frustrated with the delivery of top-down control and command messages:

"So what I genuinely believe and what I always say is that there are some individuals in the HSE that you can have really, really good working relationships with but then there are others who I think just want this, and people often use the term command and control, I'm sure you've heard that as you've gone through your interviews?" **(Interviewee 8, 2018).**

However, despite this recognition of the potential for some positive relationships, the consequences of increasing State control are felt in the loss of autonomy and agency:

"We've certainly lost autonomy hugely. The long arm of the HSE is definitely reaching far and wide right through to my desk and the desks of all the senior managers in the service." **(Interviewee 7, 2018).**

Experience elsewhere doubts the wisdom of such diminution of the autonomy of not-for-profit organisations, questioning whether networks of agencies and organisations, such as those involved in the Irish social care sector, can be managed *'with hierarchically imposed objectives'* as opposed to working in learning oriented partnerships (Muir and Mullins 2015:970).

4.2.4 Perspectives on the HSE

Inevitably, in any discussion on relationships, the role of the HSE is going to be subjected to considerable scrutiny. A strong emphasis emerges on institutional issues; communications; capacity, as well as a clear divergence of perspectives on relationships with HSE officials at national, as opposed to local, level.

Institutional arrangements

Many of the research participants have pointed to the importance of how the HSE was established, its relationship with other arms of the State and how it has evolved institutionally over time. However, it is the disconnect that often exists within the HSE and between the HSE and the Department of Health that draws considerable comment. For example, one not-for-profit CEO suggested that the current split between the policy and operational functions is problematic:

"You know of course the other big issue in all of this is what you've had is a complete divergence of policy and strategic oversight in terms of the split between the department and the HSE." **(Interviewee 9, 2018).**

The internal HSE disconnects had previously been identified by the Department of Health which commented that:

'...while the National Disability Unit of the HSE has lead responsibility for the planning, monitoring and evaluation of the Disability Services Programme nationally, it has no authority over resource allocation or operational service delivery, which lies with the Regional Directors of Operations and the Integrated Service Area Managers.' **(Department of Health, 2012).**

This suggested mismatch in the planning/operational axis is reinforced by another participant who commented about the HSE:

"... they're in crisis mode most of the time, they're just managing crisis particularly the operations. What's interesting about it though from my observations is the strategy and planning side have no money and the operations side have all the money so who's going to be the power base in that. The HSE is not a progressive insightful organisation that's going to drive change, that's going to come from elsewhere." **(Interviewee 12, 2018)**

The corresponding lack of local decision making and inconsistent application of nationally driven compliance requirements across different regions is also noted:

"There's no leadership. What I have seen is in the past, the local disability manager had a lot more authority and had a lot more decision-making power around the budget. They have none now. Everything is going up to central HSE and the problem with that is that the people in the central are so far from the decision that they don't know what decision to make so nothing happens." **(Interviewee 1, 2018).**

Others echo frequently heard comments about the size of the HSE, suggesting that it too big and too cumbersome to function effectively and that this negatively impacts on internal communication:

"Anecdotally, I would say that even within the same divisions sometimes they don't seem to communicate effectively with each other. There doesn't seem to be a very obvious link in communication between the CHOs and the people at national level in what was the Social Care division but I think is now rebranded as Community. So we can have a conversation with somebody at national level that agrees something and then we get this notification from a CHO about something and you're like, 'But we agreed this nationally'. It just seems to be very fragmented and probably a bit dysfunctional and all over the place. I don't know if anybody knows the answer to the HSE." **(Interviewee 6, 2018).**

There is however recognition of potential for innovation within the HSE though it is suggested that it is more likely to be as a result of individual leadership factors as opposed to a broader organisational culture:

"...but that doesn't mean that if you look at the organisations in the parts of the country where services are innovative, it's been down to the innovative CHOs or HSE managers. The CHOs that want to be innovative, Chief Health Officers that want to be innovative or the CEOs of organisations that want to be innovative, can be innovative and can drive change ..... It's a choice that people are making as leaders and managers to either be innovative or to stick with the traditional." **(Interviewee 12, 2018).**

Capacity

The potential to innovate is inherently related to the type of capacity that exists, is built within an organisation or is recruited in from outside. Historically, capacity development within public sector organisations has been largely instrumental in nature, designed to equip staff to complete mainly technical, job-related functions. And while recent policies of recruiting directly into the public sector has begun to shift the capacity mix somewhat, this research suggests that large organisations like the HSE continue to rely heavily on human resources that have been in place over many years, possibly without the appropriate mix of skills and experiences.

"Most of them are generalists and that's not necessarily always a bad thing but I think you have to have the balance right. If it's all kind of the career civil servant-type thing then I think you're missing out. On the other hand if you're all disability I think you're also missing out." **(Interviewee 11, 2018)**

For others, consistency of access to the same staff over a sustained period is seen as important but subject to constant change:

"Now I suppose what's happened really over the last six months or so is there has been a restructuring within the HSE and the people that we deal with nationally in the HSE, and certainly we would feel at the moment that our relationship with those people at the national level in the HSE is on a much stronger footing. There's certainly a recognition from them of the value of our organisation and what we contribute. But that could change next week if somebody else comes in." **(Interviewee 6, 2018)**

The frequency of internal structural changes continues to frustrate also:

"They're talking about changing their structures for 15 years they no sooner have it communicated then they've come up with another iteration of it." **(Interviewee 11, 2018).**

However, many of the research participants do recognise the impact of these and other changes on HSE staff also, leading some to leave and resulting in other less suitable, albeit well-meaning staff, being put into positions where they do not have the capacity to operate:

"There are a lot of really good people in HSE and they've been worn down themselves by their own HSE changes. A lot of them have left. There are a lot of people who are career people, moving up through the HSE into positions that they're not qualified to be in. Lovely people. So we deal with people who don't know how to read audited accounts for example, who look at what it's like from their point of view, who put expectations on us that are unreasonable and often with this lack of expertise, it's a bit like talking to an electrician about a plumbing problem." **(Interviewee 1, 2018)**

Communication and understanding

A sense often communicated in this research and elsewhere (McInerney and Finn 2015) is a poor experience of being listened to by HSE officials:

"They're not listening. I tell you what I have perceived is that locally HSE are great in many areas but what I have found is because we are a national organisation, different HSE areas operate differently. So in most of them they get what we're doing. They're very supportive, they see the value in it. There are one or two that I believe they don't understand the service and they think these clients should be just minded. As long as they have a bed and they're fed they're fine. For HSE Central that seems to be their bottom line, I find a huge disconnect between HSE Central and HSE Local in their approaches." **(Interviewee 1, 2018)**

For CEOs of large not-for-profit organisations, access to senior level HSE staff on a regular basis is considered important:

"Well what I would look for from my point of view is a single person of contact, senior enough to be able to make decisions. Senior enough to be able to influence, or respond to you … it's also access to the strategic planning process for services which include yours. To have real consultation." **(Interviewee 1, 2018).**

However, this has clearly been absent for a number of years:

"That is where things have changed with the HSE. There is sometimes no consultation with agencies whatsoever before a significant change happens. In the previous days with health boards you would have had good consultation, good engagement. You would have had an opportunity to tease things out and work things through in an agreed way." **(Interviewee 4, 2018).**

One possible reason for the poor communication according to one contributor is the lack of planning for the evolving role of Section 39-funded organisations:

"Because again they never thought about Section 39s being more than a grant-assisted community or voluntary body. So the HSE have no system in place to engage on a national level. So what you have is relationships with nine different CHOs locally. But that's devolved to a local disability manager who really is only concerned with the disability services in their couple of counties. Right? They have no interest in what is the scaleability and the size of an organisation and you know how do you actually make this work and how do you look at the bigger issues here. So it's quite extraordinary!" **(Interviewee 9, 2018).**

Contrasting local and national relations

While the experiences of engagement with the HSE are often presented as being less than positive, a clear distinction has to be made between perceptions of relating to the HSE at central as opposed to the local level. Virtually all not-for-profit representatives interviewed commented that vastly superior operational relationships exist at local level, whereas national level relationships, where they do exist at all, are often poor:

"Well first of all with local HSE there is an excellent working relationship up to CHO level. I feel they understand our issues, they don't always agree but they understand where we are coming from and they like our approach in the community. Beyond that there is… a difficult relationship then with the hierarchy in the HSE… They don't engage with us… they just send on the orders! At local level, there's very little power. And they don't hold the funding locally." **(Interviewee 7, 2018).**

Another interviewee commented in a similar way, suggesting that they felt local HSE staff shared their frustrations:

"When it comes to locally I would consider we have a fairly good relationship with our local HSE but to be honest with you what I see is that their hands are tied. They don't have the where-for-all to give, they have to go back. You know you'll put in a business case to our local area it has to go maybe one, two layers up before it comes back down to get agreement. And actually it's a pity in some respects because I think the local people are at a loss themselves in that respect. You need to be dealing with the couple of levels up now.... I think the HSE need to look themselves at that because why would you have a local structure if you don't give them some responsibility and authority. It just appears to me that they don't have that autonomy at present." **(Interviewee 10, 2018).**

Apart from being a source of frustration it is also suggested that the absence of stronger local level planning and decision-making capacity impedes the capacity for more effective local level planning, capacity lost with the abolition of the former regional health boards:

"I think we deal with a very disempowered HSE even the local people like we used to sit with the HSE here in [the county] and plan for people in [the county] and they'd have their budget, we'd have our budget and we'd be sitting with the other providers in the county and we'd be trying to work together." **(Interviewee 11, 2018).**

4.2.5 Autonomy and independence

Reflecting international experience, the sense of a loss of autonomy, occurring as a result of the changing nature of how the State operates, is palpable in all the interviews conducted in this research:

"I think the autonomy of the voluntary agencies is disappearing and I suppose it's one of the points I was trying to make to the HSE myself this year. Because we're funded in the main by them we have very little scope to go outside what they would expect for that funding. At the moment we can't spend anything without agreement from the HSE." **(Interviewee 10, 2018).**

What the loss of autonomy means in practice will of course look and feel different to different organisations. For one CEO there is a concern that the reduced ability to deliver services as the organisation would wish may impact on the organisation's reputation:

"I would fear for our reputation yes. I can understand the HSE are funding us, but we are the provider. And it's the provider is the person that the family member meets, the public meet. So they don't sometimes link it very strongly with funding from the HSE... the family member or the public does not see the HSE as running the service, they see the [organisation name] is running the service. It's the [organisation's] name, not the HSE's. It's our reputation, not the HSE's. And I think that's a concern." **(Interviewee 10, 2018).**

It is of course inevitable that there will be a loss of autonomy once not-for-profit organisations enter into funding relationships with the State, especially when those relationships are demarcated within the confines of an arrangement to deliver services, as suggested by one senior health sector official:

"So if you take that concept of a community health organisation there's always going to be a point of tension between an autonomous independent organisation and the wider needs of the health system that needs an organisation to deliver in a particular way, in other words a part of an integrated system." **(Interviewee 3, 2018)**

However, for others this is experienced as more than 'tension', especially when the State begins to push and, in some cases, coerce autonomous organisations towards involuntary merger. Describing the experience of involuntary participation in a poorly facilitated process one not-for-profit representative noted:

"They basically threatened us, I have this in writing, a threat. 'If you don't attend these sessions, you're not going to get any of your core funding money.'" **(Interviewee 1, 2018)**

Another wonders if achieving greater numbers of mergers is actually the unstated policy of the HSE:

"Mergers and acquisitions or whatever they want to call it. Reducing the numbers of the smaller organisations is really what the HSE's policy is about.... They're allowed to fall into financial trouble so that they have to hand over the keys or something you know? We're assured that that's not going to happen to us, we're a big enough organisation but we're still left at the same time on the breadline, all the time watching it, watching it, watching it." **(Interviewee 7, 2018).**

This is not to say that, in some cases, not-for-profits may recognise potential merit in considering the option of merger with another like-minded, sustainable organisations. However, the recurring theme running throughout this report is that such processes need to be based on dialogue, respect and collaboration, not on command, control and coercion. Such an approach was effectively recognised by one senior health sector official who speculated as to the value of an organisation modelled on Pobal whose role it is to support organisations interested in merger, alongside other functions to support organisations around issues of compliance and accountability:

"Suppose you had a Pobal-like organisation that could provide shared services, training, compliance support and where there are organisations who want to merge, they would be able to facilitate the discussions and the Minister is not involved. Would that be any use to anybody?" **(Interviewee 13, 2018).**

Ironically, the sense of declining autonomy may lead to more not-for-profit organisations being established, as some consider restructuring their organisations so as to effectively corral their Section 39 funding within a dedicated entity, leaving their core structure to be fully independent and autonomous:

"But you know we're very clear in that we're setting ourselves up as a thriving independent organisation. We would prefer if a lower percentage of our income was coming from the State. We would prefer to be in a position to generate more of it ourselves and re-establish and I suppose solidify that independence. I suppose to a certain extent one of the things that we're considering at the moment, and I know some other organisations have already done this, is we're actually reviewing our corporate structure. At the moment we're a single legal entity and there's a certain element of risk to independence around that. Particularly with our reliance on the State for service funding. So you know we will potentially look at breaking that up into a couple of different entities. So we might have a service provision Section 39 that's doing what the State wants it to do. But that we would retain our independence by having one or two potentially other entities that might be social enterprise, partially commercial, whatever else they might be and also have the advocacy piece in that space as well." **(Interviewee 6, 2018).**

An impact on advocacy?

While it might be assumed that a reduction in autonomy might impact on organisations' ability to engage in policy and other forms of advocacy this does not appear to be the case. In considering their capacity to engage in policy advocacy a number of research participants emphasised the different roles their organisation play, both in undertaking direct advocacy themselves but also in support their members, service user of families to undertake advocacy:

"So it's not us saying 'This person needs' it's about enabling the people who need the services to speak out. And their families. I think our emphasis has changed to helping them and supporting them to ask because heretofore they were too tired and beaten down with the effort." **(Interviewee 1, 2018)**

"I suppose there's also the major advocacy and lobbying role in terms of public policy, in terms of issues pertaining to people with disabilities in particular. Much of that is generated through the actual people who use our services and their issues by putting in place a very robust advocacy structure within the organisation, which gives people the opportunity to be able to actually raise the issues pertinent to them. Our role is to support them to be able to actually bring those views to a wider audience." **(Interviewee 9, 2018).**

Crucially, the need for the organisation to support the service users to advocate around their own agendas and not just the organisation's was stressed:

"You have a role in supporting them to be able to express that viewpoint but it might not necessarily be the board of this organisation's viewpoint. So you have to be careful how you steward that so that you're not silencing those other voices just because they don't fit with necessarily what the organisation viewpoint is. And that's a really important thing to do. Particularly where you're working with people who are vulnerable or have less ability perhaps to express, you know to operate within those arenas to get that message across." **(Interviewee 9, 2018).**

However, the place of not-for-profit advocacy is not necessarily viewed by all in the same way. And the appropriateness of service-providing organisations engaging in advocacy was questioned by one official:

"I think it blurs the line when a provider of services is trying to be a provider of services and an advocate as well. So when I say advocacy I suppose I have a particular kind of view on that advocacy. I suppose it's not brokerage, I'm not talking about brokerage; I'm not talking about trying to advocate for services." **(Interviewee 3, 2018).**

As might be expected, not-for-profit organisations did not share this view and feel that withdrawal from the policy advocacy space would be a negative development:

"But if we ceased to advocate at the level that we do and lobby and influence and create awareness the way we do, we feel there would be a far greater negative impact on the lives of people with disabilities." **(Interviewee 6, 2018).**

Indeed, it is also suggested that in some cases, staff in the HSE actually welcome not-for-profit taking on advocacy roles

"To date it hasn't really been an issue for us and what's been quite interesting is we have lobbied very aggressively around the pay restoration piece with politicians and again with quite a reasonable amount of support with that. The HSE have been aware that we've been doing that. We've been very open and in fact I would go so far as to say that we were actually encouraged by some people in the HSE to do that. Although I'm sure they would never admit to that publically because they felt they were... I suppose the HSE to a certain degree, their own reputation has been discredited in government so they certainly didn't have a difficulty with us doing what we did. A lot of the stuff that we would have done we would have been less than charitable in our comments about the HSE. But that doesn't seem to have caused a problem. I think they understand that we need to do what we need to do and there's certainly never been any threat of well, if you don't shut up the funding is going to go. Because our response to that would always be well if you pull the funding you've got to find somebody else to provide the services. And they can't do that. So it's a little bit of a dance that we all do I suppose around one another. But so far it hasn't been an issue." **(Interviewee 6, 2018).**

However, not all are so confident that policy advocacy by not-for-profits is welcomed:

"You know this country's very small and people have ridiculously long memories when they choose to have them so if you go out and campaign on something and somebody really doesn't like it or you have a go at somebody about something, you know that's long remembered." **(Interviewee 9, 2018).**

Another commented in a similar vein:

"I think we're free to say what we want but how we say it will be where the constraint is. And to who we say it in that we have had situations where we've have had a really, where we have advocated really strongly on behalf of the organisation, people we support. We've also had some instances where we've been reminded who funds us and not to be you know, just to keep us in check a little bit. Done nicely but we were told nonetheless. So I think you have to be fairly resilient and strong in the face of that and I do think it can be pressurised a little bit." **(Interviewee 11, 2018).**

Conclusion

This section of the report has looked at the nature of the relationships between not-for-profits and the State. It captures the belief amongst some not-for-profits that their value or the State's perception of it has declined in recent years. As a consequence, relationships with the State have changed, often in a negative way, especially since the creation of the HSE and a parallel drive for stronger accountability and 'value for money', a drive to control a potentially wasteful sector. And while the HSE's role in the shift towards a command-and-control approach is clearly named, there is a recognition that much of this is also driven by the Department of Public Expenditure and Reform. On the whole, relationships with the HSE are mixed, seen as stronger at local level but weakened at national level by less-effective communication and institutional arrangements. The impact of all of this is a clearly perceived loss of autonomy and independence, though this seems to have a limited impact on the willingness to engage in or facilitate a variety of advocacy/lobbying functions.

In the next section, related issues of accountability and compliance will be examined.

4.3 Accountability, regulation and compliance

As described in Section 3, the shift from an era of more-direct State delivery of services globally has seen increased reliance on delivery of public services by non-State actors, either private or third sector/not-for-profit. In such a circumstance the State becomes a deliverer of services but, more significantly, a contractor of and regulator of service provision, increasing emphasis on accountability and compliance with a range of regulatory provisions. Before looking at what this research has concluded about accountability, regulation and compliance it is important to clarify some of the common understandings of what these terms mean and how perspectives on them are changing globally.

Firstly, different layers, levels and directions of accountability can be identified. In the first instance, accountability may have an internal as well as an external dimension, where organisations recognise not only the importance of being responsible to others but also taking responsibility for their own actions **(Cornwall, 2000)**. In a similar way, different directions of accountability exist: upwards, where accountability usually refers to relationships with funders and donors and downwards to 'clients' or 'groups receiving services' **(Ebrahim 2010: 4)**. Accountability, whatever the direction, requires a commitment to undertake certain actions, and to provide account for the actions undertaken, not only in economic terms but also in social terms **(Costa, Ramus et al., 2011)**. Building on these basic understandings, accountability may involve a number of distinct activities: being held to account by a variety of stakeholders; giving an account to stakeholders and taking account of stakeholder needs and views. Each of these, while related, are distinct activities but some may be more demanding of time and attention, especially being held to account. Given the questions sometimes raised about the legitimacy basis for not-for-profit organisations, a focus on downward accountability assumes particular importance.

Whatever about the layers and levels of accountability, a further question of 'accountability for what' arises. Four principal accountability responsibilities are often named: finances, governance, performance, and mission. However, all do not enjoy parity of esteem. As might be expected, financial accountability is most often prioritised and not just in the world of the not-for-profits. However, in the wake of scandals in the State, private and third sectors, the tendency for accountability to become 'coercive or punitive' has increased *'with an emphasis on disclosure, a reliance on legislative or regulatory oversight, and backed up by threats of sanctions for non-compliance, such as fines, imprisonment, or loss of tax-exempt status* **(Ebrahim 2010: 8)**. Alongside these financial elements, organisational governance also receives high levels of attention, especially the structure and compositions of boards overseeing the functioning of not-for-profits. This will be demonstrated in a later section of this report.

Beyond the financial and governance components of accountability there are two main performance-based dimensions. The first of these focuses on results-orientated performance, often using tools of results-based management such as logic models, performance indicators etc. The second performance dimension, a *'more emergent type of accountability'* is seen as being more concerned with *'organisational mission i.e. accountability for progress towards the ultimate mission that the organisation is set up for'* **(Ebrahim 2010: 10)**. This seems like a somewhat obvious level of accountability but in practice these performance dimensions rarely receive adequate attention. The weight of emphasis is generally on the input side (finances and governance) as opposed to the outcome/impact side (results and impacts).

Equally, in terms of the direction of accountability, the privileged direction is upwards, usually towards those providing funds or other resource inputs. Thus, what is called 'compliance-driven accountability' predominates as a 'reactive response to concerns about public trust'. However, it is argued that this compliance-driven accountability and the dominance of upwards accountability may be problematic:

> *'...as it skews organizational attention towards the interests of those who control critical resources. In such cases, patrons hold powers of punishment and can revoke funds, impose conditionalities, or even tarnish non-profit reputations. The predominant emphasis on compliance-driven accountability tends to reward non-profits for short-term responses with quick and tangible impacts, while neglecting longer-term strategic responses or riskier innovations that can address more systemic issues of social and political change.'* **(Ebrahim, 2010: 26).**

Research from Australia and New Zealand similarly suggests that the dominant form of principal-agent relationship needs to be replaced by *'a more parsimonious conceptual framework that boiled down the multiple measures of accountability to a few important categories and made clear the relationships among them'* **(Tenbensel, Dwyer et al., 2013: 7)**. In reality, if the state imposes a burdensome level of upward accountability to funders and regulators, then little space may be left for accountability in any other direction, especially downwards to members and/or service users.

This global discussion about the complexity of issues about compliance and regulation has also been recognised in Ireland. Indeed, at the Dáil Public Accounts Committee on the 26 26 October, 2017 from HSE Director General Tony O'Brien stated that:

"In the past, the challenges faced by the sector, vis-à-vis the HSE, are rooted in governance issues. Good governance is fundamental to the effective delivery of services and sustainability of agencies. The HSE is not, and does not wish to be, the regulator for the sector and neither does the HSE wish to micro-manage external agencies. The HSE like all public funders relies, and must be able to rely, on agencies audited accounts. The importance of a robust statutory external audit process cannot be underestimated. Like all public funders the HSE cannot audit all agencies as this would require an army of auditors. While agencies should be accountable for the grants made available to them, they should continue to be independent and they should not be so constrained that the innovation and drive they bring to services is lost." **(O'Brien, 2017)**

This to some extent echoes the conclusion of the National Economic and Social Council (2012: 5) which has proposed that:

"Regulation should not be considered here in its narrowest sense in terms of command and control, but rather as 'responsive regulation', which is more flexible in the approach taken and responsive to the context, culture and conduct of the regulated organisations."

From the discussion in the previous section it is evident that the command and control model of regulation reigns supreme and the impression of many of those interviewed is that the HSE indeed wishes to, and does, micro-manage the activities of external agencies. For one interviewee, the less-than-equal commitment to accountability between not-for-profits and the HSE was demonstrated in the absence of a board structure for many years and related accountability deficits within the HSE itself:

"And the HSE being let develop into an organisation with no governance at the top is just... You know that probably, of all things, I think that has most fundamentally changed the relationship. Because there is no accountability for decision making at those levels in the HSE." **(Interviewee 9, 2018).**

Clearly this has been a serious inconsistency over the years, albeit one that has begun to be addressed with the initiation of the public recruitment of a new board membership in October 2018.

4.3.1 Acknowledging the value of regulation

Issues of accountability and compliance featured strongly in the interviews conducted for this research, focusing heavily on the increasingly challenging regulatory and compliance environment faced by voluntary/not-for-profit organisations. It is important to highlight there was no disagreement about the fact that all organisations must constantly seek to improve their own governance, optimise performance and deliver excellence in everything they do. There was also full agreement that they must be accountable for public funds and ensure high levels of quality outcomes. However, there was concern about the ability of organisations to meet the volume and nature of required regulation. In fact, one senior health sector official spoke of the *'unique challenge between voluntarism and altruism and greater level of standards and assurance, all requiring increased level of education and professionalism'* **(Interviewee 5, 2018)**. At the annual conference of the Federation of Voluntary Bodies in May 2018, this was clearly illustrated by the production of a list of at least 30 potential compliance obligations which many not-for-profits need to comply with (Wolfe 2018).

None of those interviewed in this research objected to appropriate levels of accountability and compliance. On the contrary most were strongly in favour of efforts to maximise quality and pointed to examples of where they had acted autonomously to strengthen their own focus on quality assurance. However, there exists a palpable concern that the balance and burden of existing accountability and compliance regimes, rather than serving to deliver quality outcomes for people with disabilities, may instead hamper the ability of organisations to function effectively. This concern is captured in the evident frustration of one CEO:

"Funding HIQA and cutting organisations at the same time! How in God's name can anybody expect organisations then to resource their staff, their training, the way in which they manage the services, grouping services together and there's a lot of issues created in resourcing HIQA at the time when they resourced them. Don't get me wrong, I think HIQA's approach... I think the whole regulation thing is fantastic. I just don't see why the HSE have to do it as well because they are putting pressure on organisations. Not HIQA. It is the HSE that are putting the pressure on. There are incessant lists of templates that you have to fill out. There's all these things you have to sign up to knowing that the HSE isn't doing it in its own services. So there's a lot of double talk going on and double everything." **(Interviewee 7, 2018).**

This commitment to standards and quality is reinforced by the fact that some organisations themselves implement additional standards and quality assurance measures, many of them externally verified.

"We actually have ISO as well for a number of years and we've kept that because it's throughout all our services because currently HIQA obviously is just for residential and respite in Disability. We also have excellence through people for our staff because if you empower staff they empower service users etc. etc. We're always trying to boost morale but it has been difficult and morale's bad everywhere because people have gone through the recession and everything it's been a tough time." **(Interviewee 2, 2018).**

Clearly though, the nature of how compliance and regulation regimes are seen cannot be disconnected from perceptions about why such regimes were introduced in the first place. These motivations range from value-for-money concerns to a sense that they are just being passed down the line, a form of reactive passing on of compliance obligations. The value-for-money concerns are explained by one senior health sector official:

"So for example we are accountable now to the Public Accounts Committee for oversight in relation to the disbursement of funding and when there is non-compliance in certain areas it's actually the State that actually is the one that has to account for it. That's the way the accountability framework works. So I think that has inevitably led to, I suppose a tightening up of accountability and responsibility in terms of processes. We have now which wouldn't have been there... now you have what's called a service agreement. So I'm sure you've seen it, you can see it online, it's extremely legalistic it's very loaded towards making sure that there was compliance across a whole range of issues whether policies, procedures or regulatory requirement etc. etc. So that has placed a whole new emphasis in terms of the relationship between the State as the funder and the provider." **(Interviewee 3, 2018).**

Others see the increased level of compliance as resulting directly from external compliance pressures on the HSE:

"But we didn't see what was coming from the HSE perspective and I feel strongly that because the HSE didn't do so well in the compliance stakes, the voluntaries are suffering as a result. So our whole ethos has been affected by cuts and over regulation, the morale of our staff has been affected, people are pushing paper, all because of these compliance issues and obviously HIQA were funded at a time when organisations were being cut." **(Interviewee 7, 2018).**

The significance of publicly reported compliance weaknesses, even small ones, is not lost on not-for-profit organisations. However, they do criticise the tendency for public, media and political commentary to focus on the weaknesses as opposed to the strengths:

"We'd one bad inspection in four years, it hit the [newspaper]. We've had 20 inspections since that haven't gone anywhere. So they [the media] don't like good news. Nobody turns around and says it's great to see [organisation name] get their act together, great quality service there. And it's the same with the Charities Regulator. You're not going to see them going out saying that, 'I've been out to ten organisations and found nothing. They're actually squeaky clean and damn good'. He'll talk about the one where he found something wrong. Is that Irish nature? I don't know. In a time when you're looking to particularly get outside the State funding piece when you are trying to inspire confidence as a charity. You could do with some endorsement. Even if the endorsement is, 'We've been in there and we didn't find anything wrong with the place. We're not concerned'." **(Interviewee 4, 2018).**

Indeed, one of the senior health officials interviewed as part of this research cited three or for examples of governance malpractice as an explanation of why not-for-profit organisations were sometimes viewed sceptically within the public sector (Interviewee 13, 2018).

4.3.2 Compliance and Regulation – Implementation gaps

So, while the importance of strengthened regulation and compliance is widely accepted, its implementation raises a number of concerns.

i. There is an inadequate focus on bigger-picture outcomes

The discussion that introduced this section distinguished between mainly financial and organisational compliance requirements as opposed to those that focus on outcomes or the achievement of mission. The conclusion being that the latter is by far the poor relation within the world of accountability and compliance. A number of research respondents identified this as an area of concern:

"When such large amounts of money are being given to organisations there should be some level of understanding of whether they're delivered against what they've contracted to do. I question how well the HSE understands what we're delivering... I would say that we have to provide lots of information but, you know, does that actually go into somebody who actually looks at it and sees, 'Oh they seem to be having a lot of shifts in the numbers of people going in and

out of their service. What's going on there?' Is anybody sitting down and saying to us, 'what's going on here?' Not at all! Having been on the other side of this and knowing do you know what I mean that, that's the basics of understanding. So the reticence of this country to move into a commissioning model I find, you know the essence of commissioning is actually looking at its outcomes, which facilitate your planning of the whole commissioning cycle. But unless you have that level of oversight... And they're just not geared up to it. They just don't see things. And that's because it's not related. They're not delivering and contracting with us in terms of service delivery against a national strategy that's clearly got objectives to be met. Do you know what I mean? It's just incremental building of numbers so let's increase the numbers of respite beds but you know is that targeted in the right areas? Are you looking, have you got the right service providers?" **(Interviewee 9, 2018)**

This suggests a desire to move to a different, more strategically focused form of performance accountability, with less time spent on the micro-management of individual organisational activities.

"Yeah, it's when you're getting into compliance and accountability by template it's a very narrow tool and a very narrow approach to things and at the end of the day what does it tell us? So [my organisation] is providing [xxx] residential places and there is a template that has every bit of information, the template will go from that corner to that corner and you'd know everything about the profile of people supported and the staffing and the budget and the location and all that it doesn't tell you anything about whether those 200-plus people are having a good life." **(Interviewee 11, 2018).**

This is frustrating for those who believe that outcomes can, and need to be, measured:

"You can measure the outcome of a service. In other words what difference does our organisation/ intervention make? We can scientifically prove to you that we've gotten Johnny from here to here for this amount of money, with this intervention. We can actually show and demonstrate the difference that we make as an organisation. I think they need to take cognisance of that ... it demonstrates value for money." **(Interviewee 1, 2018)**

Drawing a comparison with the relationship between the HSE and Section 38-funded organisations, one interviewee commented on the degree to which compliance requirements for Section 39-funded bodies focuses excessively on micro-level detail while potentially missing out on larger, and more strategically significant, issues:

"There's no system in place for the HSE to have similar engagement with the national Section 39 organisations. So they give us millions each year and there is no ongoing interaction. So we could be heading into going bust and it will come as a great big shock to them because they don't engage. You do your annual financial monitoring returns, you send them in data, but they have never reverted on those returns, they have no system in place... 'What are you doing, where are you headed, what are you doing? Should you be really doing those things there? Is that the right place to be doing that?' Not at all. Strategically I find it fascinating that there's no plan, it's just haphazard development of services around the country." **(Interviewee 9, 2018).**

Ultimately, the focus on the immediate demands of a narrow compliance regime is indicative of a managerialist culture, where the instrumental and the technical take precedence over quality human interaction and which produces a culture of fear and trepidation, an issue named by one senior health sector official:

"I do think we need to question to what degree do the current HIQA regs lead to much more of a ticking the box exercise and serving a bureaucratic need as distinct to an effective service delivery which is person centred and human centred because we're about people. I don't mean that again, I don't mean it provocatively I'm not trying to be difficult, I'm just thinking you hear it all the time, I spent quite a bit of time going into centres. You do hear from people on the ground, and that translates up into the management system, that people are genuinely you know, Jesus they're afraid of their lives. So there's a tension that's created at the delivery end which takes away from the standard, from the human interaction piece which is what we're supposed to be about, helping people to live lives, good healthy lives and fulfilled lives and independent lives. And if you're overly concerned and worried about it... because the way it'll be asked is can you demonstrate how you're doing that but the tendency usually is 'well can you demonstrate it by way of showing me a piece of paper that tells me you've done that'. So I think they are huge challenges I think and I do think that that creates huge frustration within organisational systems including our own... So it means very much it's a risk mitigation, risk adverse environment that's been created that's distinct to quality and improvement." **(Interviewee 3, 2018).**

ii. Inconsistent applications of regulation and compliance:

Apart from the lack of the bigger picture outlook, it is the inconsistency in how compliance standards are applied by different inspectors, across different CHO areas or across different regulator regimes that is a source of frustration:

"Inspectors can interpret differently within my view. Whereas it might be fine at one inspection with one inspector but it mightn't be at the next inspection with another inspector... And that is an issue that HIQA need to work on – to ensure a standard consistent approach." **(Interviewee 10, 2018)**

It is also suggested that the application of regulations would be more effective if it proceeded from a broader learning disposition as opposed to a more narrow, and somewhat punitive, approach. Comparing the approach of two different regulators, one CEO commented:

"I had a recent experience in a different organisation of that involvement where they looked very robustly at things but engaged with us in a way that was constructive, bringing suggestions to the table, looking to work with us to address things, taking things from us that we were doing really well with our permission to share them with somebody else you know like... 'I've also been involved with regulators who have taken the approach of here's where you're wrong, you're wrong, fix yourself and you would say, have you seen anywhere in the other work that you were doing examples of how this might have been addressed...that's not my job that's your job. I don't think it needs to be like that. I think you can say to us here's something you're not getting right and ok we're not getting something right we're not getting something right that's not the point', it's around the learning and the sharing of things." **(Interviewee 11, 2018)**

iii. The costs of compliance and regulation requirements

Meeting the challenges of regulation and compliance demands a **higher level of administrative and financial investment** from organisations, who ironically may then face charges of excessive spending on administration. This is recognised, as least in some parts of the health sector:

"What has fundamentally changed is we have a much more diversified population and we have a much more diversified range of expectations of what the State is. We've a much greater demand for accountability. We've a very low tolerance for anything being of poor standard or wrong. When you add all that together well what happens? What does a modern state do? It regulates, it prescribes, it legislates. And sometimes when it does that you couldn't argue with it because it articulates a standard we could all aspire to. But the difficulty is, of course, when you regulate today and you take the history of the service and the service's ability to come up to that regulation today you're immediately in that tension space. I think that has fundamentally altered how we view things ...So you've HIQA, you have to a compliance person. You have nurses, so you have to have a nurse manager, you've social workers, you have to have a social work manager, clinical governance. So, sometimes I wonder do we realise when we demand the highest standard. Do we realise what it takes to get to that?" **(Interviewee 5, 2018).**

However, funding contracts with the State do not provide at all, or do not provide adequately, for such administrative expenses, in some cases requiring organisations to divert resources from fund raising or other sources to cover increased administrative costs:

"It's just, it's a major anomaly as far as I'm concerned. Why bring in a standard if you're not prepared to stand over it and fund what needs to be done. When the standard came in first you can be assured that there was going to be a cost to get services up to the level. This had a significant cost." **(Interviewee 10, 2018).**

Most recently, in May 2018, the implications of GDPR began to be felt. Responding to a question about the potential implications of GDPR, one CEO expressed concern about yet another cost implication but felt co-operation with like-minded organisations might provide a possible solution:

"I'm looking at a couple of agencies getting together and maybe having one data protection officer which would reduce the cost." **(Interviewee 10, 2018).**

A similar suggestion on dealing with compliance costs was mooted by one senior health official. However, the more challenging issues of organisational scale and merger were also raised:

"Where people would want to have a look at themselves is around scale. If your organisation is too small to be able to manage that level of compliance do you need to go and talk to the fellow down the road about a merger? There is a simple mathematics to that which I don't have at my fingertips. Is it the case that larger organisation can spread the cost of regulation. You could say if I am a very large service supplier I can afford a compliance manager.

If I'm a small organisation I can't and I have to buy that in from somewhere and it's a disproportionate cost. So are there ways in which some of the organisations need to think about cost sharing or shared services or merger. And if that's the case how do you facilitate that." **(Interviewee 13, 2018).**

However, it is not just not-for profit organisations that have to deal with the burden of compliance. One interviewee noted that while there is a pressure on the capacity of not-for-profits there are also compliance capacity deficits within the HSE itself:

"There is this requirement being placed on voluntary organisations who don't actually have the capacity to supply all the material, all the paperwork and carry out all the requirements. Equally there isn't the commensurate capacity inside to do all the box ticking and compliance with all these hyperlinked service arrangements." **(Interviewee 14, 2018).**

iv. Governance Compliance

Alongside regulation of standards and finances, organisations are increasingly facing a range of governance compliance requirements, especially in relation to the appointment/retention of board members. While the legitimacy of such requirements is defended by health sector officials (Interviewee 3), it is suggested by others that they have the potential to seriously impinge on the autonomy of independent, not-for-profit organisations, and may even breach company law:

"I mean I do find some of the things in the service arrangement quite anomalous again when you come to an organisation like this where, you know, if they don't think your board is operating in the way that it should be operating they have the right to send somebody in to work with the board. And you just sit there going…'You know this is a company'… I mean from a corporate governance perspective, if somebody came in as a shadow director. The failure is sometimes where these things are construed up, put into a service arrangement and yet they don't think about, 'Well how does that actually fit with the law of the land'?" **(Interviewee 9, 2018).**

In a similar vein, organisations become frustrated when the HSE needlessly imposes governance requirements which the main governance regulator, the Charities Regulator, does not consider necessary:

"I'll give you one example of that. So in the HSE's annual compliance statement, they want Section 39s, with regard to board membership, that a board term is three years and that nobody can have any more three consecutive terms. So a total of nine years. Our constitution is set up that the board term is four years but they can only have two terms so in fact it's eight as a total. Now the HSE kind of grudgingly accept that, but they'd rather we had the three and three, irrespective of the fact that the charity regulator is very happy with what we're doing. You know so you can't please everybody. So I would wonder why the HSE are setting this stuff out. Why not align themselves with what the charity regulator is doing. Because, well, that's his job so why does it have to be different?" **(Interviewee 6, 2018).**

v. Dealing with multiple compliance requirements

A further recurring concern for many not-for-profits is the multiplicity, duplication and overlapping nature of compliance requirements that again run the risk of taking the human out of human-orientated services:

"I think we need autonomy with responsibility and accountability, no problem with that. I think we need a quality system, I think we need one quality system. So we have HIQA. And then I sat on a committee who were producing another set of quality measures. The HSE are devising their own system and HIQA have their system and it's becoming more and more restrictive and risk adverse. From our point of view where we suffer and our clients suffer, is that our homely innovative and creative environments have now become more institutional." **(Interviewee 1, 2018).**

The financial and administrative costs of these multiple accountability requirements are considerable, producing an increasingly bureaucratised and legalistic operating environment for not-for-profit organisations:

"We are being bombarded with compliance, compliance, compliance. It's significant and there are huge costs and there are a lot of opportunity costs as well. Our organisation is a company limited by guarantees and we comply with company law. We're also a charity so we've charity law. Then we've the service arrangement and everything in the service arrangement is this now web-enabled links. So I'll tell you if they want to get you on something they'll get you because you're not going to be compliant in everything as it's always changing. You'd need to have solicitors nearly working for you which obviously we can't. It's gone very, very legalistic. We obviously then have health and safety as an employer and all of that, all of the HR issues. And

the whole Section 39 and pay restoration is a big issue and then we are a housing association so we have that legislation as well. We have to comply with lobbying, we have to comply with... we also have education and we're a trainer, you know we do training in our team. So the amount of compliance and then HIQA of course, so it's huge." **(Interviewee 2, 2018).**

Another commented:

"The difficulty with it is I suppose, we're filling in an annual compliance statement for the HSE. We're being independently audited every year. We're doing compliance for the Charities Regulator. You know there's all these versions of what are in effect the same thing. And while any one of them isn't onerous particularly in its own right, you're duplicating stuff. You know so why wouldn't the HSE accept an auditor sign off or why wouldn't the HSE accept the return that we made to the charity regulator or whatever it is? Why does there have to be all these different versions of things? **(Interviewee 6, 2018)**

Whatever about having to comply with multiple sets of compliance obligations, organisations are also clearly frustrated with perceived duplication of demand within the HSE itself:

"I think the way it's done makes it excessive. Because it's not streamlined in any way. And there is talk but never action about trying to streamline processes for national organisations. But we've been asking for stuff to be streamlined for years and years and years. And I think the fact that it hasn't been definitely, definitely makes it excessive and makes it burdensome on people. And the danger in making statements like that is that people say, 'Well compliance should never be a burden'. It's something that you should be doing anyway so it's not the concept of compliance it's how it is operationalised that makes it a burden. Because there's no attempts made to make it efficient or effective." **(Interviewee 8, 2018).**

The frustration of this experience from many is almost tangible, as these to extracts highlight:

"Just from the point of view I suppose HIQA regulating us and the HSE regulating us is not a good idea. I think if the HSE are insisting on either swallowing us up and converting us to Section 38s or leaving us out there in Iceland with very little funding, then they should get the hell away from us and let us regulate ourselves. And if we enter into a contract with them for services, then, we're the ones that should suffer if we don't meet the standards. So they should keep their hands off, they should take us on in good faith and allow HIQA to check our compliance. We should meet the standards as laid down by HIQA. The HSE don't need to be our daddy, they just don't..." **(Interviewee 7, 2018).**

"Then on top of that every time somebody does a study somewhere in the HSE they send you a request for information and you send them all the same information over and over again, they ask for it to be inputted in Excel templates which don't often work, and not formatted so they can amalgamate any information for proper analysis. So you're duplicating it over and over again. And if you don't send it you get a threatening note saying 'The HSE... You are a publicly funded body, you need to give me this information'. It has become very adversarial in the last three years I'd say." **(Interviewee 1, 2018).**

For some organisations this problem is further compounded by having to meet accountability and compliance regimes across multiple CHO areas, providing the same documentations on multiple occasions, instead of having a centralised system to accept and redistribute relevant documentation:

"There needs to be a passport agreed which is... so for example... if we have to give our audited accounts, which I have to, to nine HSE areas as well as central why can't I put them in one Dropbox? And any HSE area who wants to see them goes there... So why isn't there like a Dropbox-type scenario for each organisation which would include the charity regulator, it would include HSE, the housing agency, the companies office any regulatory body. They could all be in one place. So you streamline the amount of admin that people have to do and you just do it once." **(Interviewee 1, 2018).**

Where such an amount of regulation is needed is far from certain, though in some cases, not-for-profit representations wonder as to its purpose:

"That's a huge problem. The duplication is a huge problem. I mean the compliance requirements themselves are getting more onerous but they are very hard to argue with in themselves because they are justifiable, to be fair. But I think sometimes I often wonder about the volume of paper that the HSE creates. They can drown you in so many reports, yet follow through and applications of these is not always apparent." **(Interviewee 4, 2018).**

It should also be remembered that the evolution of such a complex and multifaceted compliance culture brings its own pressure for health sector officials, where it seems that the quantity of regulation is more important that the quality:

"And that presents me with a challenge, because there are certain agencies based on their level of funding that my senior managers or me are supposed to meet so many times a year. I just had the C&AG here a couple of weeks ago, they pulled a couple of files and looked at them and said 'Well you said you were going to meet them 10 times a year but you actually met them 6'. Now they could have been the best six meetings in the world but the standard, the demand and the only headline in three years' time is HSE didn't keep its agreement or overseeings'." **(Interviewee 5, 2018).**

It is noted however that there seems to be an emerging awareness of these issues amongst regulators, HIQA especially who have begun to convene focus groups designed to examine 'regulatory burden' and the need for a 'forum of regulators' to address these issues **(Department of Health, 1997).**

vi. Competing and changing compliance obligations

As well as the multiplicity and duplication issues, other concerns arise when compliance requirements may conflict with each other. Examples are offered where HIQA might name a requirement to add additional staff to address a particular concern in a regulation report but the HSE won't support it because it doesn't meet with their financial priorities:

"Or sometimes HIQA might say, 'you have to put in additional staff we're not happy with fire or whatever', and HSE is saying, 'you can't do that…'. Now we've done things because obviously reputation is very important to us as a company and to the board of directors. And yet we look for money for safeguarding, we don't get it. But yet we can't not do it and they're saying, 'oh we have to do it' and we'll say, 'well, will you fund it?' And the HSE safeguarding is saying, 'Yes you need that, we'll agree with these plans,' and then you go for money and they haven't got it." **(Interviewee 2, 2018)**

In another example, a housing regulator presents a requirement but the not-for-profit organisations knows that in meeting it, they are likely to run into problems with the HSE:

"If I go to the housing regulator who reminds me that I should have a sinking fund and that's going to become a legal obligation on us to have that sinking fund and the only way we could have a sinking fund really is if we were able to either through rents or whatever to put it aside, if I produced audited accounts with a fund like that the HSE would say well wouldn't you use that and to be honest even before it got to the HSE my Board would say for God sake [CEO name] what about the needs that are there. The housing regulator is absolutely right you do need to have some provision for the rainy day and buildings and roofs do blow off buildings you know so it's not that they're wrong." **(Interviewee 11, 2018).**

4.3.3 Managing multiple accountabilities

Apart from the challenge of managing multiple compliance requirements, organisations may find themselves stretched between multiple accountability obligations. A strength and distinctive element of voluntary/not-for-profit organisations mentioned above is their connection to community. A core element of this community connection is their capacity to be accountable to citizen service users and their broader supporters. However, it can be difficult for organisations to manage multiple accountabilities, especially when those demanded by the State have immediate funding implications and therefore demand that they take priority. As a result, there is a danger that the pressure of compliance and regulatory demands will take away the space and capacity for community engagement and accountability, as has been suggested in other research on this topic:

'There are several broad implications to these observations. First, while traditional approaches to improving accountability, such as increased oversight through reporting and disclosure requirements, enable a degree of upwards accountability, they are of limited use for enhancing downwards accountability. A more balanced approach thus requires a greater role for non-profits in evaluating funders and for clients in evaluating non-profits. The emergence of feedback tools such as grantee perception reports and constituency voice suggest that it is possible to find low-risk ways for non-profits to express their views on funders. These efforts notwithstanding, the key point is that downward accountability mechanisms remain comparatively underdeveloped' **(Ebrahim 2010: 23).**

The issue of downward accountability was not the main focus on this research nor did it emerge as a substantial issue in the various interviews undertaken. However, the importance of this form of accountability cannot be underestimated. Downward accountability is not just important in establishing the legitimacy of not-for-profit organisations but also contributes to the type of performance-based accountability discussed in the last section. However, while some organisations do have a strong commitment to such accountability it is difficult to see how it can to be accommodated more widely within organisations, given the range of financial and other pressures confronting them.

Summary and conclusion

The issue of accountability, compliance and regulation is one that is simultaneously embraced as essential to guarantee the quality of outcomes but one that is lamented for its narrowness of focus, for the inadequacy of financial provision to meet regulatory requirement and for the existence of multiple and often competing forms and processes of regulation. Nobody suggests that accountability is not a good thing, but just as bad forms of bureaucracy stifle activity and the achievement of results, so too the poor and disconnected design of multiple regulator regimes runs the risk of undermining the work of not-for-profit organisations. As experience in New Zealand concludes, the impact of "increasingly stringent and complex accountability requirements placed on TSO [third sector organisations] may have the effect of 'killing the golden goose' as the mission of TSO atrophies and TSOs morph into quasi-governmental providers" **(Tenbensel, Dwyer et al., 2013: 2).**

4.4 Funding

Given the historical evolution of service provision in Ireland and the absence of any significant philanthropic base, it is not surprising the not-for-profit sector is highly dependent on the State for its funding (Mazars, 2016). As well as creating vulnerability for organisations, this creates significant uncertainty for the citizen service users they serve, especially if funds are cut during a period of economic retrenchment. When services are provided directly by the State, such retrenchment is likely to attract much higher levels of public and political scrutiny. By contrast, when cuts are made in State funding for services provided by voluntary organisations, the State is more insulated from negative comment. This is especially the case when the twin mantras of efficiency and effectiveness are rolled out alongside suggestions that it is profligacy on the part of service providers that has to be fixed as opposed to remedying weaknesses in the State's economic and social planning.

Paralleling this dependency on State funding is a relative weakness in autonomous fund raising. Relatively low returns from autonomous fund raising continues to be a challenge, though for five consecutive years up to 2016, charity fund-raising increased, despite the impact of earlier scandals **(Mazars 2016: 1)**. However, falls in trust have been reported since 2014 so it is not yet clear how this will continue to impact on fund raising **(Amarach Research, 2017)**. In general though, CEOs are reporting continued pressure on non-State revenues.

This section of the report addresses the main funding issues raised in the research and in relevant national and international literature. Five main issues emerge:

- The cost of delivery: Paying the full economic cost of delivery (FECD);
- Financial management and sustainability;
- Value for money;
- The impact of not-for-profit governance failures;
- Alternative models of funding.

4.4.1 The cost of delivery – Paying the full economic cost of delivery (FECD)

Previous research has noted the impact of the economic crisis on funding to virtually all organisations providing services in the disability sector **(McInerney and Finn, 2015)**. Many organisations today continue to feel the effects of this period but this impact is particularly strongly felt in the Section 39-funded bodies. One of the most pressing issues raised by interviewees in this research is the unwillingness of the State to fund the actual cost of the delivery of services.

Interviewees have repeatedly reported HSE refusal to pay for the cost of services as detailed by their organisations during the annual signing of part two of their service arrangement. And while it is, of course, incumbent on the HSE to achieve value for money, all of those interviewed reported their inability to deliver the expected level of service for the volume of resources allocated by the HSE. They also report the HSE's refusal to countenance a reduction in services to match the available funding. More seriously however, when organisations indicate their need to show on the service arrangement that they will be operating at a deficit, they are being informed by the HSE that they are not allowed to do so. This clearly presents difficulties for organisations who feel that they are being asked to present an image of a break-even service, while knowing that the opposite is the case:

"I've no difficulty with the service arrangements process actually apart from the fact that they ask us to show no service delivery financial deficits when we know that deficits will arise due to the current funding situation. Because they want us to show zero deficits which we can't do and we know we're providing services that run at a deficit. So we just get into a row with them every year and we don't sign and then it drags on. Then it all gets sorted out... I genuinely don't think they fully understand corporate governance from a company's legislation point of view. I think they understand it from a public sector point of view but not from an independent legal entity company law. I just don't think they get it." **(Interviewee 6, 2018)**

The clear frustration of operating under such regime is captured in the comment of another CEO:

"So we tell them how much a service costs, they know how much it costs but they won't pay that. No, they automatically apply a discount. For example, in the organisations Service Agreement (SA) the service has actual costs of X. They'll say we're not giving you X we're giving you X minus Y which equals Z and then instruct the organisation to a) input the full cost as Z and b) put any deficit (Y) in a separate letter which you can attach to the SA. If you don't, they will refuse to sign the SA. They say that legally they can only sign off service agreements that have no deficit.

However organisations cannot sign a legal document to provide a service which is not fully funded yet refusing to sign on this basis or reducing your service to meet allocation (Z) will result in a penalty, the withholding of 20% of your total funding leaving you with even less money to provide the same service. It is like selling the HSE a loaf of bread which costs €1.25 to make but the HSE will take the bread and pay you 1 euro for it and if you don't agree to give it to them at that price then they will take it at 80 cent but you are still expected to produce it at a cost €1.25" **(Interviewee 1, 2018)**

It is not just the not-for-profits that recognise the difficulties inherent in the continued adoption of this approach; health officials also recognise the problem:

"I don't know how many agencies can sustain the differential between something costing €100 and them only having €80 particularly in the disability service space. Now residential or day centres, fine if it's a local sports club that's different, but in the disability residential day service and personal assistant space I think agencies feel they wouldn't have a lot of success if they went into that kind of fundraising sort of space, do the best you can. When by law they have to do more than the best you can, they have to do A,B,C. So if it costs, it costs. The dispute is probably not even what it costs, the dispute is where it comes from." **(Interviewee 5, 2018)**

The rationale for this approach is unclear but some seem to suggest that it stems from a residual, albeit misguided, belief that not-for-profits have substantial level of own resources that can, and should, be used to meet the deficit:

"They're expecting us to do it. Absolutely, absolutely. And like they'll say to us 'You know well you can show it as a zero deficit because then you can show your own income that's plugging it'. 'Yes we were willing to do that for ten years lads, but I'm sorry it's all gone now' you know." **(Interviewee 6, 2018)**

Organisations report the experience of signing service arrangements on the basis of known, but formally unrecorded, deficits as more than a little coercive. Delays in signing the service arrangements were reported by the media in mid-2016 when the HSE was reported as suspending 'full funding to major health providers'[10]. The reporting in question however did not reference the fact that organisations were being required to obscure the existence of an ongoing deficit. One not-for-profit CEO described the experience of this particular approach:

"And I've gotten very strong with my language with them I'm saying, 'You're asking us to sign something we know is inaccurate and our board are not prepared to do that. Because they don't want to go to jail. I put it in terms as blunt as that. Now we've come to an unofficial arrangement that isn't written down anywhere with the HSE over it where they've decided to shut up and leave us alone and that's fine. But there will be other organisations who will be called to account. About two years ago, the then HSE DG, Tony O'Brien, issued an edict that any Section 39 that hasn't signed their schedules by the 28th February would be subject to 20% withholding of funding until such a time as they sign. So effectively you're being blackmailed into signing something that you don't think you can sign. They, the HSE, then have to report into the PAC over what number of 39s or whatever have signed. I gather that edict about the withholding came out of his meeting with the PAC the previous year but he was held to account because so many hadn't signed on time. So this was his solution to get people to sign, or we'll withhold their funding." **(Interviewee 6, 2018)**

10 HSE suspends full funding to major health providers https://www.rte.ie/news/2016/0717/802957-hse-funding/

How agencies respond to the dilemma of operating at a deficit differs and may be related to the size of the organisation and the scale of service delivery involved. The perspectives communicated in this research suggest that many organisations have reached breaking point and may well take the advice of one not-for-profit representative:

"If somebody met a, a CEO met me, and he asked me what should I do about this, the HSE are saying we have a deficit of €200,000 and the HSE are saying they're not going to pay it. I said stop providing services and they said what, I said tell your board to tell the HSE we're stopping the organisation we're getting off the bus and stopping and that's what they went back and said and the HSE in a panic stepped in to fund them. The HSE can't afford to let these organisations fail they're like the banks they can't afford to let them fail." **(Interviewee 12, 2018)**

However, not all health sector officials are convinced about not-for-profit arguments about the seriousness of their funding positions, despite the fact that a number of contributors to this research have commented that there has been limited new and substantial investment in disability services for quite some time.

"Probably around the time of the recession and slightly maybe leading into the recession. You could see it coming maybe as early as 2003. That the funding became emergency only, crisis only. And not-for-profit organisations really can't react in a crisis the way that a... you know..." **(Interviewee 4, 2018)**

4.4.2 Financial management and sustainability concerns

Apart from the inability to identify funding deficits within the service arrangements, other more recent financial management requirements are also proving problematic. For example, organisations are told that they can no longer carry over surpluses from one year to the next:

"Service Level Agreements are annual and up until this year I've been able to carry over any surplus. They don't do accrual, you have to spend whatever you have in the year and that's the way the HSE work but it's not the way a business works. So, we cannot build up an essential reserve, no contingency measures, nothing for the rainy day or the wall that falls down or if HIQA comes in and says you need fire equipment. So we have to go cap in hand every time. We are companies and need to be able to run the business the way any other business run." **(Interviewee 1, 2018).**

Equally, how fundraised money is treated by the HSE is sometimes the source of problems, with organisations reporting that fund-raised money will automatically be seen by the HSE as income to be used to deliver services, even though it may have been raised for a different purpose.

"If you put your fundraised money into your SA [service arrangement] as they request, they want to know how much money you're fundraising. They'll subtract that amount from your allocated budget. So, there's no incentive to go and find other means of income. So often people who give you money want it to be spent on specific things, this makes it restricted money. The HSE doesn't understand restricted money. They'll look at your cash flow and they'll say 'Oh you've plenty of money in your bank' and you're going, 'But I can't spend that.' 'Oh well it's there and we are counting it in." **(Interviewee 1, 2018)**

A similar point was raised by another not-for-profit representative who defended the prudence of organisations maintaining some level of reserve funding without it being seen by the HSE as some kind of organisational luxury:

"All the auditors that ever were would say it's absolutely prudent and good governance to have a reserves policy. The HSE will have a look at the balance sheet and will come down and see this magical amount of money, it's like an Aladdin's cave and we have a little bit of that. Or indeed say, 'don't be talking to us about your funding deficit when you have this reserve'." **(Interviewee 14, 2018).**

Some respondents have suggested that there may be underlying trust issues at play but that, in reality, many organisations are facing serious financial sustainability concerns:

"I think there's a big suspicion that there's all these millions being held by these voluntary organisations that, you know, if they could only get their hands on it and force us to spend it on running services that they're meant to be paying for. But you know you're seeing more and more organisations are running into serious financial problems. And they will start collapsing, you know, there's a number of them at the moment that are on the brink..." **(Interviewee 9, 2018).**

Speaking about these concerns, another CEO emphasised the pressure to source funding, not just for direct services but also for core costs if organisations are to remain viable:

"They do acknowledge the service we're providing. They do acknowledge that and they've told us that they will support us. But to be honest with you what we really need is the core money." **(Interviewee 10, 2018)**

Supporting such core costs, it would seem, is an essential part of managing transitions from one form of service to another, or in dealing with the substantial extra costs involved in meeting the new standards introduced by HIQA and other regulators (Interviewee 8, 2018). Such transition costs are also likely to be encountered if any serious and substantial move is made towards implementing recommendations on personalised budgeting.

A number of research participants also point to the additional costs facing organisations working in rural settings, not least those resulting from the requirement to provide transport, while the relevant mainstream statutory transport providers fail to take on any significant responsibility. This generates costs for the HSE but also means that not-for-profits are faced with additional maintenance, insurance and compliance costs:

"We shouldn't be providing transport. We're doing it because there is no public transport that's flexible and responsive enough and the HSE are funding us to do it but whether that's the best use of HSE funding so it's that and then it brings with it you know have all the fleet of transport you have to maintain and you have to have all the compliances around your maintenance of vehicles, your driver certification you know all those kinds of things." **(Interviewee 11, 2018)**

Finally, it is suggested that additional inefficiencies are built into the financial management process by the limitations of annualised, as opposed to multi-annual, budgeting arrangements. Currently, Part 1 of the service arrangement covering roles and responsibilities, value for money commitments, performance issues, governance, transparency etc. are agreed on a three-year basis. Each organisation has to complete just one Part 1 arrangement with the HSE **(Comptroller and Auditor General, 2017).** However, the Part 2 schedules where levels of funding are addressed are only agreed annually. The inefficiencies in this are recognised by not-for-profits and by health sector officials:

"So you look at the service agreement I've given you, that takes three months to develop and agree, it takes three months to settle and before it's even settled the process of writing the next one starts again. I don't think that's a very good way. I think most people would agree with me in the business that multi-annual planning is probably the best route, even if there has to be a tapered adjustment once a year for the appendix or the money but of course government funding and vote accounting and the vote of the Oireachtas doesn't work like that. It's annual." **(Interviewee 5, 2018).**

For some organisations that operate across a number of CHO areas, there will also be a requirement to complete multiple Part 2 arrangements, thereby imposing a substantial administrative burden on organisations.

4.4.3 Value for money

The cumulative impact of the 2005 Comptroller and Auditor General Report, the legacy of the economic crisis, the establishment of the Department of Public Expenditure and Reform in 2011 and the Department of Health Value for Money report in 2012, have all placed the issue of value-for-money centre stage in the relationships between the State and the not-for-profit sector:

"An overarching recommendation on the achievement of efficiency is that there should be a focus in every organisation in receipt of public funding on driving efficiency on an ongoing basis, ***contingent on client need*** *within a value-for-money framework. This should be coupled with a more sophisticated risk assessment and management process."* **(Department of Health 2012: xxiii emphasis added).**

In reality, nobody is likely to object to the principle of achieving value for money, not should they. However, it does appear from this research that the term '**contingent on client need**' is relegated in importance behind the driving of efficiency, where efficiency is nearly always equated with reducing costs. One dictionary definition of efficiency describes it as 'a situation in which a person, company, factory etc. uses resources such as time, materials, or labour well, without wasting any' while another is 'the condition or fact of producing the results you want without waste, or a particular way in which this is done'[11].What is most important in these definitions is the achievement of results without waste, something that does not automatically require a reduction in financial inputs, just better use of them to achieve desired results. In reality inefficiency may be the consequence if reducing financial inputs compromises the ability to produce desired results. This research presents a strong argument that this is what is occurring, motivated in some cases at least by less-than clearly substantiated concerns that not-for-profits represent questionable value for money or that, in some way, they are unprofessional and possibly even a little profligate in their control of expenditure.

11 https://dictionary.cambridge.org/dictionary/english/efficiency

For many of those interviewed in this research, the experience of value-for-money requirements are at best formulaic, at worst, ill informed:

"So I'll give you an example they would ask, 'Why does it not cost the same for Person A in a residential in Dublin as person B in Galway?' We would answer, 'It depends on the individual'. So Individual A may sleep all night, they get up in the morning and go to a day resource centre and may need minimum support. Person B is up all night, so we need a waking night person to be with them, sometimes two if they get challenging in the middle of the night. They only go out with a one on one during the day. They are going to cost more. There is nowhere in that report that takes into account any of those differentiations. What they're saying to us is, 'Oh you're very expensive.' When we started the service, we were undercutting their own costs by at least two thirds." **((Interviewee 1, 2018).**

It is clear from this comment that few organisations object to efforts to maximise value for money and that they are willing to engage with efforts to develop 'resource allocation frameworks' **(Department of Health, 2012).** However, there is a belief that this should be done in a way that recognises the complexity of standardised[12] unit cost approaches, acknowledges the expertise of not-for-profit organisations and which engages in serious dialogue with them. Simple application of a one-size-fits-all formula is not seen as likely to produce benefits for the users of services, concerns previously expressed in other research:

"In addition, there are concerns that funding is determined on the basis of places (e.g. one residential place; one-day service place) rather than individual need (e.g. greater funding for those with higher support needs). This has resulted in per capita funding variations across regions and service providers, meaning that individuals with similar needs receive widely differing funding depending on the region they live in and the provider they receive services from." **(Linehan, O'Doherty et al., 2014:8)**

This is further illustrated by another interviewee:

"DPER say show us the evidence. So 'Show us the formula that calculates how much that will be' and you say, 'But somebody with a progressive disability the X + Y bit, the Y might not happen for another three years. It might happen tomorrow. The person with an acquired disability who was in a car accident yesterday was never part of the formula and they might have high dependency and they might need a huge amount of services that we can't predict'. So it's all about... It's based on predictability and I think that is because it's like the fiscal envelope we have to be able to say this is how much it's going to cost and we have to say, 'And it attaches to this person, this person, this person, this person. And that unpredictability means that services and also...' So it's the unpredictability of need but it's also the unpredictability... I think there are so many new models of service that nobody really knows how much those models of service cost to provide yet. And that's a good example I think of policy to practice." **(Interviewee 8, 2018)**

It is clear then that while achieving value-for-money is accepted as an objective by not-for-profits, crude and ill-thought out approaches to achieving it are not. An example of a crude application of the value-for-money approach is cited in the form of the 'Value Improvement Programmes', at least as applied in some cases by the HSE. The Value Improvement Programme (VIP) is described by the HSE as:

"...a single over-arching programme with three broad priority themes: improving value within existing services; improving value within non-direct service areas, and strategic value improvement."

It aims to ensure that the HSE is:

"more effective with what we have and more efficient with what we have. It's about maximising our resources and ensuring that we are doing more with the same resources with no adverse impact on Quality or Safety"[13].

This would seem largely unobjectionable. However, in practice, for some organisations, the VIP has been experienced as a simple, across the board percentage cut, enforced on organisations already forced to deliver services below a breakeven point, many of whom are barely struggling to survive. It was not the product of a considered discussion on possible efficiencies. This is described in graphic terms by one CEO:

12 The 2017 Comptroller and Auditor General report did reference that the HSE recognises the difficulty of calculating unit costs per output in the social care sector and notes its development of 12 performance indicators to be used in comparing the performance of service providers. The report noted that according to the HSE, this would be used in the 'development of commissioning models' (Comptroller and Auditor general, 2017).

13 https://www.hse.ie/eng/about/our-health-service/value-improvement/

"I suppose the other big thing in relation to the HSE and their value improvement, we have a deficit, we're working with the HSE to sort our deficit and then they impose another cut. Now that can't be right. With this VIP each agency will receive a percentage cut at a meeting with the HSE talking about our deficit, discussing cost containment, asking them for assistance and at the end of it all they tell us they're imposing a value improvement cut. Now that doesn't make sense to me." **(Interviewee 10, 2018).**

Again it would seem that the internal logic of HSE engagement with not-for-profit organisations is questionable, as deficit-management discussions encounter crude value improvement strategies. However, again, there are alternative perspectives within the State health sector, with one interviewee questioning how much effort to cut costs has been made:

"Part of the challenge back is have you genuinely looked at your costs? Have you genuinely interrogated them? And yet that might be yes or the answer to that might be... I don't want to. Because certainly I think the evidence of the austerity period is very mixed in that regard." **(Interviewee 13, 2018).**

4.4.4 The impact of not-for-profit governance failures

As noted earlier, it is reported that trust in charities fell, from 28% in 2014 to 24% in 2017 reflecting the impact of a number of high-profile governance weaknesses in a small number of organisations **(Amarach research, 2017).** At the same time though, almost two thirds of those surveyed still believe that charities still play a very important role in Irish society. Not-for-profit representatives recognise the impact of 'scandals' on how they are perceived, both by the public and by the State, but also recognise that the not-for-profit sector needs to improve how it does its business:

"I think there have been instances where we didn't help there were too many scandals and I think we lost the confidence of the community and the State and it was almost like moving from the pendulum being at one end of no regulation and no real oversight to the other and I don't think we've found the middle ground yet and I hope there is a middle ground but I don't think it's only about the State exercising its bureaucratic muscle I think we as a sector have kind of invited some of that by not being good enough sometimes." **(Interviewee 11, 2018)**

Another agrees, but regrets that there is often an inability to distinguish between organisations in the not-for-profit sector:

"I do have fairly definite views I think it's an awful pity really that we're all painted with the same brush in that there were a number of situations whereby charities were not managing their monies in the way, in a best practice way. I'll put it that way...The thing is it has affected us all, it has affected our fundraising to a huge degree. But the number of new fundraising initiatives in the community for individuals has affected us also." **(Interviewee 7, 2018).**

These perceptions are confirmed in the Charities 2037 report which noted that 54% of respondents to a public survey didn't trust that donations made to charities are used effectively, while almost 75% consider that current levels of transparency are 'unsatisfactory' **(Amarach Research 2017: 25)**. It can be assumed that this has a knock-on impact on willingness to support organisation core costs:

"In terms of fundraising, in terms of perception, in terms of public anger, in terms of people saying, 'Well I'm not paying for that. I'll fundraise for your client activities for you but I'm not fundraising for central admin,' and well how do you expect us to run the organisation if we don't have a good HR person or a good...transparency and accountability needs resourcing." **(Interviewee 1, 2018).**

Again, the disconnect between public knowledge and the realities of running professional not-for-profit organisations emerges. Research confirms the belief that the salaries paid to staff in not-for-profits are too high **(Amarach Research 2017: 18)** despite data from Benefacts showing that this is not the case. In fact, according to Benefacts research, 'Excluding the quasipublic segment, fewer than 1% of people working in Irish Nonprofits are paid more than €70k, compared to 13% of people in the economy at large' **(Benefacts 2018: 13)**. Clearly then there is a challenge to communicate more effectively about what it is not-for-profit organisations do, the way that they work and the actual reality of the terms and conditions of their staff.

4.4.5 Alternative models of funding

From the evidence presented thus far there can be no doubt that many fundamental aspects of existing relationships and funding regimes are problematic and broken. This has led some contributors to suggest that there now needs to renewed discussion on alternative models of designing, delivering and funding service

provision. One such model is commissioning. In the view of one health sector official what is needed is a shift in discourse towards a commissioning-based relationship:

"...the reason why I say that is that actually I think it actually keeps the focus on that the services are actually about the citizen and about the public and their access to and entitlement to basic and public services. It can't be about the confusion and the fog around, well the State paid for this and the charity paid for the other bit. A lot of the stuff that should be a basic entitlement that people should enjoy..."

However, in the official's mind, the extent of what could be commissioned may be limited:

"There are elements of services that could certainly be commissioned but discrete elements I would say. So for example I think if you look at where we're going in terms of personalised budgeting and people genuinely making their own decisions with the resources that are made available to them, that has potential to certainly drive a particular approach in terms of how we deliver services and maybe it's not necessarily the State commissioning maybe the person is commissioning their own services." **(Interviewee 3, 2018).**

This is confirmed by another official who suggested that a fully market-based model of commissioning is a long way off, while emphasising that an approach based on some level of dialogue is important:

"People have different ideas about what commissioning is. Some people think commissioning means a type of market-based approach. I think we're a long way off that. If commissioning means sitting down with the service provider and talking about what service you can provide at what cost and under what conditions then there's definitely going to be more rather than less." **(Interviewee 13, 2018).**

The role of commissioning was put firmly on the political and administrative agenda by the Department of Public Expenditure and Reform in 2015 when it undertook a consultation exercise and commissioned the Centre for Effective Services to carry out a Rapid Evidence Review (REA) about approaches to and experiences of commissioning. The report on the consultation exercise reported that respondents were generally 'receptive' to the idea of commissioning, albeit expressing some 'cautions and qualifications', especially cautioning that the term 'commissioning' would not be interchangeable with 'procurement/competitive tendering' and recognising that it might not be appropriate in all fields of activity **(Government of Ireland, 2015: 8)**.

The review of evidence carried out by the Centre for Effective Services cited a number of possible rationales for moving towards a commissioning model, emphasising elements such as understanding needs; sharing information; promoting workforce wellbeing; improving partnership working and pooling of resources, and creation a 'single health and social care vision'. The review cites four examples of commissioning models from different parts of the world: The Institute of Public Care Commissioning Cycle in the UK; the South Australia Health Clinical Commissioning Framework; the New Economics Foundation Commissioning for Outcomes and Co-production model and the Alliance Contracting Model in Canterbury New Zealand. It is worth noting the emphasis these models on strategic planning of services, partnership, co-production and separation between planning elements and purchasing/contracting stages **(Colgan, 2015)**.

Responses in this research further suggest that commissioning would need to be able to value both the tangible and intangible dimensions of service delivery, especially the relational capacity that not-for-profits bring:

"And it's the depth of those relationships and the duration of those relationships that the organisations bring. You know how do you value that in a commissioning process? You have to find a way to value that to make sure that it is competitive in the real sense of the word. You know that organisations can compete against other organisations who will be just... If they're just competing on price, then it's not going to be fair" **(Interviewee 8, 2018).**

Pointing to the potential contribution of a commissioning approach another contributor proposed that it could be useful way to being to recast the whole basis of service provision.

Another interviewee suggested that commissioning could provide a platform to enable better planning for the decommissioning of some existing services and the recommissioning of other approaches to replace them:

"The other thing that [organisation name] have argued about, argued for is that disability service should be commissioned, that there should be an independent commissioning body for disability services and we should be de-commissioning old services over time and say actually we don't want that model anymore so we're going to start de-commissioning you, can we help you move into a different space, or can we invite other

people in to the market but actually somebody needs to be saying why are we continuing to commission this model, because the problem is we'll continue to fill those beds." **(Interviewee 12, 2018).**

The dangers of poorly designed commissioning do however need to be recognised, not least those arising from frequent retendering for services:

"Frequent tendering rounds and different contract winners could result in the wholesale (and regular) transfers of staff between public, private and voluntary sector organisations. This is unknown territory in terms of the likely scale of change, but there is some evidence about the effect on staff and staff commitment and morale, on potential burnout, disillusionment and the quality of care provision as a result of deterioration in employment conditions." **(Davies, 2011:646)**

Another CEO however, while positively disposed, wondered if the whole focus on commissioning has slipped off the HSE agenda, a sense confirmed in informal discussions with officials in the Department of Public Expenditure and Reform:

"But I think one of the things that's really interesting and has been talked about by the HSE for a while but actually they've gone a bit quiet on it the last year or so is the whole area of commissioning and tendering for services. Which is something that we would welcome." **(Interviewee 6, 2018)**

Conclusions

The main conclusion emerging from this section is the clear need for a major and urgent revision of how not-for-profit organisations are funded and how funding agreements are overseen and managed. In the short term, where services are being provided under a Service Level Arrangement, it seems evident that the level of funding needs to match the actual cost of delivery. While there should of course be space for dialogue about costs and for the HSE to question the cost bases being proposed, not-for-profits cannot be expected to be pushed further into deficit by effectively subsidising the State's provision of services. Either the level of funding should be adequate deliver the required services or the level of services provided needs to be reduced. Ultimately, an alternative model of funding needs to be considered if financial sustainability weaknesses are to be adequately addressed.

Equally, in the context of already financially strained organisations, crudely applied Value Improvement Programmes serve little purpose other than to push organisations further into deficit. As such they serve little purpose.

4.5 Pressure on human resources

Earlier sections of this report have discussed the increasing pressures experienced by not-for-profits arising from the State's drift towards command-and-control approaches, from the array of regulatory, compliance and accountability requirements and from the challenges of managing the finances of organisations increasingly operating in deficit and under less-than-optimal administrative regimes. Inevitably, all of these take a toll on the human resources involved in overseeing and delivering services (staff and board members).

Actual and potential loss of staff from organisations is one of the concerns raised, an issue highlighted in previous research on Section 39-funded organisations (McInerney and Finn, 2015). This concern is again reported here. A particular concern is the loss of staff either to the HSE or to Section 38-funded bodies as a result of their ability to offer more attractive terms and conditions, not least due their capacity to guarantee pay restoration and access to a State pension:

".... unfortunately, we're losing staff from the system to the HSE, to our colleagues in 38s. Because I mean staff have to try and get the best deals for themselves and I get that." **(Interviewee 2, 2018)**

This is confirmed by another not-for-profit representative who commented on the problems created because of the differential pay and pension regimes that have been allowed to build up between Section 38 and Section 39-funded organisations:

"What I'm hearing is happening on the ground are Section 39-organisation staff, whether it is the speech therapist, the social care worker, the physiotherapist, are having a little look across the road and seeing the defined benefit pension scheme, the pay restored..." **(Interviewee 14, 2018).**

Similar experiences have been reported in New Zealand, where competition from the state and private sectors has been difficult for many not-for-profit organisations (Sanders, O'Brien et al., 2008).

For those involved in senior management positions the impact of sustained periods of managing organisations in increasingly challenging circumstances is telling. One highly qualified CEO comments:

"It's tough but I refuse to get down under it. I mean you just crack on and you do what you can. But I've always approached that... I won't create expectations I will be honest in my dealings with everybody. If I can't do it, I'll say I can't do it. And the same with my board. I tell them it as it is and that's the only way you can survive really." **(Interviewee 2, 2018).**

The same interviewee noted that a number of senior managers are leaving the sector and that there may be difficulties in replacing them:

"And the other thing is CEOs are retiring or going early, a lot of them are going early and then to get a replacement, the HSE don't want you paying proper salaries. They have cost bands now that in most cases it's our managers. And you're not going to get someone to take on that accountability and responsibility for a pittance. So that's a lot of our managers in that area are leaving and they're finding it very hard to get replacements." **(Interviewee 2, 2018).**

However, it is suggested that the ability to employ senior staff is not just a question of finding willing candidates, it is also now about receiving permission from the HSE to recruit them in the first place, further emphasising perceptions about gradual erosion of organisational autonomy:

"Well it appears that we cannot decide to recruit senior staff without the HSE knowing about it. That's one thing. There was a time up to I would say 2008, 2009 where organisations decided their own pathway. That's gone, that's long gone. If I was to leave here tomorrow morning [the organisation] would have to get permission from the HSE to recruit a CEO. In fact, there could very well be a case whereby [the organisation] would be merged with a like organisation in the county or in the next county if such a situation were to occur." **(Interviewee 7, 2018).**

The personal impact on many CEOs of dealing with perceptions of being undervalued and trying to manage underfunded services is tangible, as are their ways of counteracting it:

"The relentless advocating for the organisation and proper service funding is exhausting and does cause burnout ... I get so tired of it all... I make a point of going out to the services to meet the clients because that's what drives me. They remind me why I do this job. That's why I put up with the bureaucracy. I do it because I believe that it's making a difference to these people's lives." **(Interviewee 1, 2018)**

Beyond the impact on paid staff, the human resource cost is also being extracted from amongst the volunteer membership of organisations' governing structures, with increasing reluctance to take on this increasingly onerous role being noted by a number of interviewees:

*"So what's happening is we don't have anybody who wants to be on a board. Because what I witnessed was the HSE making the board responsible for the services that the HSE wouldn't fully fund yet expected the service to be delivered. Even when the board could potentially be brought up to court for not meeting HIQA regulations. Board members have been held responsible for the actions which are not in their control, a dysfunctional business model which puts their personal credibility into question. In my organisation our board members are asking 'well what's our role if they're going to tell us what they want us to do and how to do it, yet make us accountable when it doesn't work or they don't pay us what it costs to deliver it safely."***(Interviewee 1, 2018).**

This pressure was also openly acknowledged by one of the senior officials interviewed:

"You know the boards of management who are volunteers it's a huge burden on them. They're not paid, they are there out of the goodness out of their sense of duty and loyalty etc. etc. and that's to be commended and there is a tipping point I think which we are probably at now in terms of: why would I be involved in a voluntary organisation if this is the level of input that is required when really I'm here to play my role as a non-paid person who is interested in the work? So I think there is a bit of a tipping point for some organisations, some of which is created, probably a lot around the tension around compliance and regulation, the potential import or the impact of something going wrong with my good name and then the tension around 'sure Jesus we're not funded really to actually meet the requirements'. So, I'm very aware of all that." **(Interviewee 3, 2018).**

A critical, related point about the makeup of boards was made by the CEO of a regionally focused not-for-profit, suggesting that the increased responsibilities being placed on organisations are in danger of substantially shifting the future composition of boards:

"In times gone by they would have been people who represented the voice of families and people using services on the Board of Directors. Now they're directors in the sense of all the compliance and I suppose being challenged in ways maybe that previous generations of directors wouldn't have been and they are still there as volunteers, they're still there as people who are going to do their best but feel an enormous amount of pressure on them that's a little bit different maybe than what their predecessors might have had. And it wasn't that previous Boards weren't really clear on their governance role I think often they were, but I think they felt that they were able to exercise it in a way that gave them a little bit of, freedom is the wrong word, but they didn't feel as pressurised by it, whereas now I think there is a very onerous sense of it. So, I even know from talking to members of our own Board at the moment they are very conscious of their responsibilities and their duties and kind of some of them I know were saying, god when my time up I'm not sure I want another term of this and if I'd known what was involved here would I have got involved. I think that's a concern...."

This point was expanded upon further:

"I was involved in a discussion recently about trusteeship of pension schemes and there is this whole move to maybe professionalising that and having professional trustees who are trained and I can see the same kind of move happening in organisations like [organisation name], that you get to a point of kind of saying you know you need people who are going to come from a particular type of sector with real experience of governance to be on boards of organisations like [organisation name] and how are we going to balance that to maintain the voice of people and one of our things has always been able to say we're governed by the people who use our services." **(Interviewee 11, 2018).**

This raises a real concern that the role of board members will become the preserve only of those with specific skills in the governance of large organisations or those with the confidence to take on the increasingly challenging role of board members. One CEO said in this regard:

"I mean me personally if someone asked me to be on a board I'd have to think seriously about it. We're going to find it very difficult to get board members because of all the compliance." **(Interviewee 2, 2018).**

Summary and Conclusions

The delivery of services to people with disabilities is a human resource-intensive process requiring highly experienced staff at all levels alongside unpaid board members capable and willing to take on increasingly onerous governance and compliance responsibilities. For the reasons outlined in this research, there can be no complacency that Section 39-funded organisations will be easily able to overcome these human resource challenges. There are challenges to retain existing staff and to recruit new personnel. There are challenges to retain and recruit senior managers to oversee the effective operation of organisations. Finally, there are challenges to secure the involvement of range of board members who can bring different perspectives and skills, not just those demanded by an increasingly professionalised regulatory environment. Meeting these challenges is not just a question of funding as the next and final section will discuss.

5 | Conclusions and ways forward

5 Conclusions and ways forward

Introduction

This research set out to examine the relationship between not-for-profit organisations and the State, in particular, those organisations in the disability sector funded under Section 39 of the 2004 Health Act. Drawing on the perspectives of the representatives of prominent not-for-profit bodies and senior health sector officials, this report has identified a range of issues that impact on the success and sustainability of this relationship. In this section, these issues are analysed and ways forward are considered in relation to:

- Some of the longer-term fundamentals that underpin more healthy and sustainable relationships;
- Some medium-term options to begin to recast relationships;
- Some short-term, immediate, and, largely operational, blockages that need to be addressed.

5.1 Addressing some fundamentals

5.1.1 How public administration operates

Since the foundation of the State the delivery of services for people with disabilities in Ireland has relied on an interaction between the Irish State and the not-for-profit sector. Over time, however there has been a notable negative shift in the nature of the interaction. Relationships, initially based on loose co-ordination and collaboration have, in the view of many, given way to one where not-for-profits are seen largely as contracting bodies, entities to be managed and to be directed, likened by one interviewee to being a 'sub-cost centre' of the HSE **(Interviewee 14, 2018).** Accompanying this shift towards a stronger managerialist ethos is a sense that the sector is not valued or trusted, as the governance weaknesses of a small number of organisations are magnified into a pathology of the many. The quest for what is presented as greater efficiency and effectiveness and narrow 'value for money' has come at the cost of increased centralisation; reliance on narrow performance metrics; the assertion of command and control; declining collaboration; underfunding of services; an absence of longer-term planning; dilution of the autonomy of not-for-profit organisations and, ultimately, a weakening of the sustainability of service delivery capacity. This has led one not-for-profit representative to conclude that:

> *"We're in that situation now of an existential threat to the whole voluntary sector, to the whole voluntary ethos."* **(Interviewee 14, 2018).**

This managerialist twist alone is not the only source of this threat. It has been exacerbated by the economic crisis and a related desire to control public expenditure, though this may well have simply coincided with a broader move to abandon formal partnership as a way of working and with the desire to reassert command-and-control impulses. Ireland is not unique in experiencing this type of managerialist enthusiasm, but whereas we appear unable to break free of it, others have moved beyond it. New Zealand, the best-known early adopter of a new public management, market-driven ethos in public service provision, shifted back towards a culture of respect and partnership in the late 1990s, ultimately leading to the establishment of an Office for the Community and Voluntary Sector to provide a channel for information sharing, research and co-ordination **(Tennant, O'Brien et al., 2008).**

In considering how Ireland might usefully learn from the more recent, progressive New Zealand lead, it is important to recognise that the managerialist – or new public management approach – to public administration is not the only way that the public sector can operate. Laid as it is on top of traditional models of public administration, managerialism has to be seen as a particular and ideologically driven approach, that has swept through the operation of public bodies throughout the Western world. The key long-term message from this research is the need to renew an ethos of collaboration and co-operation in the relationship between the State and not-for profit organisations, one where broader public value principles, not just narrowly defined and short term value-for-money considerations, inform the choice

of operational priorities and the nature of operational relationships.

Thus, in an era when managerialist approaches are increasingly showing their weaknesses, alternative ways of considering how public policy should be designed and delivered are needed, implying that alternative dispositions and approaches to, and within, public administration are also needed. These alternatives have been articulated in approaches such as Public Value Management (PVM) and New Public Governance. These have variously been presented as tools for planning, analysis, and means of charting the changing nature of government and governance. Many have argued that their underlying principles offer a more realistic approach to the leadership and the management of public policy processes and are especially important in an era of collaborative, network governance, where the state does not have the capacity on its own to address complex societal problems **(Stoker 2006; Alford and Hughes 2008; Shaw 2012; Ernst and Young, 2014).**

Such approaches, in the context of this research, do not simply see not-for-profit organisations as an instrument of the state, there simply to implement policies at the behest of the state, but as partners in pursuit of a shared vision. As such they require a broader concept of authority and legitimacy and a more expanded and, potentially more challenging, form of accountability where public officials reimagine their relationship with citizens and civil society organisations, including not-for-profits. Strong forms of dialogue and deliberation are implicit, with the public manager playing a key role in the facilitation and mediation of such dialogue. This is the type of approach visible in the commissioning models mentioned earlier and cited in the Centre for Effective Services research, and which has been suggested by many of the research participants. However this does require a certain skill set and disposition. And while this research suggests greater openness to dialogue may be present at local level, it is perceived to be weaker within national level relationships.

Some may consider a discussion of these types of issues as vague and relevant only to the academic environment. Fundamentally though, the nature of how public administration operates is at the root of most of the issues raised in this research. As such, focusing on short-term remedies while underlying structural and dispositional weaknesses within the public administration system persist would change little, as acknowledged by the former Director General of the HSE **(O'Brien, 2016)**:

"As we are all well aware, the HSE was created with a big bang. Politically and legislatively it was easy but, to my mind, not necessarily a good idea and not well thought through. The rationale behind the establishment of the HSE was to centralise operations. This type of structure coupled with an unexpected economic recession, led to a 'command-and-control' type of system that disempowered those tasked with service delivery. It also tended to stifle the creativity and innovation required of a sustainable, adaptive organisation. Overall, we have learned that you simply cannot manage 105,000 staff from one central location."

While directed at the HSE itself, the impact of the comments extends to those organisations providing services on behalf of the State. The negative impact of centralisation and of command and control approaches on creativity, innovation, sustainability and adaptability are clearly echoed in the comments of many not-for-profit CEOs and even some health sector staff.

There seems little value, however, in the former Director General of HSE naming these issues but then continuing to preside over the command-and-control trajectory. At this point, as part of the broader reform of Irish public administration, the HSE must be reformed so that the acknowledged over-bureaucratisation doesn't damage service delivery capacity even further, in the process eroding the distinctive value produced by not-for-profit organisations.

To this end, it is recommended that the Department of Public Expenditure and Reform needs to expand its approach to public sector reform to move beyond the more limited technical reform agenda that has been visible in recent years. Alongside the many technical, instrumental types of reform contained in these plans, DPER needs also to address public sector capacity so that it can be liberated to play a more enabling and transformative role, so that it can build more durable and effective relationships, especially with the not-for-profit sector. In this regard it is worth noting the conclusions of the OECD Assessment of Ireland's second Public Service Reform Plan 2014-2016, in particular its assessment of the Alternative Service Delivery sub goal. The objective of the alternative service delivery is described in the report as involving the 'use of innovative alternative delivery models, in partnership with voluntary, community and private sector' to 'design, and deliver better more cost-effective public services' **(OECD, 2017)**.While the report suggested that many of the more technical elements of the proposed reform were completed, alternative delivery and related outsourcing 'have not emerged as systematically viable options for public service provision'.

Reflecting many of the issues raised in this report the OECD have attributed this, in part, to:

*'Cultural resistance towards outsourcing among managers and at the political level, as well as industrial relations. Increasing take-up would require **strengthening capacity of the service delivery ecosystem**, which includes the public service as well as grantees, regarding compliance with regulations, evaluation, and managing risk.'*

The report also suggested a stronger focus on outcomes, suggesting that:

'Putting a stronger focus on outcomes in a reform agenda can open space for flexibility and innovation in achieving them, as opposed to building up an overly complex reporting system that may divert limited resources to measurement and compliance. Focusing on processes can limit innovation and achievement of the desired outcomes, and is thus less resilient and responsive to changing circumstances and needs.' **(OECD, 2017:10)**

Despite the fact that the OECD report did not pay particular attention to the relationship between the not-for-profit sector and the state, these recommendations resonate strongly with the issues raised in this report, especially those relating to the regulatory burden and the inadequate focus on outcomes. However, speaking about future reform processes, the OECD does identify the importance of the 'co-production of reform' and 'giving citizens a role in prioritising outcomes and in making decisions about how to achieve them' **(OECD, 2017: 16)**. To achieve reform, particular capacity requirements are also identified. The first three are in the areas of 'Iteration, Data literacy, and User Centricity' but more significant are the second set of capacities, which clearly move the focus of capacity building from the technical and instrumental towards the transformative and relational:

*'The second three – **Curiosity, Storytelling and Insurgency** – relate to **mind-sets and working methods**, where all **public employees are supported to ask questions, search for unexpected solutions, communicate** with a range of audiences, and be **drivers of change** in their organisation. This not only requires skills, but supportive workplace culture and leadership.'* **(OECD, 2017:19)**

Clearly, this scale and type of reform agenda is challenging and a long-term project if applied to the entirety of the public sector. However, the degree to which it has permeated into the current public sector reform plan 'Our Public Service, 2020' is questionable. **(Department of Public Expenditure and Reform, 2017)**

This plan neither addresses the substantial role played by not-for-profit organisations in service delivery across a range of sectors, especially health, nor does it consider ways in which the State could and should engage more effectively with them.

This is a significant gap in the reform process. Thus, for the purposes of this research, it is recommended that consideration be given to the importance of this relationship by piloting a reform programme within the HSE functional units dealing with the disability sector (nationally and regionally). These units should be designated as a pilot for public value/public governance-oriented reform processes, taking the OECD recommendations for capacity building as their starting points. As part of this reform process DPER and the HSE must identify ways to move away from command-and-control bureaucracy towards a model that emphasises collaboration, responsiveness, partnership, entrepreneurship and deliberation alongside, but not replacing, necessary rules and regulations.

5.1.2 What services are delivered?

While the focus of this research is on the nature of the relationships between the State and the not-for-profit sector, the issue of how the not-for-profit sector operates in the longer term was also raised, the suggestion being that existing models of service delivery may need to change considerably to embrace and reflect a stronger commitment to emancipation, personal autonomy and control. Thus, as well as reform in the public sector, an internal sectoral focus on reform should also be considered.

As was noted earlier, it was proposed by one contributor that this might even bring into question the very need for not-for-profits to exist or certainly to exist in their present form. Speaking of the not-for-profit sector the point was made that:

"It employs thousands of people in very traditional ways of working, very automated, you know rotas, nursing staff, very automated traditional ways of working. It's very hard to shift that model there's no political will to shift the model so you can fairly ask what's the alternative? And the alternative is people living close to their home, in their own community getting bespoke supports that are individualised and person-centred. Now it would be naïve and stupid to say that we don't need disability services but there aren't significant numbers of people who have additional support needs, you know, like people who can't get from A to B, or hold down a job or get from A to B in a way that is safe without the support of their family or a professional carer but it's become so professionalised and so labour heavy in terms

of staffing and nurses etc. that we've institutionalised a whole sector of the population of persons with a disability, particularly intellectual disability." **(Interviewee 12, 2018).**

Current policy proposals around individualised or personalised budgeting, if implemented widely, would accelerate the need to substantially reconfigure how services are provided, though many doubt that the political or administrative will is there to drive such fundamental change **(Interviewee 12, Interviewee 13, Interviewee 14)**. However, be that as it may, just as public administration reform needs to be reconsidered, how not-for-profits take on the challenge to review how they work may also need to be questioned:

"So, you know they could sit down in that space and create and [organisation name] would welcome participation in that, how do you get into a space with organisations that want to innovate but that at the core of what they want to do is the right to self-determination of persons with a disability. Not a dependency on institutions and segregation but the right to self-determination because there is always going to be a need for models of service." **(Interviewee 12)**

To this end it is recommended that the not-for-profit sector itself, via its main representative bodies, convene a process/forum to explore these issues and to assess its own longer-term vision of how services might be best provided to people with disabilities and how organisations in the sector can be best configured to deliver such a vision.

5.2 Addressing medium-term issues

Beyond these longer-term considerations, a number of significant medium-term issues emerge from the research, namely redefining and rebuilding relationships between the State and the not-for-profit sector; operationalising that relationship within a progressive alternative funding model and, finally, locating the relationship within a more appropriate legislative framework.

5.3.1 Re-defining the relationship

International experience suggests that the *'solution to the ongoing complex social problems confronting societies requires working together in new and innovative ways that are underpinned by deliberative horizontal strategies encompassed in networked arrangements and collaborative, crosscutting endeavours' (Keast and Brown 2006:41).* This research echoes the international experience. It concludes that 'working together' has not been the defining element of the State's recent disposition towards not-for-profit organisations, at least in the period since the establishment of the HSE. However, there is still a widespread desire to work in more collaborative ways, expressed both by not-for-profit representatives, as well as by some officials. Responding when asked about ways to develop more effective relationships in the future one official offered the following recipe:

"The first thing I think is the State needs to articulate its intention to provide services through partnerships of commissioning contracting, whatever phrase you want to use. So, is it the intention of the State to continue to do that, is that a good thing? I would suggest the answer is yes. The second thing then is the State would need to change the legislative framework which allows for services to be provided on behalf of the State and deal with all of the terms and conditions associated with that." **(Interviewee 5, 2018)**

The same official continued...

"I think the best thing that could happen with the relationship is that we introduced a maximum level of honesty to it. And the maximum level of honesty is about telling somebody what I can do for you and I will partner and support you, and what I can't do for you about which you might be feeling uncomfortable, but you need to know I can't do anything about it and here's why. I think if we have a more robust relationship, I think it's a better relationship, I think it's more enduring. At the moment we probably have a little bit of unreasonable expectation of each other, 39 and the State and the State on 39." **(Interviewee 5, 2018)**

What this extended roadmap essentially suggests is the need for a clearer and more mutually defined relationship between the State and not-for-profit organisations, especially those responsible for the delivery of substantial levels of service, but one that revitalises the notion of partnership and collaboration that was more visible in the pre-HSE days. This presents challenges both for the State and for not-for-profit organisations but meets the call by one CEO that the State must be more forthcoming about *'what it sees the role of the third sector to be'.* **(Interviewee 9, 2018)**

Historically, this was supposed to have been achieved in 2000 with the publication of the White Paper on Voluntary Activity: The Relationship between the Community and Voluntary Sector and the State **(Government of Ireland, 2000)**. While this White Paper was, in any case, largely abandoned by the State within a year or two of its launch **(Harvey, 2004)**, it was criticised at the time for its failure to address issues pertinent to the operation of voluntary

sector/not-for-profit organisations. Instead it focused primarily on community sector organisations. In the intervening period successive governments have failed to tackle the need to develop an overview of the role of not-for-profit organisations. This gap needs to be addressed.

Of course, roles do change and evolve, though the nature of that change is contested. One official recognised that dialogue is needed but envisages a more functional, integrationist approach to future relations, one in which the State has legal obligations to deliver public services, may do so through not-for-profits but which requires a more 'mature' approach on all sides:

"I think it's changed; I think we need to have a grown-up conversation now. I think we need to appreciate that we've moved on from the legacy of charity organisations delivering key public services. That is no longer the case. That is not to denigrate or disrespect the gap that has been filled in the absence of the State stepping up but I think there's a maturity that is required now and that maturity is we have in this democratic system, we have public service, we have legislation, we have policies to deliver key public services." **(Interviewee 3, 2018)**

While calling for a 'conversation', this perspective does seem to suggest a more bounded and directed engagement, where the State sets the rules and not-for-profits decide whether to engage with them or not. In the absence of a more open approach, integration of not-for-profits into the machinery of the State may well lead organisations to simply reconfigure their operational and legal structures, to split off those parts of the organisation that are involved in delivering public contracts while maintaining a separate, ethos, and mission-driven core structure.

Whether future relationships are more or less integrated it seems clear that there are basic prerequisites for more effective future relationships:

i. Developing a clearly articulated vision for the role of not-for-profit agencies both in the design and delivery of services. This is clearly not only the responsibility of the HSE but the HSE must play a lead role in motivating for such a vision to be developed. It does however have clear implications for political leadership and for the Department of Health.

ii. Articulation of agreed principles for interaction, such as those described above, producing a clear understanding of relevant roles, rights and responsibilities.

iii. More direct, regular and mutually respectful communications pathways between the HSE and not-for-profit organisations, facilitated by experienced, dedicated and knowledgeable contact points within the HSE.

iv. Effective relationships are also supported by clarity about what is expected of each other. Many not-for-profits have emphasised the need for a different way of articulating these expectations through outcome-oriented planning and outcome-oriented reporting, moving the relationship toward more meaningful forms of results based on accountability, not just being limited to shorter-term input and output indicators. This is very much in line with the ethos of the OECD assessment of Irish public sector reform.

v. That ability to manage a new form of relationship requires a renewed focus on capacity building within the HSE, to enable and empower it to collaborate and build sustainable partnerships. As well as the broader recommendation for a pilot reform exercise within the relevant functional units of the HSE at national level, this may mean greater devolution of decision-making power to the CHO level, where the experience of – and potential for – collaboration is reported to be substantially stronger. It will also require better internal communication within the HSE, between regions but also between the national and regional levels.

To address these issues it **is recommended that the State commit, within a three-year period, to develop, in a collaborative way, a Compact governing the relationship between itself and not-for-profit organisations involved in the delivery of a substantial level of services on behalf of the State. If the task of developing a sector-wide Compact is seen as too demanding, a pilot for the disability sector could be developed instead.** Models of state-voluntary sector compacts/concordats already exist in the Scotland[14], Northern Ireland[15] and in England and Wales[16] and provide a useful starting point. Typically, these compacts affirm and set out:

— The value of a strong and diverse not-for-profit sector;

— The differing contributions and roles of not-for-profit organisations;

— Principles underpinning future relationships;

— Mutual expectations of behaviour and contribution;

— Communication and collaboration principles;

14 https://www2.gov.scot/Publications/2004/02/18723/31449
15 https://www.communities-ni.gov.uk/publications/concordat-between-voluntary-and-community-sector-and-ni-government
16 https://www.ncvo.org.uk/practical-support/information/collaboration/compact-agreement

— Institutional structures to enable co-operation and collaboration;

— Expectation of autonomy.

Local-level compacts based on the national model could in turn be developed to enhance local-level partnership and to capture local-level specificities.

Who should be responsible for a Compact?

Recommending the development of a Compact and it happening are two different things. Who, or what, arm of Government would be responsible for its design? That it is not easy to identify who might be responsible for supporting the negotiation of a Compact in Ireland highlights the lack of institutional capacity in the Irish State to oversee and enable its relationship with the not-for-profit sector. In addition, the research has also encountered a degree of inertia or administrative fatigue and an associated unwillingness to look at bigger-picture questions, to step back, to tackle complex topics, to look at issues such as commissioning or the development of an appropriate and meaningful legislative basis. These are challenging issues, but not ones being prioritised by DPER, the Department of Health or the HSE.

To address this institutional deficit, it is recommended that the Government needs to take a decisive step and follow the example of New Zealand and create a junior ministerial portfolio for the community and voluntary/not-for-profit sectors, to be located as a distinct office/unit within the Department of the Taoiseach. This portfolio would cover the development of strategic relations with the community and voluntary/not-for-profit sectors, including the negotiation, monitoring and review of a Compact Agreement; advancing funding frameworks relevant to organisations involved in substantial service delivery on behalf of the State and the review and revision of legislative frameworks governing these relationships. Alternative funding and legislative frameworks are discussed further below.

5.2.2 Towards an alternative model of funding

Many of organisations interviewed fear for their financial sustainability and they fear for the sustainability of others in the sector. The word 'crisis' has been used more than once. If organisations collapse, either the service they provide will have to be picked up by another organisation, it will have to be delivered directly by the State, it may be deliverable by a private sector organisation (most likely at higher cost) or the service may just be lost.

Given that so many organisations speak of running at deficit it is unlikely that those who do survive will be able to take on the legacy of underfunded services from another organisation, especially within an already overburdened compliance environment. To do so would appear financially reckless. The strong impression from this research is that the situation is close to breaking point and requires immediate political and administrative leadership to address it.

One way to do this would seem to be direct dialogue with not-for-profit organisations about the range of pressing funding-related issues, including the potential to move towards a more structured model of commissioning, capable of taking on the best features of the models identified in the Centre for Effective Services Rapid Evidence Review. The creation of a Healthcare Commissioning Agency was recommended in the 2012 Value for Money Review and should now be pursued, in partnership with the not-for-profit sector. The experience of organisations such as Tusla, which already operates a commissioning model, may also be worth investigating. This operates from seven core principles, including taking decisions at the lowest level possible, taking a partnership role with other statutory partners and 'respecting the unique role for community and voluntary organisations, including small scale providers'**(Gillen, Landy et al., 2013: 1)**.

However, many also fear for the future of service delivery and suggest that there are multitude of needs coming down the track that haven't even begun to be planned for. The current 'crisis' in service delivery capacity is, according to one long-serving not-for-profit representative:

> *"... the outcome of a situation where demand is growing, needs are changing, thankfully people with disabilities are living longer in line with the rest of the population. That brings its own challenges. Populations' needs change. But if you have an intellectual disability they change far more rapidly. And there is already proven research to show that early onset of dementia is far more prevalent in people with intellectual disability... This is a wake-up call for government if they choose to listen to it. The tsunami is out there, it hasn't hit land yet. But it's coming, because it is that confluence of lack of investment over the years, people living longer, needs changing, emergencies growing..."* **(Interviewee 14, 2018)**

The potential role of commissioning in providing a framework to plan for and locate the service-delivery component of the relationship between the not-for-profit sector and the State, has been examined and recommended in the 2012 Department of Health Value for Money report and has been the subject of Department of Public Expenditure and Reform consultation and research in 2015/2016. That consultation exercise indicated that there is a general openness to the idea of a progressively

constructed model of commissioning with themes of collaboration, outcome orientation, data-based planning, transparency and the primacy of service-user needs very much to the fore.

International experience clearly illustrates that there are many different approaches to commissioning, some of which emphasise collaboration, others tending more towards a narrower emphasis on competitive tendering, which in some cases can involve potentially disruptive processes of re-tendering and associated negative impact of staff morale, terms and conditions **(Cunningham and Nickson, 2009)**. In considering the design of any commissioning approach the pervasive influence of managerialist approaches must be remembered. Commissioning designed with a managerialist bent is likely to result in a narrower form of dictated, competition and output-oriented commissioning. Commissioning designed with a public-value orientation has the potential to produce an approach to commissioning that reflects the themes emphasised in the 2015 DPER consultation and which more closely approximates to the partnership-oriented models referenced in the Centre for Effective Services report **(Colgan A., Sheehan A. et al., 2015)**.

Still, in 2018 in Ireland, despite the groundwork being laid, there is little indication that commissioning as a way forward has gained any significant traction. Indeed, it appears from some commentary that there is no particular appetite to progress it to an operational stage. Alongside, and in parallel with the development of the Compact, **it is recommended that there be no further delay in the development of a model of commissioning for the provision of services to people with disabilities. As with the Compact, this model should be developed in a collaborative manner and should emphasise the place of partnership and co-production as well as a distinction between planning elements and purchasing/contracting stages. It should also seek to replicate the features of internationally recognised progressive models and avoid the negative impacts of narrow, competition-based approaches.**

5.2.3 Reconfiguring the legislative provisions for not-for-profit service delivery

The nature and evolution of legislative provisions for the delivery of services to people with disabilities through non-statutory bodies have been described in Chapter 1 above, and various reactions to it are conveyed at different points in Chapter 4. There is the general agreement that the existing Sections 38 and 39 of the 2004 Health Act are not fit for purpose, given that the services provided by organisations through Section 38 are largely indistinguishable from those provided by many of the larger organisations supported under Section 39. As a result, for these organisations at least, the legislative distinctions between organisations providing services 'on behalf of' the State (Section 38) and 'ancillary to' the State need amending. This legislative distinction means that the state assumes liability for the full costs of services provided by Section 38 organisations, whereas Section 39s, although the services are the same, and costs are similiar, are underfunded and this underfunding has become critical in the last few years.

If this issue could be easily resolved by a simple change of language it would have been done long ago. In the real world a pertinent distinction between Section 38 and Section 39-funded organisations exists, namely the fact that, in the former, employees are counted within the public sector workforce numbers and have access to the State's defined benefit pension scheme, while the latter are not. The former also have enjoyed the benefits of public sector pay restoration, while many of the latter have not, itself a source of ongoing discontent. It is conceivable that a legislative change to remove the 'on behalf of'/'ancillary to' distinction could be considered. However, what seems less likely is the addition of a significant number of individuals into the public sector headcount and into the State pension scheme. In any case, it could be suggested that having staff reclassified as public servants potentially undermines calls for the preservation of the organisational autonomy and independence of not-for-profit organisations.

It has been clear in interviews with public officials that there is no great appetite to address these legislative anomalies. In real terms though, this distinction matters in very practical ways. Staff in Section 38-funded organisations enjoy more-secure employment status and, in most cases, they now enjoy better terms and conditions. As a result of this, it is reported that Section 39-funded bodies are beginning to lose staff to better-funded State or Section 38-funded organisations. For organisations too, access to the cover provided by the State Claims Agency can represent a significant cost saving.

How can this seemingly intractable issue be resolved. In the first instance the HSE and the Department of Health need to acknowledge that a reconfiguration of the legislative provisions governing the relationship between the State and not-for-profit organisations in the disability sector is needed without further delay. This could be done as part of the legislative programme associated with SláinteCare implementation. The nature of this reconfiguration should be agreed between the HSE and the Department of Health but, it would seem, needs to target a mid-ground between Section 38 and Section 39, for want of a better term, a 'Section 38½'! Under section 38½ it would be acknowledged that funded organisations are providing services on behalf of the State, but that for historical reasons they must be treated differently than those funded under Section

38. This could mean that for instance their employees would not be counted as public sector employees, their salaries would be set to protected pay scales applying in State or Section 38-funded organisations and that Section 38½ organisations would be funded specifically to meet such salary levels. Equally, pension arrangements for Section 38½-funded employees, while not enjoying defined benefit status, should be sufficient as to not be a cause of employee migration. Finally, the designation as Section '38 ½' organisations should ensure that these organisations are included under the State Claims Agency and not be left to the vagaries of the commercial insurance market.

5.3 Addressing immediate issues

Finally, this research has highlighted a number of immediate issues that need to be resolved if the sustainability of service delivery is to be maintained.

5.3.1 Creating sustainable and adequately funded service arrangements

This research points to a number of areas where the existing funding regime needs to substantially revised:

- **Paying full economic cost of delivery:** At this point it seems self-evident that the State needs to commit to pay the full economic cost of delivery in respect of services delivered on its behalf. It can no longer expect organisations to enter into service agreements where they are expected to understate the actual cost of delivering a service. Equally, if organisations are unable to deliver the required services for the level of resources proposed by the HSE, they need to indicate that the service cannot be provided and that the HSE needs to find an alternative means of provision.
- **Addressing current financial sustainability issues:** Many not-for-profit organisations are reporting the existence of growing financial deficits and some at least are experiencing serious financial sustainability issues. To an extent, these are a legacy of the recession but also of the failure of the HSE to pay the full economic cost of services. The HSE needs to address this legacy issue and engage in a collaborative way to resolve it. Failure to do so runs the risk of organisations being unable to operate and necessary services becoming unavailable in certain areas. **To address these issues it is recommended that an independent review of the level of financial deficits facing key organisations be undertaken. This review should map out the scale of organisational deficits and their origins and should recommend actions to address them. Those appointed to the review team should be mandated by, and should report to, a joint Department of Health/not-for-profit task group.**
- **Easing immediate financial pressure – To address some of the short-term financial pressures of organisations it should possible to address some of the big-ticket items that impose particular financial stress** on organisations. In particular, it is recommended that not-for-profit organisations of a particular scale should be included under the cover of the State Claims Agency for services they are carrying out on behalf of the State.
- **Suspending percentage cuts under 'value improvement programme'** – The Value Improvement Programme has been described earlier as being about improving value within existing services; improving value within non-direct service areas, and strategic value improvement. However, for organisations already under financial stress applying percentage reductions in budgets seems to make little sense. Given the above issues, it is recommended that the application of percentage cuts under the VIP be suspended for any not-for-profit organisations currently in financial deficit, at least until the financial sustainability review has been completed. This does not mean that identifying ways of saving money should stop, rather, it argues that applying a percentage cut in the budget of organisations already in deficit just exacerbates an already serious financial situation and jeopardises fragile financial sustainability.
- **Management of service arrangements** – The requirement to complete Part 2 of Service Arrangements on an annual basis with multiple CHOs and associated accountability and compliance requirements places an unnecessary burden on the administrative capacity of many organisations that operate across CHO boundaries. There does not appear to be any disagreement on this issue among not-for-profits or health sector officials and many of the solutions suggested are not contested. However, no action has been taken on them. Immediate action should be taken to address this, including moving to a system of multi-annual budgeting, as had previously clearly signalled in the 1997 'Enhancing the Partnership' report and in the White Paper on Voluntary Activity. It has also been noted that there is an absence of outcomes or results-based planning, with the focus instead being placed on shorter-term, output orientations, driven by an annualised budgeting process. This absence of a focus on outcomes was previously highlighted by the National Economic and Social Council in 2012 **(National Economic and Social Council, 2012)**[17]. Moving to a multi-annual programme arrangement would also

17 NESC (2012) Quality and Standards in Human Services in Ireland: Disability Services. No 132 2012

provide the opportunity to develop more substantial, outcome-based reporting. It would also enable the development of more 'downward' accountability relationships to balance the dominance of upward accountability to funders.

— **Dealing with fundraised income** – Finally, the issue of how fundraised income is dealt with the HSE needs immediate review. It does not seem logical, as has been reported by a number of interviewees, that organisations' independently fundraised income can be automatically targeted to be offset against the cost of services that are delivered on behalf of the HSE. In reality it represents a serious incursion into the autonomous working of an independent legal entity. Moreover, in some cases such funds are needed to meet the requirement of other regulators e.g. to create a sinking fund to allow for the upkeep of accommodation. In other cases, fundraised income is used for specific projects, such as the construction of a new building or to purchase transport. The degree to which this practice of HSE targeting of fundraised income needs to enumerated. To this end, it is recommended that as part of the financial sustainability review suggested above that the availability and deployment of fundraised income also be examined.

5.3.2 Regulation, compliance and accountability

This report has captured some of the experiences, commitments and frustrations of those in not-for-profits and in the statutory sector in dealing with the increasingly complex regulatory, compliance and accountability environment. And while the frustrations are considerable, at least there is a recognition of the need and potential to change amongst health sector officials:

"From a compliance point of view, I'm sure there's lots of things the State could do differently in terms of how we're a highly regulated State, highly regulated. There may be layers that could be just peeled out but at the same time making sure that organisations are governed properly and that people are safe and that their services are effective. It's a big job... I think there is an appetite to change that. I think there's an appetite to get into a much more elite CHO role that will hold the lead for particularly national organisations and they could do the compliance checks to remove the burden on these organisations having to do it nine times over if that makes sense. I think that makes sense. That just creates inefficiency."
(Interviewee 3, 2018)

However, this recognition now needs to translate into immediate action. In moving forward on this it would seem obvious that streamlining regulatory and compliance processes is essential. Such thinking is not new in the Irish public sector which introduced a process of Regulatory Impact Assessment (RIA) in 2005 to ensure that regulations being introduced would achieve their desired impact. The purpose of RIA is:

'...to identify any possible side effects or hidden costs associated with regulation and to quantify the likely costs of compliance on the individual citizen or business. It also helps to clarify the costs of enforcement for the State... RIA is best used as a guide to improve the quality of political and administrative decision making, while also serving the important values of openness, public involvement and accountability.'[18]

Just as the development of a system of regulatory impact assessment was seen as necessary to enable a conducive business and economic environment, so too the same principle needs to apply to this most important field of human activity. This requires the development of a better form of more-intelligent, integrated and communicative accountability systems, which:

— Strike a balance between upward, downward and internal accountability;

— Eliminate duplication within the HSE sphere;

— Accommodate the needs and demand of different regulators;

— Focus not just on financial and governance compliance but evolves towards stronger performative accountability;

— Provides the basis for meaningful engagement and communication, i.e. not just determines what has to be done to meet regulatory requirements but also shares best practice of how it might be done;

— Can be fully operated so as to restore lost confidence within the not-for-profit sector;

— Resources the core administrative costs of organisations to ensure that they can operate the systems needed to produce accountability data and support accountability processes.

Just what such intelligent accountability would look like would be an ideal theme for early partnership-type engagement between the HSE and not-for-profit

18 Department of the Taoiseach (2009) Revised RIA Guidelines – How to conduct a regulatory impact assessment http://publicspendingcode.per.gov.ie/wp-content/uploads/2012/07/Revised_RIA_Guidelines_June_20091.pdf

organisations, building on the existing discussions that are taking place between the Federation of Voluntary Bodies, the HSE and HIQA. One outcome of these discussions could be the development of some type of modified and sector-specific RIA process to identify the most appropriate, intelligent and cost-effective mechanisms to ensure openness, transparency and accountability, including:

- The development of a compliance passport;
- Establishing data and document repositories to avoid multiple requests for documentation which add needlessly to the compliance burden; and
- Review of the design of the Service Arrangement process and establish, as recommended earlier, formal mechanisms for engagement, dialogue and deliberation.

This again highlights why the State needs to move towards multi-annual service arrangements, where accountability requirements are set to cover the period of the arrangement and not subject to arbitrary change and addition at the behest of the HSE. This would contribute to security of service and reduce the frequency of engagement in the negotiation of arrangements.

5.4 Conclusion

In the UK, the Panel on the Independence of the Voluntary sector made the following assessment of the relationship between the UK voluntary sector and the UK State:

> *'The voluntary sector risks declining over the next ten years into a mere instrument of a shrunken state, voiceless and toothless, unless it seizes the agenda and creates its own vision... The voluntary sector must do more collectively to assert its independent mission and demonstrate how it adds distinctive value to the wider public and other stakeholders.'* **(2015: 14-15).**

This report has argued that the voluntary/not-for-profit sector in Ireland does contribute a distinctive added-value to Irish society and has done so since the foundation of the State. In the particular case of not-for-profit service delivery to people with disabilities, this contribution sees that sector as the primary provider of services and the State as the primary funder and now regulator of service delivery. Between these two lies a tension, between the preservation of the autonomy and independence of not-for-profit organisations on one hand and, on the other, the desire/right, of the State to exert ongoing and potentially greater control over how taxpayer's funds are deployed. In the former lies the challenge to design regimes of 'responsible autonomy', as described by the Federation of Voluntary Bodies; in the latter, control scenario, lies the potential for the voluntary/not-for-profit sector to become 'a mere instrument of the shrunken state'.

Ireland is not unique in experiencing the tensions between not-for-profit providers and the State, nor in encountering the drift towards more managerialist forms of public administration. Some level of tension is inevitable, in fact, it is desirable. But these tensions have been managed elsewhere and have given way to more progressive forms of engagement. There is clearly a willingness on the part of not-for-profits to engage in the configuration of a new relationship, allied with sufficient political will and the trio of public sector capacities named by the OECD – *Curiosity, Storytelling and Insurgency*.

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RehabGroup

Investing in People, Changing Perspectives

The Rehab Group
Roslyn Park
Beach Road
Sandymount
Dublin 4
D04 FH28
Ireland

Tel: +353 1 205 7200
Fax: +353 1 205 7211
Email: info@rehab.ie
Web: www.rehab.ie
Facebook: www.facebook.com/therehabgroup
Twitter: www.twitter.com/rehabgroup
YouTube: www.youtube.com/therehabgroup